

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 7 July 2010

The Council met at Eleven o'clock

MEMBERS PRESENT:

THE PRESIDENT

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

THE HONOURABLE ALBERT HO CHUN-YAN

IR 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.M., G.B.S., J.P.

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

DR THE HONOURABLE MARGARET NG

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

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

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

THE HONOURABLE LEUNG YIU-CHUNG

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

THE HONOURABLE WONG YUNG-KAN, S.B.S., 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 ANDREW CHENG KAR-FOO

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

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

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

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

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

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

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

THE HONOURABLE WONG KWOK-HING, M.H.

THE HONOURABLE LEE WING-TAT

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

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

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

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

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

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 KAM NAI-WAI, M.H.

THE HONOURABLE CYD HO SAU-LAN

THE HONOURABLE STARRY LEE WAI-KING, J.P.

DR THE HONOURABLE LAM TAI-FAI, B.B.S., J.P.

THE HONOURABLE CHAN HAK-KAN

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

THE HONOURABLE CHAN KIN-POR, J.P.

DR THE HONOURABLE PRISCILLA LEUNG MEI-FUN

DR THE HONOURABLE LEUNG KA-LAU

THE HONOURABLE CHEUNG KWOK-CHE

THE HONOURABLE WONG SING-CHI

THE HONOURABLE WONG KWOK-KIN, B.B.S.

THE HONOURABLE IP WAI-MING, M.H.

THE HONOURABLE IP KWOK-HIM, G.B.S., J.P.

THE HONOURABLE MRS REGINA IP LAU SUK-YEE, G.B.S., J.P.

DR THE HONOURABLE PAN PEY-CHYOU

THE HONOURABLE PAUL TSE WAI-CHUN

DR THE HONOURABLE SAMSON TAM WAI-HO, J.P.

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

THE HONOURABLE LEUNG KWOK-HUNG

THE HONOURABLE TANYA CHAN

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE WONG YUK-MAN

MEMBER ABSENT:

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

PUBLIC OFFICERS ATTENDING:

MR KENNETH CHEN WEI-ON, J.P.
SECRETARY FOR EDUCATION

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

MS FLORENCE HUI HIU-FAI, J.P.
SECRETARY FOR HOME AFFAIRS

THE HONOURABLE MATTHEW CHEUNG KIN-CHUNG, G.B.S., J.P.
SECRETARY FOR LABOUR AND WELFARE

PROF THE HONOURABLE K C CHAN, S.B.S., J.P.
SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY

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

CLERKS IN ATTENDANCE:

MS PAULINE NG MAN-WAH, SECRETARY GENERAL

MRS VIVIAN KAM NG LAI-MAN, ASSISTANT SECRETARY GENERAL

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY
GENERAL

MRS PERCY MA, ASSISTANT SECRETARY GENERAL

TABLING OF PAPERS

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

Subsidiary Legislation/Instruments	<i>L.N. No.</i>
Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Brunei Darussalam) Order.....	89/2010
Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Kingdom of the Netherlands) Order.....	90/2010
Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Republic of Indonesia) Order	91/2010

Other Papers

- No. 103 — Report by the Trustee of the Correctional Services Children's Education Trust for the period from 1st September 2008 to 31st August 2009
- No. 104 — Construction Industry Council Annual Report 2009
- No. 105 — Hong Kong Trade Development Council Annual Report 2009/10
- No. 106 — Independent Commission Against Corruption Complaints Committee Annual Report 2009
- No. 107 — Annual Report of The Ombudsman Hong Kong 2010

No. 108 — Hong Kong Export Credit Insurance Corporation Annual Report 2009-10

No. 109 — Hong Kong Special Administrative Region Independent Commission Against Corruption Annual Report 2009

Report of the Finance Committee on the examination of the Estimates of Expenditure 2010-2011

Report No. 16/09-10 of the House Committee on Consideration of Subsidiary Legislation and Other Instruments

Report of the Bills Committee on Companies (Amendment) Bill 2010 and Business Registration (Amendment) Bill 2010

Report of the Panel on Manpower 2009-2010

Report of the Panel on Administration of Justice and Legal Services 2009-2010

Report of the Panel on Home Affairs 2009-2010

Report of the Panel on Security 2009-2010

Report of the Panel on Constitutional Affairs 2009-2010

Report of the Panel on Food Safety and Environmental Hygiene 2009-2010

Report of the Panel on Financial Affairs 2009-2010

Report of the Panel on Education 2009-2010

Report of the Panel on Development 2009-2010

Report of the Panel on Welfare Services 2009-2010

ADDRESSES

PRESIDENT (in Cantonese): Addresses. Mr CHAN Kam-lam will address the Council on the Hong Kong Special Administrative Region Independent Commission Against Corruption Annual Report 2009.

Hong Kong Special Administrative Region Independent Commission Against Corruption Annual Report 2009

MR CHAN KAM-LAM (in Cantonese): President, I am not yet ready with my speech. I am sorry about that.

As a member of the Advisory Committee on Corruption, I have great honour to brief Members on the Hong Kong Special Administrative Region Independent Commission Against Corruption Annual Report 2009 which is tabled in Council today.

Year 2009 marks the 35th anniversary of the Independent Commission Against Corruption (ICAC), whilst in a number of international surveys of the places that are most free from corruption, Hong Kong holds its position in the best performing league. The ICAC shows to the world that the three-pronged strategy of law enforcement, prevention and education, together with the community's unreserved support, are the golden rules in the fight against corruption.

Although Hong Kong was hard hit in the global financial crisis, there was no significant increase in the number of overall reports of corruption received in 2009 as in 1998 when the number of corruption reports recorded a drastic increase in the wake of the Asian financial turmoil. A total of 3 450 corruption reports were received in 2009, representing a slight increase of 2% from 3 377 reports in 2008. The number of pursuable reports for the year was 2 530, accounting for 73% of the total number of reports and representing a drop of 3% over that in 2008. The conviction rate was as high as 85%, while 69% of complainants disclosed their identities when reporting corruption to the ICAC. All these figures indicate the community's disdain for corruption and the public's confidence in the ICAC. The number of corruption reports involving public bodies was 1 267, representing an increase of 7% over that in 2008 and accounting for 37% of the total number of reports. While the number of

corruption reports in the private sector has slightly decreased from 2 188 in 2008 to 2 183 this year, they accounted for 63% of the total number of corruption reports, and among which, 924 reports were related to building management. These cases remained a major concern since they accounted for 42% of all private sector reports.

Besides taking law enforcement actions to fight corruption, the ICAC continues to raise the awareness of property owners about corruption-free building management practices through extensive education and publicity campaigns, such as the Building Financial Management Toolkit published in the year for the reference of all owners' corporations in Hong Kong. The ICAC also reviewed the funding schemes for the Operation Building Bright to help ensure that funds would be fairly disbursed and projects properly monitored.

During the year, the ICAC's corruption prevention efforts focused on areas of public concern, such as building management, public health, food safety, environmental protection, major public development and charitable fund-raising activities and so on. The ICAC recommended preventive measures to relevant policy bureaux, government departments and public bodies with a view to minimizing corruption opportunities in their practices and procedures, and also handled requests for corruption prevention service from private organizations. During the year, the ICAC completed a total of 80 assignment studies on issues of public concern, and provided quick and early advice to government departments and public bodies at the initial stage of formulating new legislation, policies and procedures to ensure that adequate safeguards against corrupt practices were in place. In 2009, such corruption prevention advice was given on 529 occasions.

Furthermore, the ICAC launched various preventive education initiatives with a view to enhancing public vigilance to the threat of corruption. The ICAC continued to encourage and help entrench a culture of probity in the civil service under the "Ethical Leadership Programme" jointly launched with the Civil Service Bureau. The ICAC also mobilized an extensive network in the business sector to spread anti-corruption messages and the importance of good governance to SMEs.

Moreover, building an integrity culture among the young people has all along been a priority of the ICAC's work in preventive education. The ICAC incorporates integrity messages into the formal curricula, organizes various school activities, such as the "ICAC I-Mission Ambassador Programme for

Senior Secondary Students", "I Generation Youth Integrity Programme", as well as inculcates positive values in young people through providing support to educators and youth workers.

Notwithstanding global recognition of Hong Kong's achievement in the fight against corruption, the ICAC is still constantly looking for fresh ways to increase its regional and global contribution to the fight against corruption. During the year, the ICAC set up the Centre of Anti-Corruption Studies, which was the first of its kind in Hong Kong and the neighbouring regions to integrate theoretical research with the results of decades of empirical investigations. It provided a platform for law enforcement agencies and academics in Hong Kong, the Mainland and overseas in the research on anti-corruption initiatives, and to promote its anti-corruption initiatives to regions outside Hong Kong. To promote exchange among international communities, the ICAC co-hosted the Fourth ICAC Symposium with the European Anti-Fraud Office, which provided a forum for law enforcers, businessmen and professionals from all over the world to exchange views on ways to combat corporate corruption and to promote business ethics.

In the continuous drive to counter increasingly sophisticated corruption activities and better prepare for fast changing times, the ICAC restructured its training regime during the year, creating a centralized body to oversee the long-term training and development strategies of staff, particularly on skills relating to computer forensics and financial investigation so as to ensure that there are adequate professional investigators to cope with the rapidly changing times.

President, on behalf of the Commissioner of the ICAC, I wish to take this opportunity of tabling this Report in the Council to thank this Council and members of the public for their support to the ICAC and to express gratitude to members of various advisory committees of the ICAC for their valuable contribution.

President, I so submit.

PRESIDENT (in Cantonese): Ms Emily LAU will address the Council on the "Report of the Finance Committee on the examination of the Estimates of Expenditure 2010-2011".

Report of the Finance Committee on the examination of the Estimates of Expenditure 2010-2011

MS EMILY LAU (in Cantonese): President, pursuant to Rule 71(11) of the Rules of Procedure, the Estimates of Expenditure 2010-2011 were referred to the Finance Committee at the Council meeting on 24 February 2010. On behalf of the Finance Committee, I now submit Finance Committee's Report on the examination of the Estimates of Expenditure.

In order to study in detail the various items of the Administration's 2010-2011 expenditure, a total of seven special Finance Committee meetings had been held in 20 sessions during 22 to 26 March.

Due to time constraints, members were requested to first submit written questions for written replies to be tabled by the Administration prior to the special meetings. This year, a total of 3 194 written questions had been submitted by members, mostly on the details of expenditures for education, welfare services, home affairs, commercial and business development as well as medical services and public hygiene. The Administration had the written replies to these 3 100-odd written questions tabled prior to the special meetings. The electronic version of which had also been uploaded to the Legislative Council's website for the public's perusal.

After experiencing the financial tsunami, the economy of Hong Kong has started to revive along with global economic recovery. That notwithstanding, members note that many local businesses, in particular small and medium enterprises (SMEs), are still facing a difficult operating environment, while the general public cannot immediately benefit from economic recovery. For that reason, during the examination of the Estimates of Expenditure, members were gravely concerned about the effectiveness of the relief measures proposed by the Administration in alleviating the financial pressure of SMEs and the general public, in particular the disadvantaged groups. Members were also concerned about whether resources were appropriately allocated to the formulation of medium-to-long-term policy with a view to promoting the transformation and development of Hong Kong's economy, facilitating social progress and enhancing people's quality of living.

In the area of supporting the disadvantaged, members were gravely concerned about the adequacy of improvement measures in providing support and rehabilitation services for the elderly and for persons with disabilities and mental illness. They also provided views on the scope of various pilot schemes and modes of service delivery.

With regard to improving the employment situation, members considered that more training and internship opportunities should be provided to young people, and the manpower of the Labour Department should be increased to enhance the provision of employment counselling services. Members also urged the Administration to complete its review of the Transport Support Scheme as soon as possible and extend the scope of the Scheme, with a view to alleviating the burden of travelling expenses on the working poor in various districts.

Regarding public works projects, members welcomed the Administration's commitment of \$49.6 billion on infrastructure projects, which would help create job opportunities for the construction and other sectors. In order to meet the manpower needs in the construction industry, members urged the Administration to strengthen the training of the local construction personnel and improve safety and tidiness conditions in construction sites in order to attract more people to join the construction industry.

Regarding education, members urged the Administration to continue improving the provision of pre-primary education and implementing small class teaching. Members also urged the Administration to allocate resources to facilitate the early identification and provision of treatment to students with special educational needs. On the front of higher education, a number of members asked the Administration to put in more resources to increase the number of publicly-funded first-degree places. Some members also suggested providing subsidy to the self-financed programmes or relaxing the criteria for students enrolling in these programmes to obtain loans from the student financial assistance schemes.

As to medical and health services, members were concerned about the manpower shortage of healthcare professionals, and the Government was urged to conduct a comprehensive manpower assessment study and to devise strategic manpower plans. Some members considered that the HA Drug Formulary should be expanded and comprehensively reviewed with a view to benefiting

more patients. Members also urged the Administration to, as soon as possible, explain to the public its plan for taking forward the healthcare financing reform with the \$50 billion earmarked provision.

On constitutional matters, members were concerned about the relevant expenditure for the conduct of the 2010 Legislative Council By-election for the five geographical constituencies, and the expenditure for the publicity of the consultation on the methods for selecting the Chief Executive and for forming the Legislative Council in 2012. On Mainland affairs, members supported the further enhancement of various plans and activities to explore regional co-operation, and enquired about the details of provisions and resources allocation. On the rights of individuals, members urged the Equal Opportunities Commission (EOC) to enhance its research work and to reserve adequate financial resources with a view to meeting its expenditure on the provision of legal assistance.

Members had raised various views and concerns as to other work priorities highlighted by the Government, such as measures to improve air quality, heritage conservation, supporting measures for enterprises, tourism promotion efforts and driving the development of creative industries.

The Appropriation Bill 2010 had been passed by the Council on 22 April this year. The Finance Committee has also approved a number of funding proposals for the purpose of implementing the measures proposed in the Budget.

President, I am most grateful for members' enthusiastic participation in and the Administration's positive response to this year's special Finance Committee meetings. I would like to take this opportunity to pay tribute to staff of the Financial Services and the Treasury Bureau and the Legislative Council Secretariat who spared no effort in supporting the work of the Finance Committee.

I so submit. Thank you, President.

PRESIDENT (in Cantonese): Ms LI Fung-ying will address the Council on the "Report of the Panel on Manpower 2009-2010".

Report of the Panel on Manpower 2009-2010

MS LI FUNG-YING (in Cantonese): President, in my capacity as Chairman of the Panel on Manpower (the Panel), I submit the report on the work of the Panel during the 2009-2010 Session of the Legislative Council and briefly highlight several major items of work of the Panel.

The Panel continued to follow up the provision of subsidy under Transport Support Scheme (TSS) and receive views from deputations. Members requested the Administration to further relax TSS to operate on a long-term basis and to extend it to all other districts in Hong Kong.

The Administration explained that the purpose of TSS was to offer transport allowance to needy job seekers and low-income workers in the four designated remote districts to seek jobs or work across districts. If TSS was extended to 18 districts and the subsidy was provided on a permanent basis, it would depart from the policy intention of TSS. The provision of the subsidy on a permanent basis was tantamount to providing an income supplement to the employees on a long-term basis.

Members noted that the TSS was under the Administration's review. Apart from evaluating whether the policy objective had been achieved, the review would also cover an assessment of the overall effectiveness of TSS, the case processing procedures and practices adopted by non-government organizations participating in administering TSS, and the *modus operandi*, control and monitoring measures. Members requested the Administration to report the outcome of the TSS review to the Panel as soon as possible.

Members were very concerned about the major findings of the 2009 Annual Earnings and Hours Survey (AEHS), which was conducted to identify the level and distribution of wages of employees in Hong Kong, with a view to assisting the Provisional Minimum Wage Commission (PMWC) in deriving the initial statutory minimum wage (SMW) rate.

As AEHS was conducted in the second quarter of 2009, and at that time Hong Kong was adversely affected by the financial tsunami and had a high

unemployment rate, some members questioned whether the findings of the survey were appropriate references for determining the initial SMW rate.

The Administration advised that the wage statistics in the second quarter were adopted since they were relatively more stable than those in other quarters. The year-on-year comparison on the basis of wage data pertaining to the same reference period in each year would be meaningful, consistent and of good reference value. As AEHS's statistics might not be the most updated due to the inevitable time lag between data collection and compilation of the AEHS report, PMWC would take more recent information such as the standard of living, labour market conditions, economic growth and inflation into account.

The Panel was also very concerned about the findings of the survey conducted by the Census and Statistics Department on the effect of the age factor in employment. Some members considered that the first item of the survey revealed that age preference, to a large extent, affected the employment opportunities of job seekers looking for elementary occupations. Members were concerned about whether the Administration would consider introducing legislation against age discrimination in employment.

The authorities pointed out that the survey also indicated that a significant 34.8% of the target population accepted that certain occupations had a practical need to recruit employees of specific age ranges, in particular positions of service workers and shop sales workers, elementary occupations as transportation workers and security guards, and associate professionals.

The authorities emphasized that age might not necessarily be the only consideration of employers in recruiting staff, as many other factors, such as skills, qualifications and work attitude, would also be considered by employers. Age preference in recruitment and age discrimination were two different matters. The authorities considered it more practical to tackle the issue through strengthening publicity and education rather than the enactment of legislation.

The Administration stressed that in considering whether age discrimination legislation should be introduced, it had to critically examine whether the introduction of legislation would be the most effective way to achieve the

intended purpose, and whether it would be able to enforce the legislation effectively. Given the practical difficulties associated with legislation and enforcement, the Administration considered it more appropriate to focus on public education and publicity in tackling age discrimination in employment. The Administration would monitor the situation closely and in the event that public education and publicity were found to be ineffective, the legislative alternative might be considered.

Members were very concerned about the high unemployment rate of young people. Some members questioned the effectiveness of the Youth Pre-employment Training Programme (YPTP) and the Youth Work Experience and Training Scheme (YWETS) in assisting young people to find jobs. They considered that the Administration should strengthen the element of vocational training in YPTP and YWETS.

The Administration explained that while YPTP provided a wide range of modular training on leadership, job-search and interpersonal skills, computer application and job-specific skills, YWETS offered job placements with on the job training of six to 12 months' duration. To proactively assist young people in navigating their career journey, the Labour Department had further enhanced and integrated YPTP and YWETS into a through-train programme. The revamped programme had, among other improvement initiatives, extended the provision of personalized career guidance and counselling services by 12 months for trainees who had secured employment so as to better assist them to settle in their jobs, overcome problems in the workplaces, and to pursue further learning and skills upgrading opportunities.

Some members considered that the high unemployment rate of young people arose from the failure of the existing education system in meeting the needs of multiple talents of young people at school age. They pointed out that with the provision of nine-year free education, the majority of schools in Hong Kong had been offering conventional curriculum. Given the multi-faceted demands on Hong Kong's work force in the face of rapidly changing technology and increasing globalization, there was a need to inject more diversity into the education system to give students more choices in the selection of schools and curricula.

The Administration advised that the unemployment rate of young people was persistently higher than the overall unemployment rate. This phenomenon was not peculiar to Hong Kong and was encountered by economies at various stages of economic development. With no or very little working experience, young people often found it difficult to secure suitable jobs. At times of economic adversity, it would be more difficult for them to seek employment. The Labour Department had all along adopted a multi-pronged strategy and worked closely with other social partners to assist young people to develop their careers through administering dedicated training and employment programmes for young people.

With regard to work-at-height safety of Hong Kong's construction industry, some members were gravely concerned about the inadequacy of the present self-regulated system of the industry.

The Administration advised that the general duties of employers required under existing law to provide and maintain safe plants and systems of work and a safe environment, together with the concerted efforts of relevant stakeholders in the industry to promote work safety, had resulted in steady improvement in the safety performance of the construction industry. The Administration would continue to adopt a multi-pronged approach, including stepping up enforcement actions, promoting education and training for the workforce, and enhancing publicity to promote safety awareness and practice among employers and employees.

Members were very concerned about the growing number of "false self-employed" employees. They pointed out that subsequent to the implementation of the Mandatory Provident Fund (MPF) Scheme in 2000, some employers had arranged for their employees to become self-employed in an attempt to evade their responsibility for making MPF contributions. These members envisaged that the implementation of a statutory minimum wage would aggravate the problem of false self-employment. They considered that legislative amendments should be introduced to prevent the proliferation of false self-employment.

The Administration pointed out that it had carefully considered the suggestion of amending the law to clearly distinguish an employee from those self-employed. However, there was no single conclusive test to distinguish an employee from a self-employed person or contractor. As a matter of fact, it was not what the parties to an engagement called their relationship, but what it was the relationship in substance, that mattered. Whether an employer-employee relationship existed was often determined after considering all relevant facts. Even if an employer had engaged a self-employed person, he still had to fulfill his obligations under the law where the relationship between the parties was in essence one of employer-employee.

Finally, I would like to take this opportunity to thank members for their support to the work of the Panel. Thank you, President.

PRESIDENT (in Cantonese): Dr Margaret NG will address the Council on the "Report of the Panel on Administration of Justice and Legal Services 2009-2010".

Report of the Panel on Administration of Justice and Legal Services 2009-2010

DR MARGARET NG: President, in my capacity as the Chairman of the Panel on Administration of Justice and Legal Services (the Panel), I briefly report on the major work of the Panel in the 2009-2010 Session.

Procedures to fill the vacancy of the Chief Justice of the Court of Final Appeal

Following the announcement by the incumbent Chief Justice of the Court of Final Appeal of his retirement, the Panel discussed with the Administration the procedures and working timetable to fill the anticipated vacancy of the Chief Justice. The Panel stressed that the process of judicial appointments should not be politicized as it would violate the fundamental principle of separation of powers. The Panel agreed that the procedure for the Legislative Council's endorsement of senior judicial appointments, which was recommended by the Panel and agreed to by the House Committee in 2003, should be followed in the appointment exercise for the next Chief Justice. Members considered that the

Legislative Council's power to endorse judicial appointments was substantive and such power should only be exercised in exceptional circumstances where a judicial appointment was manifestly contrary to the public interest.

Some members, however, expressed grave concern over the role of the Secretary for Justice, a political appointee under the Accountability System, as a member of the Judicial Officers Recommendation Commission. Members noted that the Hong Kong Bar Association also took the view that the Secretary for Justice should not participate in the appointment process of judges. The Panel had agreed to follow up on the issue.

Access to justice

Legal aid continued to be a major focus of work of the Panel. Members all along considered that the financial eligibility limits of the two legal aid schemes should be raised, the scope of the Supplementary Legal Aid Scheme (SLAS) should be expanded and the upper financial eligibility limits should be waived for proceedings involving Labour Tribunal awards and human rights issues. Members took up these issues with the Administration when the Panel was briefed on the recommendations on the five-yearly review of the criteria for assessing the financial eligibility of legal aid applicants.

Members welcomed the Administration's recommendation of raising the financial eligibility limit for the Ordinary Legal Aid Scheme by about 50% and that for SLAS by about 100%. They, however, considered the extent of the proposed increase inadequate. Members were also disappointed that the Administration again refused to expand the scope of SLAS. The Panel requested the Administration to explain the rationale for the revised financial eligibility limits, and to reconsider expanding the scope of SLAS in order to enhance the middle class' access to justice. The Administration was also requested to explain to the Panel how employees would be better assisted in obtaining legal aid for recovery of wages and enforcement of Labour Tribunal awards. The Panel called a special meeting to follow up the discussion with the Administration and organizations involved.

The Panel had always held the view that legal aid should be expanded to cover community legal aid service in order to enhance the public's access to

justice. The Panel proposed to the Administration that legal advice service should be provided to Hong Kong people involved in litigation on the Mainland, and basic information on Mainland laws should be disseminated to the community. Members also supported the proposal of providing free legal advice service to persons detained by the police and other disciplinary forces. The Administration undertook to put forward recommendations for expanding free legal advice service and report to the Panel within the current financial year.

Some members were deeply concerned that the Legal Aid Services Council (LASC) had concluded, after its review of the need for an independent legal aid authority, that there was no pressing need to do so. They queried the basis for the LASC in reaching such a conclusion, which was a significant departure from the findings of the LASC's study in 1998. These members stressed that it was essential to the administration of justice that legal aid services must not only be delivered independently but also seen to be so. Members requested that fresh review on the independence issue to be conducted by the LASC should be advanced and the views of all relevant stakeholders should be duly considered in the review.

The Panel continued to monitor the progress of the review of criminal legal aid fees system. The Panel was kept informed of the progress of the discussions between the Administration and the Law Society of Hong Kong (Law Society) over the fee rates for solicitors. Members noted that the Administration was making preparation for the legislative process to effect the revised criminal legal aid fees structure and rates.

Development of mediation services

The Administration gave a briefing to the Panel on the major recommendations of the Working Group on Mediation (the Working Group) chaired by the Secretary for Justice. The Panel was also briefed by the Judiciary Administration on the establishment of the Mediation Information Office within the Judiciary. The Panel supported the development of mediation as an alternative means of dispute resolution. Some members, however, stressed that access to court was a fundamental right of Hong Kong residents guaranteed by the Basic Law, and such right should not be eroded by the development of mediation. The Administration assured the Panel that such right would not be

adversely affected by the development of mediation services. The Working Group believed that mandatory mediation for civil disputes should not be implemented at the present stage.

Limited liability partnerships for solicitors' practices

The Panel continued to monitor closely the progress of the Administration in taking forward the legislative proposal to enable solicitors to practise in limited liability partnerships (LLP) in line with the global trend. To address the concerns expressed by the Panel and the Consumer Council about consumer protection, Law Society submitted a paper to the Panel elaborating on the proposed measures to safeguard consumer interests. Law Society also provided relevant data to support its view that the existing statutory professional indemnity limit of \$10 million per claim was adequate in meeting the claims of ordinary consumers against solicitors. When the Administration updated the Panel on the progress in December 2009, members noted that there were a number of outstanding issues to be resolved including sanctions for LLP firms that had failed to comply with the consumer protection measures and whether such measures should be placed in the primary legislation or in the subsidiary legislation.

Some members considered that the failure of LLP firms to comply with consumer protection measures should be dealt with by way of disciplinary proceedings, rather than by the incorporation of legal sanctions in the primary legislation. The Panel requested the Administration and Law Society to resolve their differences over the outstanding issues so that the Bill could be introduced as early as possible. The relevant Bill had been introduced to this Council on 30 June 2010.

President, these are my remarks on the report.

I also take this opportunity to express my heartfelt thanks to the Clerk of the Panel and her colleagues for their able support. I am sure in doing so, I am expressing the sentiment of all members of the Panel.

Thank you.

PRESIDENT (in Cantonese): Mr IP Kwok-him will address the Council on the "Report of the Panel on Home Affairs 2009-2010".

Report of the Panel on Home Affairs 2009-2010

MR IP KWOK-HIM (in Cantonese): President, in my capacity as Chairman of the Panel on Home Affairs (the Panel), I now submit the report on the work of the Panel during the 2009-2010 session and briefly highlight the deliberations of the Panel.

In order to complement the development of the West Kowloon Cultural District and the cultural and creative industries, members welcomed the enhanced funding support for the arts and culture, but reiterated the need for the Administration to review the existing mode of subsidy for major performing arts groups to ensure a reasonable and fair distribution of funding resources amongst arts groups.

To address members' concerns, the Administration advised that the Home Affairs Bureau had commissioned a consultancy study to review the objectives of public funding for the performing arts in Hong Kong, and draw up a comprehensive proposal on a sustainable funding mechanism for performing arts groups to facilitate the flexible development of the sector.

On the development of museum services, members were of the view that the Administration should endeavour to promote an environment conducive to the organic growth of museums with a variety of missions, themes and characteristics, and to introduce measures to enhance the accountability and transparency of public museums. In this connection, the Administration assured members of its continued efforts to promote the development of a pluralistic and vibrant museum culture to complement the development of cultural software and creative industries.

On the promotion of sports development, members urged the Administration to capitalize on the outstanding results of Hong Kong athletes in the 2009 East Asian Games to reinforce its efforts in fostering a community-wide

sporting culture, and enhancing the educational and career development opportunities for retired athletes.

In respect of the promotion of local football, the Administration assured members of its commitment to collaborate with the Hong Kong Football Association to embark on major reforms on all aspects of football in the light of the findings and recommendations of the Consultancy Report on Football Development in Hong Kong. The Administration also undertook to allocate additional resources for district and representative teams and at the elite level for coaches and training facilities.

On building management issues, members urged the Government to assist owners of old buildings who had difficulties in forming Owners' Corporations or who lacked the ability and knowledge to tackle matters related to building management and maintenance. The Government indicated that the Home Affairs Bureau had launched the Building Management Professional Service Scheme on a trial basis in April this year in collaboration with the Hong Kong Housing Society and professional association of the property management industry, with a view to assisting owners of old buildings in enhancing the management and maintenance of their buildings.

In the face of the persistently high unemployment rate among the youth and shrinking opportunities for social mobility, members also called upon the Administration to formulate a comprehensive and forward-looking youth policy focusing on the specific concerns and requirements of the younger generation, and to provide more communication channels or platforms for young people.

With regard to improving library facilities, members passed a motion requesting the Administration to actively consider the requests of reviewing the planning standard in relation to public libraries prescribed in the Hong Kong Planning Standards and Guidelines, extending library opening hours, and setting up self-service book lending and returning outlets at MTR stations and ferry piers on outlying islands for convenient access to library services by the public.

The Panel would further discuss the implementation experience in relation to the recommendations of the 2006 District Council (DC) Review with the

Administration on 9 July, as well as other DC-related issues under the purview of the Home Affairs Department, including the responsibilities and functions of DCs, the delivery of District Minor Works, remuneration packages for DC members, as well as financial and staffing support for DCs.

Finally, I would like to take this opportunity to thank members and the Secretariat for their support to the work of the Panel in the past year.

President, I so submit.

PRESIDENT (in Cantonese): Mr LAU Kong-wah will address the Council on the "Report of the Panel on Security 2009-2010".

Report of the Panel on Security 2009-2010

MR LAU KONG-WAH (in Cantonese): President, in my capacity as the Chairman of the Panel on Security (the Panel), I now submit the report on the work of the Panel during the 2009-2010 session and briefly highlight several major items of work of the Panel.

Members were very concerned about the proposed introduction of the Medical Priority Dispatch System (MPDS). Members supported in principle an improvement to the existing emergency ambulance service (EAS), but they expressed reservations about the Administration's proposal of adopting a three-tier system for the categorization of emergency ambulance calls and setting the target response time at 20 minutes for Response 3 calls. Members considered it a retrogressive move. Some members considered that the existing response time target of 12 minutes should be adopted as the baseline, and a quicker response time target should be set for more critical cases.

Noting that callers would under the proposed MPDS be asked a set of entry questions, members expressed concern about the reliability of the MPDS

questioning protocol, whether the questions and answers would cause delay in the dispatch of ambulances and whether the MPDS questions were effective in ascertaining the patients' conditions.

The Administration advised that Response 3 calls were non-acute in nature. They were not time-critical and there were examples overseas of not setting any response time target for Response 3 calls under MPDS. The Administration therefore proposed to pitch the response time target for Response 3 calls at 20 minutes. Regarding the effectiveness of the MPDS questions in ascertaining the patients' conditions, the Administration advised that at present, advanced ambulance services in over 20 countries had already adopted a priority dispatch system, and the implementation of the priority dispatch system in these overseas countries had been smooth, safe and effective.

In view of the disputes and confrontation between demonstrators and the police during the protest activities outside the Legislative Council Building in mid-January 2010, members expressed grave concern about the ways in which the police handled large-scale public meetings and processions. Some members queried the propriety of the police deployment of mills barriers to barricade certain areas and streets in the vicinity of the Legislative Council Building and of using pepper spray against demonstrators when they made several attempts to break through the police lines by pushing and climbing over the mills barriers. Some members were of the view that the actions of certain demonstrators were too extreme, to the extent of storming the police lines and setting fire in Statue Square, thus posing danger to public safety. Therefore, they maintained that while facilitating the conduct of protest activities, the police should also discharge their duty of maintaining public order and ensuring the safety of others.

The Administration advised that the freedom or right of peaceful assembly and procession was enshrined in the Basic Law and the Hong Kong Bill of Rights. It was the long-standing policy of the police that while facilitating lawful and peaceful public meetings and processions, they would also ensure that the activities concerned would not pose any adverse impacts on public safety and order. Whenever there were any large-scale public meetings or processions, the police would, based on the assessment at scene and professional judgment, take

appropriate actions. After the conclusion of an activity, the police would also conduct a review.

During the year, members continued to follow up the progress of the Administration's review of the torture claim screening mechanism. Some members expressed reservations about the Administration's proposal to resume the screening process in December 2009 and the parallel implementation of a pilot scheme to provide publicly-funded legal assistance to torture claimants who met the means-test requirements. These members maintained that there were still a number of outstanding issues, including the guidelines on the pilot scheme, the training arrangement for duty lawyers, and the fees rates for torture claim related work.

The Administration advised that as at the end of October 2009, a total of 6 200 outstanding claims were pending screening. Because of this and the 300 or so new torture claims per month, the Administration saw a need to resume screening as soon as possible in order to clear the backlog of claims. Having reviewed the torture claim screening mechanism in the light of the Court of First Instance's judgment in a judicial review case on the screening procedures and relevant experiences of other common law jurisdictions, the Administration planned to enhance the existing screening mechanism by implementing a series of improvement measures, with a view to achieving effective screening, ensuring fairness and preventing abuses. The Administration had reached agreement in principle with the Duty Lawyer Service on launching the pilot scheme in December 2009 for a period of 12 months.

Members were very concern about the results of the Administration's study of matters raised in the Annual Report 2008 to the Chief Executive (Annual Report 2008) by the Commissioner on Interception of Communications and Surveillance (the Commissioner). Members expressed grave concern about the attitude of law enforcement officers towards the Commissioner's oversight and review functions. They enquired about the measures taken by the Administration to ensure law-enforcement officers' full support for and co-operation with the Commissioner in discharging the statutory functions under the Interception of Communications and Surveillance Ordinance (the ICSO). Members were also concerned about the queries regarding whether the Commissioner was empowered to listen to interception products which had been

lawfully obtained by law-enforcement agencies. They noted that the Commissioner had made a recommendation to the Administration for amending the ICSO to give express power and authority to the Commissioner to listen to interception products held by law-enforcement agencies.

The Administration advised that the unsatisfactory response given by a law-enforcement officer to the Commissioner's enquiry was possibly due to the fact that the officer had not got used to the Commissioner's oversight authority. As a matter of fact, with the benefit of more practical experience gained in the implementation of the ICSO, law-enforcement agencies were more readily able to offer useful comments from the operational perspective in response to recommendations and suggestions made by the Commissioner for improving the checking mechanism. Regarding the recommendations and concerns of the Commissioner, the law-enforcement agencies concerned had accepted them in full or were actively identifying improvement measures. The Security Bureau had also amended the Code of Practice, as and where appropriate, to resolve common issues that had implications across law-enforcement agencies. The Administration advised that it would carefully consider the recommendations raised in the Commissioner's annual reports during the comprehensive review of the ICSO.

The Panel was briefed on the latest position regarding the implementation of the Quality Migrant Admission Scheme (QMAS) and the Capital Investment Entrant Scheme (CIES). Members expressed grave concern about the impacts of the relaxation of the selection criteria of the QMAS in 2008 on the employment prospects of local university graduates. Some members were of the view that the Administration's measure of allowing investors to invest capital in real estate might be one reason for the sharp rise in the prices of commercial and residential properties in recent years. They pointed out that in some overseas countries where similar capital investment schemes were implemented, investors would be encouraged to bring in capital and to engage in the running of business, so as to could create more employment opportunities. They maintained that the Administration should draw experience from overseas, review the CIES and impose conditions on investment under the CIES.

The Administration pointed out that since the implementation of the QMAS in June 2006, only 1 333 applicants were approved to enter Hong Kong.

The figure should have very limited impact on the employment opportunities of local graduates. Besides, as at November 2009, only 29% of the annual investment made under the CIES was invested in the property market, which was more or less the same as that for the first year after the scheme was launched. Therefore, the Administration considered that the CIES would not have much effect on the local property market.

Members were also very concerned about the employment service support for rehabilitated offenders. Some members urged the Government to take the lead in providing employment opportunities for rehabilitated persons by appointing them to less sensitive government posts. They also thought that applicants should not be required to provide information on whether they had any criminal convictions.

The Administration explained that the requirement to provide past criminal conviction record in the application form for employment with the Government had been removed since January 2004, thus ensuring that rehabilitated offenders would be considered on equal terms with other applicants for appointment to the Civil Service. In considering applications for civil service posts, the Government, as an equal opportunity employer, would select the most suitable candidate for the post concerned, having regard to the applicant's character, qualifications, abilities and merits. To ensure that all civil servants were of good character and high integrity and could be entrusted to perform the relevant duties, all recruiting departments would require candidates who were initially considered to be suitable for appointment to provide information for the purpose of integrity checking. If a rehabilitated person met the entry requirements for a job and was shortlisted for appointment, he would not be disqualified for appointment merely because he had a criminal conviction record.

Finally, I wish to take this opportunity to thank the Legislative Council Secretariat and members for their support to the work of the Panel. Thank you, President.

PRESIDENT (in Cantonese): Mr TAM Yiu-chung will address the Council on the "Report of the Panel on Constitutional Affairs 2009-2010".

Report of the Panel on Constitutional Affairs 2009-2010

MR TAM YIU-CHUNG (in Cantonese): President, in my capacity as Chairman of the Panel on Constitutional Affairs (the Panel), I would like to highlight the deliberations of the Panel during this Legislative Session.

A Legislative Council Member from each of the five geographical constituencies (GC) resigned on 29 January 2010. The Administration subsequently explained to the Panel its plan for conducting the 2010 by-election. The Panel had also discussed the related practical arrangements. Members noted that the Basic Law did not provide for any referendum mechanism. Conducting any form of so-called "referendum" in Hong Kong would have no legal basis or effect under the Basic Law and the legislation of Hong Kong.

Some members disagreed with the resignation of the five GC Members for the purpose of initiating the so-called "referendum campaign" via the by-election. They strongly considered that the by-election this time was a waste of public money and time for community, as well as an abuse of the electoral system. They also considered that to prevent abuse of the electoral system, there was a need to amend section 14 of the Legislative Council Ordinance (LCO) to restrict the condition under which a Member who resigned from one's office could stand for election in the by-election to fill that vacancy.

Some other members took the view that the purpose of the resignation of the five GC Members was to trigger a "*de facto* referendum" so that every citizen could express one's view under the theme of "implementation of genuine universal suffrage and abolition of functional constituencies as soon as possible" by voting in the by-election, whereby public opinion could be quantified. The Administration had to discharge its statutory duty to arrange the by-election in order to fill the vacancies of the Legislative Council.

The Administration advised that it noted members' concerns and was exploring means to prevent abuse of the electoral system. If the legislative process to amend Annexes I and II to the Basic Law could be completed before the end of the current Legislative Session, amendments to the LCO to that effect might be considered when the Administration introduced local legislation in the autumn of 2010 to implement the two electoral methods.

The Panel had all along monitored closely the reports submitted by the HKSAR Government to the United Nations under the international human rights treaties. The Panel discussed the outline of topics in the third report of the HKSAR under the International Covenant on Economic, Social and Cultural Rights (the ICESCR) with the Administration, and received views from the public.

Some members expressed concern that according to Article 39 of the Basic Law, the provisions of the ICESCR and international labour conventions as applied to Hong Kong should remain in force and be implemented through the laws of the SAR, but the Administration had not enacted domestic legislation to entrench ICESCR. Some other members expressed the view that as the ICESCR had not required the implementation of the rights guaranteed in the Covenant in one go, the Administration should enact law only when needed, taking into account public aspirations and the local circumstances.

The Administration expressed the view that although the SAR had not specifically enacted domestic legislation to implement the ICESCR, as in the case of International Convention on Civil and Political Rights, the rights enshrined in the ICESCR were protected by the Basic Law and other domestic law.

Some members also expressed concern that the Administration had not introduced a bill on collective bargaining despite the trade unions' repeated requests. The Administration advised that it had already explained to the relevant United Nations committee that imposing collective bargaining by statute would have long-term implications on Hong Kong's labour relations system and might affect adversely Hong Kong's economic competitiveness, given the predominance of small and medium enterprises in Hong Kong.

During the last Legislative Session, the Administration consulted the Panel on the draft Administrative Guidelines on Promotion of Racial Equality (the Administrative Guidelines) which sought to provide guidance to relevant Bureaux, Departments and public authorities to promote racial equality and ensure equal access to key public service areas. The Panel since then had monitored closely the implementation progress and received updates from the Administration on the draft checklists of measures drawn up by relevant Bureaux, Departments and public authorities under the Administrative Guidelines, which

covered areas of education, vocational training, medical and health, employment and community services.

Since the Administrative Guidelines would be implemented on a voluntary basis only, and a high-level monitoring mechanism led by the Chief Secretary for Administration had not been set up to ensure compliance within the Government, some members queried the effectiveness of the Administrative Guideline in promoting racial equality.

The Administration explained that under the Policy Committee led by the Chief Secretary for Administration, all relevant policy secretaries were aware of the need to implement the Administrative Guidelines. If the relevant Bureaus and departments failed to comply with the Administrative Guidelines, the Ombudsman was empowered to investigate the cases on the ground of maladministration. The Constitutional and Mainland Affairs Bureau would pay close attention to the overall implementation of the Administrative Guidelines within the Government.

Some members also expressed concern that the Administration should review the implementation of the Race Discrimination Ordinance, including the overall requirement for additional resources to implement the Administrative Guidelines, and undertake to provide for the financial commitment accordingly. The Administration had assured the Panel that it would strive to provide the resources to meet the bid for additional funding, where necessary, from relevant Policy Bureaux or departments for the financial year 2010-2011 for the implementation of the Race Discrimination Ordinance and the Administrative Guidelines. At the Panel's request, the Administration undertook to consult relevant bureaux and departments on the adequacy of manpower and funding for providing support services for ethnic minorities and to keep the Administrative Guidelines and checklists under review. The Panel would continue to monitor the implementation progress.

Following the Government's announcement of the appointment of Mr LAM Woon-kwong as the new Chairperson of the Equal Opportunities Commission (EOC), the Panel invited the new Chairperson to brief members on his vision and the work of the EOC. Members pointed out that the EOC had experienced a spate of incidents in recent years which affected adversely the credibility of the

EOC, and non-government organizations were of the view that the EOC should not confine itself to the enforcement of the anti-discrimination ordinances. Members asked the newly appointed Chairperson of the EOC as to how the EOC could regain public confidence.

The Chairperson of the EOC stressed that the EOC should be an advocate of equal opportunities, not merely a law enforcement agency. The EOC should promote and disseminate the values of equal opportunities and anti-discrimination throughout society which was a long-term task requiring the concerted efforts of non-government organizations and the Government. Members expressed support about this.

Members also expressed concern that the EOC's funding for providing legal assistance is insufficient to enable the EOC to discharge its duty effectively. The Chairperson of the EOC advised that many of the cases had been resolved by conciliation before legal proceedings were initiated. Of the cases taken to Court, the legal expenses incurred by the EOC were affordable. The Chairperson of the EOC assured members that for meritorious cases which involved a question of principle, the EOC would take them to court as long as there were sufficient evidence and a need to enhance public education.

President, I so submit.

PRESIDENT (in Cantonese): Mr Fred LI will address the Council on the "Report of the Panel on Food Safety and Environmental Hygiene 2009-2010".

Report of the Panel on Food Safety and Environmental Hygiene 2009-2010

MR FRED LI (in Cantonese): President, in my capacity as Chairman of the Panel on Food Safety and Environmental Hygiene (the Panel), I present a report to the Legislative Council on the work of the Panel in the 2009-2010 session and highlight the deliberations of the Panel concerning food safety.

The Administration briefed members on 9 February 2010 on the detailed proposals of the Food Safety Bill, the results of the related public consultation and the findings of the Business Impact Assessment study. Members were supportive of the Bill and urged its early implementation. Members also urged the Administration not to drag its feet in transferring Part VA of the Public Health and Municipal Services Ordinance (Cap. 132) and the related subsidiary legislation to the Bill and to bring them up-to-date to better meet present day circumstances.

The Food Safety Bill was introduced into the Legislative Council on 2 June 2010. A Bills Committee was formed by the House Committee on 4 June to scrutinize the Bill.

The Panel held three meetings with the Administration to discuss the alignment of public market tenancy agreements by the Food and Environmental Hygiene Department (FEHD) and its introduction of the one-off tenancy transfer scheme, and the Panel had listened to the views of market traders at one of the three meetings. Members supported the one-off transfer scheme which would allow, on a one-off basis, any person who had been a registered assistant of the stall concerned for at least three years or any person who had invested in the business of the stall concerned for at least three years to apply for taking over the status of a tenant on producing relevant proof and with the consent of the original tenant, so as to resolve historical problems arising from scenarios such as several family members giving up on-street hawking in exchange for one market stall. However, some members were of the view that the scheme should, in addition to a registered assistant, also cover any person who took part in operating the stall in other capacities or forms.

Regarding the alignment of public market tenancy agreements, members shared deputations' views that the Administration should continue its long-standing practice of paying rates on behalf of market tenants and that the air-conditioning charges attributable to public areas of markets such as passages and lobbies should be borne by the Government, while tenants should only pay charges *pro rata* to their stall areas.

The Administration undertook that it would seek members' views on the specific arrangements for the recovery of rates when the details of rates

assessment were finalized, before deciding on the way forward. As regards recovery of air-conditioning charges, the Administration undertook to review whether the existing air-conditioning charging mechanism could be fine-tuned by excluding more common areas of markets from the amount of air-conditioning charges payable by stall tenants.

On a proposal for including a preamble in the tenancy agreement to recognize the historical background and social functions of public markets, the Administration advised after the meeting on 4 June 2010 that more time was needed to examine carefully whether the suggestion could be implemented. If it was concluded that the suggestion was worthy of implementation, consideration would be given to drafting the relevant clauses in consultation with the stakeholders.

As regards the allocation of vacant fixed hawker pitches, the Panel passed a motion at the meeting held on 12 January 2010, urging the Government to give priority to existing registered assistants with experience in the hawking trade in the selection of vacant pitches. The Administration subsequently informed members in February 2010 that it was prepared to give priority to existing registered assistants to apply for 70% of the vacant fixed hawker pitches.

On 9 February 2010, the Administration briefed the Panel on the latest progress in the development of columbarium facilities in Hong Kong. Members were advised that the Food and Health Bureau had set up a Working Group in co-ordination with the Development Bureau, the Home Affairs Bureau and various departments to study measures for increasing the supply of columbarium facilities and enhancing protection of the rights of consumers of columbaria.

The Administration reverted to the Panel measures to increase the supply of columbarium facilities and enhance the regulation of private columbaria on 6 July 2010. Moreover, the Panel would conduct an overseas duty visit to Japan in early September 2010 to obtain first-hand information on the country's columbarium facilities.

On the Administration's decision to shelve the development of a Poultry slaughtering centre in Hong Kong, members urged the Administration to increase the supply of live chickens in Hong Kong (including to increase the numbers of

poultry retailers, wholesalers and farmers in Hong Kong), provided that it would not increase the avian influenza risk, so as to bring the retail prices of live chickens down.

President, I so submit.

PRESIDENT (in Cantonese): Mr CHAN Kam-lam will address the Council on the "Report of the Panel on Financial Affairs 2009-2010".

Report of the Panel on Financial Affairs 2009-2010

MR CHAN KAM-LAM (in Cantonese): President, in my capacity as the Chairman of the Panel on Financial Affairs (the Panel), I now submit the Panel's work report for the current Session and give a brief account of its major work.

During the current session, the Panel continued to provide a forum for Legislative Council Members to exchange views with the Financial Secretary on matters relating to Hong Kong's macro-economic situation. Members were especially concerned about the possible formation of asset-price bubbles as a result of the persistent rises in property prices, and the increasing difficulties faced by members of the public in buying homes. Members urged the Financial Secretary to closely monitor the development of the property market and adopt further measures whenever necessary, so as to discourage property speculation and increase the supply of small and medium sized flats.

On financial affairs, the Panel continued to receive regular briefings by the Hong Kong Monetary Authority (HKMA) on its work and its analyses of the international and local financial markets. Members noted that the financial and banking sectors of Hong Kong had remained sound and robust in face of the challenges of the global financial crisis, with the capital adequacy ratio of banks maintained at a high level. The HKMA had continued to participate in the international deliberation of the reform measures and formulation of some of these measures.

Regarding the investment and management of the Exchange Fund, members expressed concern about whether the HKMA would adjust the

investment strategy for the Exchange Fund to enhance its investment return. In its work report in May 2010, the HKMA advised that it had been exploring the feasibility of diversifying into other asset classes, including private equity and emerging-market bonds and equities. It had started investing a small portion of the Fund's assets in yield enhancement assets and would proceed cautiously and incrementally.

During the current Legislative Session, the Administration submitted a number of proposals on enhancing investor protection to the Panel, including:

1. the establishment of an Investor Education Council and a Financial Dispute Resolution Centre;
2. the statutory codification of certain requirements to disclose price sensitive information by listed corporations; and
3. transferring the regulation of public offers of structured products from the Companies Ordinance prospectus regime to the offers of investment regime in the Securities and Futures Ordinance.

Members generally supported these proposals and also expressed various concerns and opinions.

President, the other aspects of the Panel's work are already set out in detail in the written report. I so submit. Thank you.

PRESIDENT (in Cantonese): Ms Cyd HO will address the Council on the "Report of the Panel on Education 2009-2010".

Report of the Panel on Education 2009-2010

MS CYD HO (in Cantonese): President, in my capacity as the Chairman of the Panel on Education (the Panel), I now report to the Council on the Panel's work during the 2009-2010 Legislative Session.

During the current Legislative Session, as at today, the Panel held a total of 12 meetings lasting 25 hours. It received 26 deputations and discussed 21 subjects. It also conducted visits to a school for social development, two sheltered workshops and two drug treatment and rehabilitation centres. Before the end of the current Legislative Session, the Panel will hold another two meetings to discuss three more subjects. Since the work of the Panel is already set out in detail in the report, I will only focus on the progress made by the Panel in several aspects of its work.

First, regarding pre-primary education, in response to the motion passed by the Panel at its meeting on 20 March 2009, the Administration agreed to set up a working group under the Education Commission to review the Pre-primary Education Voucher Scheme (PEVS). Prof Edmond KO Inq-ming, chairman of the working group, explained to members the progress of the review conducted by the working group. Members explained to Prof KO their concerns, including the eligibility of private kindergartens for the PEVS, equitable provision of subsidy for whole-day kindergartens, fee remission ceiling for whole-day kindergartens, teachers' salaries and professional upgrading of teachers. Members stressed that the working group should uphold the principle of not reducing parental choices for kindergartens in its review. Of particular concern to members was the remuneration for kindergarten teachers. Members pointed out that primary and secondary school teachers would receive salary increase after they had upgraded their qualifications. However, such a mechanism did not apply to kindergarten teachers, and this was unfair to them.

According to Prof KO, the task of the working group was to review the PEVS and not pre-primary education as a whole. Nevertheless, the working group recognized that the improvement of the PEVS should be linked to certain policies of pre-primary education. The working group would consider pre-primary education in that context and make appropriate recommendations in its report. Members noted the plan of the working group to submit a report to the Education Commission before the end of this year.

The next subject was the subsidy for Internet access charges. At the strong request of members and many grass-root organizations made in the last session, the Administration finally agreed to provide a subsidy for Internet access charges for needy students. Members expressed concern that about 24 000 low-income families did not have computers at home and did not subscribe to

Internet connection possibly due to a lack of financial resources or a small number of parents' perceived negative effects of the Internet. Members urged the Administration to approach them, bring home the positive value of Internet learning and secure a computer for each of them.

The next subject was the prices of school textbooks. After the Panel had followed up the subject for many years, the Administration adopted a number of practical measures to address members' long-standing concern about the increasing prices of school textbooks. The Administration took forward the recommendations of the Working Group on Textbooks and e-Learning Resources Development to implement various measures in this regard, including the implementation of the "debundling" policy starting from the coming school year, the change of the "three-year rule of no revision" to "five-year rule of no revision", and the issuance of guidelines to schools stating clearly that they were not allowed to solicit any free teaching or learning materials from textbook publishers. Members urged publishers to take actions to lower the costs of school textbooks in the coming school year. They also requested the Administration to discuss with the publishers associations issues relating to the "debundling" policy and the reduction of textbook prices. After considering the request of publishers and having regard to the time needed for resolving the problems encountered, the Education Bureau announced its decision to postpone the implementation of the "debundling" policy for a year. All members of the two major publishers associations agreed to freeze the prices of the recommended textbooks for the coming school year.

Towards the end of the last session, the Panel held a number of meetings on the school leaving arrangements for students with intellectual disability, and a motion was passed by the Panel calling for, among others, an immediate review of the school leaving arrangements for students with intellectual disability. With the efforts of various sides, the Administration eventually agreed to deploy resources to provide additional places for special schools from the coming school year so that they could have sufficient capacity to cater for students who needed to extend their years of study, as well as to empower schools to exercise school-based professional judgment according to the objective criteria jointly set by Education Bureau and the sector. With the progressive implementation of the improvement measures, about 500 ID students could continue to study in their schools with government subsidy in the coming school year.

President, finally, I wish to mention the relocation of the drug treatment and rehabilitation centres operated by Christian Zheng Sheng Association in Ha Keng. The Panel held three meetings on this subject, and members criticized the Administration for polarizing the issues of reprovisioning the drug treatment and rehabilitation in Ha Keng and the provision of secondary school places for South Lantau residents. Members called on the Administration to achieve a win-win situation to meet the needs of the students of Christian Zheng Sheng College receiving rehabilitative treatment as well as the needs of South Lantau residents. The Panel noted that Christian Zheng Sheng College had held further discussions with the Administration on its relocation proposals. The two parties tentatively agreed that for the time being, the Administration would assist Christian Zheng Sheng College in carrying out in-situ improvement works with a view to effecting their relocation to the former site of the New Territories Heung Yee Kuk Southern District Secondary School as a long-term solution. The Panel has scheduled a special meeting in late July 2010 to discuss the related arrangements.

President, I would like to thank the staff of the Secretariat for their assistance and members for their active participation. They have enabled the Panel to achieve actual progress in its work. I so report.

PRESIDENT (in Cantonese): Mr LAU Wong-fat will address the Council on the "Report of the Panel on Development 2009-2010".

Report of the Panel on Development 2009-2010

MR LAU WONG-FAT (in Cantonese): President, in my capacity as the Chairman of the Panel on Development (the Panel), I now submit the Panel's work report for 2009-2010. I shall briefly explain several aspects of the Panel's major work.

The Administration launched the review of the Urban Renewal Strategy (URS review) in July 2008. In the current session, the Panel held a number of discussions on this subject. Members in general agreed that the directions of

urban regeneration, such as urban regeneration based on a "bottom-to-top" and "district-based" approach, proposed in the URS review should be implemented expeditiously. Members also put forward various views and proposals, including a greater number of compensation options and the conduct of studies on how the Urban Renewal Authority (URA) should be appropriately empowered and funded in the future.

Following the collapse of a building on Ma Tau Wai Road in January 2010, the Panel held discussions on building safety and some related issues, and a subcommittee was set up to follow up the issue. The Panel expressed its concern and advice regarding a number of issues, such as the supervision of building repairs and internal alteration works, enforcement actions against unauthorized building works, assisting owners in conducting building repairs, Operation Building Bright and enhancing the public's awareness of building safety. Besides, the Panel also discussed the legislative proposal on enhancing lift safety.

In March and April 2010, the Administration briefed the Panel on the progress of the key initiatives of its heritage conservation work, and the financial proposals under the Revitalizing Historic Buildings Through Partnership Scheme. Members welcomed the Administration's policy of implementing heritage conservation and revitalization projects under a "district-based" approach. Members suggested that the Administration should carry out heritage conservation and revitalization work on a sustainable basis. Members also offered advice on how District Councils and people's organizations could take part in launching heritage conservation and revitalization projects.

Regarding infrastructure, the Panel continued to monitor the progress of the Kai Tak Development, covering such aspects as infrastructure facilities, the construction of a cruise terminal and the development of public housing. As for the Closed Area and the North East New Territories New Development Areas, members in general agreed that the Administration should conduct detailed planning and engineering studies, including the formulation of the Draft Development Plan for the land released from the Closed Area and the tentative development plan for the North East New Territories New Development Areas. Members also urged the Administration to ensure that when it launches such projects in the future, there can be balanced planning and sound co-ordination.

Since the other aspects of the Panel's work are already detailed in the report, I shall not dwell on them here.

President, I so submit.

PRESIDENT (in Cantonese): Mr WONG Sing-chi will address the Council on the "Report of the Panel on Welfare Services 2009-2010".

Report of the Panel on Welfare Services 2009-2010

MR WONG SING-CHI (in Cantonese): President, in my capacity as the Chairman of the Panel on Welfare Services (the Panel), I now submit to the Legislative Council the Panel's work report for 2009-2010 and give a concise account of its major work.

Although the Administration had been stressing the policy of "ageing in place", the provision of adequate subsidized residential care places for the elderly was still high on the agenda of the Panel due to the persistent increase in Hong Kong's elderly population. Members noted that a number of initiatives were announced in the Chief Executive's Policy Address 2009-2010 and in the 2010-2011 Budget to provide additional subsidized residential care places for the elderly. Pointing out that the 1 000 or so additional subsidized residential care places for the elderly were far from adequate in meeting the ever-increasing demand arising from an ageing population, members were gravely concerned about the waitlisting situation.

The Administration had been emphasizing that in line with the policy of supporting "ageing in place as the core, institutional care as back-up", it provided the elderly with subsidized community care services, including centre-based day care services and home-based services for the elderly who had difficulty in taking care of themselves. Notwithstanding that, members were of the view that the promotion of "ageing in place" and the provision of additional places in subsidized residential care homes for the elderly (RCHEs) were not mutually exclusive. They strongly urged the Administration to increase the provision of subsidized RCHE places having regard to the ever-growing demand from an ageing population and the public impression that subvented RCHEs were better

than private RCHEs, with a view to shortening the average waiting time to a reasonable time frame.

The Panel continued to follow up the provision and allocation of subsidized residential care places for persons with disabilities. Members noted that the Government had earmarked sites for the provision of an additional 939 residential care places for persons with severe disabilities in the coming two years. However, members were concerned that when viewed against the 6 000 or so persons on the waiting list, the additional places were just a drop in the bucket. Members held a strong view that the Administration should draw up a concrete timetable for improving the waitlisting situation, actively consider introducing an allowance scheme for carers of persons with disabilities and put in place interim measures to enhance relief support services for carers. The Panel passed a motion urging the Administration to launch immediately an allowance for home carers of persons with disabilities, so as to provide an additional option for persons with disabilities waiting for residential care homes for persons with disabilities places.

To enable more focused discussion on the Government's effort in increasing the provision of subsidized residential places and enhancing care and support for the elderly and persons with disabilities in the community, the Panel decided to appoint a subcommittee to study policies and measures relating to the provision of residential care places and community care services for persons with disabilities and the elderly. Upon the completion of its work, the Subcommittee would submit a report and its recommendations to the Panel.

Over the past few years, the Panel had been urging the Administration to introduce the Residential Care Homes (Persons with Disabilities) Bill as early as possible for monitoring and improving the quality of residential care homes for persons with disabilities, and the Administration finally introduced the Bill to the Legislative Council on 30 June. The Bill is being scrutinized by the relevant Bills Committee.

The Panel noted that the consultant commissioned by the Administration had completed the Review on the Implementation of Integrated Family Service Centre Service Mode and put forward 26 recommendations. Members also noted that the Administration accepted in principle all the 26 recommendations

and would take them forward. However, most members held the view that the Administration had not addressed the work pressure of front-line social workers and the needs of service-users. Members maintained that the implementation of the consultant's recommendations should be closely monitored and that the mode of service delivery for integrated family service centres should be further improved. Therefore, the Panel would continue to follow up the relevant work actively in the coming Legislative Session.

Finally, the Panel appointed the Subcommittee on Poverty Alleviation last year for the purpose of studying various policies and measures relating to poverty alleviation. The Subcommittee has completed its work and formulated a series of measures for the Government's consideration. The Chairman of the Subcommittee will move a motion debate on its report at the Legislative Council meeting today.

Thank you, President.

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): Questions. The first question.

Prevention of Students and Teachers from Being Pressurized by School Authorities to Indicate Their Stance on Political Issues

1. **MR WONG YUK-MAN** (in Cantonese): *President, it has been reported that recently several school authorities one after another coerced their students and teachers into joining the "For Universal Suffrage, Support Constitutional Reform" rally on 19 June 2010 in support of the Government's constitutional reform proposals. Among them, the school authority of the Hong Kong Federation of Education Workers Wong Cho Bau Secondary School in Tung Chung coerced its teachers into participating in the activity using the reason of professional development and teachers not participating were required to explain to the school principal in person. The MFBM Chan Lui Chung Tak Memorial College in Tin Shui Wai issued a circular to the parents of all its 200 Senior*

Secondary One students, stating that the time spent on the activity would be counted as hours required for Other Learning Experiences (OLE) in the New Senior Secondary curriculum and, therefore, students' participation was mandatory. In this connection, will the Government inform this Council:

- (a) before the above incidents were reported by the press, whether the Secretary for Education knew that those schools mobilized their students and teachers to participate in the "For Universal Suffrage, Support Constitutional Reform" Rally, as well as the means of mobilization adopted;*
- (b) of the Education Bureau's guidelines, measures and complaint mechanism in place to protect students and teachers from being pressurized to indicate their stance on political issues; and*
- (c) what sanctions the Education Bureau may impose in future on those school authorities which use the aforesaid means to request their students or teachers to indicate their stance on political issues?*

SECRETARY FOR EDUCATION (in Cantonese): President, my reply to the above question is as follows:

- (a) The Education Bureau did not know about the incidents until it received enquiries and complaints from parents and members of the public.
- (b) The Education Bureau has issued guidelines to schools under different circumstances and according to the nature and requirements of student activities. When a Legislative Council general election is held, we remind schools that participation by students in electioneering activities should be entirely voluntary; the consent of parents should be obtained beforehand; normal lessons should not be interrupted; and students should not be asked to take part in activities in areas where there may be possible danger. In addition, the Senior Secondary Curriculum Guide prepared by the Curriculum

Development Council has clearly set out school-based guiding principles for conducting OLE programmes, as well as the aims and expected outcomes of the programmes. On the basis of the guidelines, teachers should exercise their professional judgment in arranging different lessons and learning activities to provide students with quality learning experiences, having regard to the circumstances of their schools, the nature of the activities and the students' needs. The Education Bureau has also issued circular memoranda to inform schools about the implementation details of teachers' continuing professional development. These circular memoranda state that schools have to make professional judgment on the basis of the direction of school-based development when assessing teachers' continuing professional development needs, and that teachers should be more engaged in the process. The ultimate aim is to serve the educational interests of students.

The Education Bureau always encourages schools to maintain good communication with their stakeholders. If the staff, parents or students disagree with any school policies, they may, in the first instance, put forward their views directly to the school so that it can address their concerns and take follow-up actions. If they have reasonable grounds to believe that the school has mishandled the matter, they may complain to the Education Bureau. On receipt of a complaint, the staff of the Education Bureau will investigate the case and take appropriate follow-up actions.

- (c) Under section 98(2) of the Education Regulations, the Permanent Secretary may give directions in writing or other guidance to the management authority of any school as to the dissemination of information or expression of opinion of a political nature in that school, so as to ensure that the information or opinion is unbiased. If the Education Bureau finds that a school has deviated from the spirit of this regulation when handling political activities held in the school, it will give advice to the school and issue proper directions in writing, if necessary.

MR WONG YUK-MAN (in Cantonese): *President, first, I said in the main question that one of the schools forced its students to join the rally, saying that the time spent on the activity would be counted as the hours required for OLE but the reply of the Secretary was totally irrelevant. He only said that "the Senior Secondary Curriculum Guide prepared by the Curriculum Development Council had clearly set out school-based guiding principles for conducting OLE programmes". He had completely missed my main question. Can schools muddle through in this way or tell students that their participation in rallies will be counted as the hours required for OLE?*

Second, I hope the Secretary can give me a more specific answer rather than being perfunctory. Part (c) of my main question is about the sanctions the Education Bureau may impose in the future on school authorities which use the aforesaid means to request their students or teachers to indicate their stance on political issues. I hope the Secretary can answer more specifically.

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

MR WONG YUK-MAN (in Cantonese): *My supplementary is very clear. Just now, when the Secretary mentioned OLE, he said that it was based on the Guide prepared by the Curriculum Development Council President, I may be speaking too fast and that is because I want to save time to enable more Members to raise questions; otherwise, you will criticize me again. Just now, the Secretary said that the Senior Secondary Curriculum Guide had set out clearly school-based guiding principles for conducting OLE programmes. So, can he tell me clearly what they are? Can he explain specifically the relationship between these guidelines and the school's practice of counting students' participation in the "Act Now" campaign as the hours required for OLE which is tantamount to treating them as point-earning activities?*

SECRETARY FOR EDUCATION (in Cantonese): President, after students and parents had reflected this incident to us, we issued a statement at the earliest opportunity, saying that we did not consider the rally to be a learning activity and that it was only an expression of one's stance. In arranging OLE activities,

schools must follow our guidelines, that is, the expected outcomes of learning have to be clearly defined and students should take action according to their independent judgments, which should be made on the basis of their personal principles and social norms. Only in this way can the learning experience be of good quality. Under this premise, we believe that mandating students' participation in rallies shows a disregard for personal wishes and we cannot see how it would give rise to quality learning opportunities. There are many different ways to raise students' civic awareness. We think that when schools design OLE programmes, the overriding principle is to ensure the provision of meaningful learning opportunities for students, instead of simply expressing stances on political issues.

MR ALBERT CHAN (in Cantonese): *President, the reply of the Secretary shows clearly that the schools have violated education regulations, and this gives rise to two issues. First, regarding the violation of education regulations by schools, has the Education Bureau imposed any sanction or taken any action to condemn it? If not, this would amount to condoning such actions since the "Act Now" campaign was initiated by the Government, this gives one the impression of "treating people differently according to affinity" and leads to doubts about being biased.*

Second, President, I am very concerned about the rights of students, in particular, about insurance. These activities may result in various accidents or casualties such as heatstroke or traffic accidents. Under these circumstances, since the schools concerned have violated education regulations, students are obviously not covered by any insurance. Should any problem arise, who will be responsible for making compensations? Has the Bureau ever looked into these issues? How to ensure that the rights of students will not be undermined?

PRESIDENT (in Cantonese): Mr CHAN, you have raised two questions. May I know which question you wish to put through your supplementary question?

MR ALBERT CHAN (in Cantonese): *President, both questions are related to education regulations, that is, the sanctions for violating education regulations*
.....

PRESIDENT (in Cantonese): Is your first question about the sanctions that the Administration would impose?

MR ALBERT CHAN (in Cantonese): *Yes, that is right.*

PRESIDENT (in Cantonese): The second question is about the rights of students, including who will be responsible for the insurance.

MR ALBERT CHAN (in Cantonese): *All these problems arise from violation of education regulations. If the President insists that I must choose, I would choose to ask the second question.*

PRESIDENT (in Cantonese): You can wait again for your turn to ask your first question. Will the Secretary please first answer the question concerning insurance for students?

SECRETARY FOR EDUCATION (in Cantonese): President, we have issued clear guidelines to schools specifying that schools have to attach importance to safety when organizing activities outside campus and the agreement of parents has to be sought. However, as I said just now, insofar as OLE programmes are concerned, the most important thing is to provide quality learning opportunities. In fact, after internal discussions, the school concerned had cancelled the activity originally scheduled for 19 June and parents were also notified. Therefore the activity did not take place.

MR CHEUNG MAN-KWONG (in Cantonese): *I received complaints lodged by two teachers of the Hong Kong Federation of Education Workers Wong Cho Bau Secondary School by email, saying that in a Professional Development*

Conference, the school asked teachers to join the "Support Constitutional Reform" rally. Teachers not joining had to see the school principal but if they were not going to teach in the school next year, they did not have to do so. Subsequently, the principal explained that the reason was to count the number of people taking school coaches. May I ask the Secretary since when school principals are responsible for keeping a tally of the number of people taking school coaches? Is the participation of teachers in the "Support Constitutional Reform" rally regarded as a professional development activity? Is forcing teachers to join the "Support Constitutional Reform" rally a violation of their professionalism? Will the Education Bureau formally investigate this incident? If the approach adopted by schools runs counter to the policy of the Education Bureau or the professionalism of teachers, will the Bureau deal with this or even issue reminders or warnings and submit a report to the Legislative Council?

PRESIDENT (in Cantonese): Mr CHEUNG, you have raised a number of supplementary questions but as far as I understand, your supplementary questions seek to ask how the case mentioned by you will be dealt with.

MR CHEUNG MAN-KWONG (in Cantonese): Yes.

SECRETARY FOR EDUCATION (in Cantonese): President, we have to understand the background of this incident. The sponsoring body of the school is the Hong Kong Federation of Education Workers (HKFEW) and many of the teachers working in that school are members of the HKFEW. The school explained to us that very often, the principal would mention HKFEW activities to its members during meetings and it was no exception on that occasion. In fact, the process relating to teachers employed on contract terms had been concluded in May, so the rally had nothing to do with the renewal of contracts. After the occurrence of the incident and upon receipt of complaints, we immediately approached this school to look into this matter. We understood that the school had already learnt a lesson from this matter and in the future, it would improve its communication with teachers.

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

MR CHEUNG MAN-KWONG (in Cantonese): *No. I asked the Secretary how the Education Bureau would handle this matter and whether or not a report would be submitted to the Legislative Council.*

SECRETARY FOR EDUCATION (in Cantonese): President, as far as we know, this incident happened because the school sponsoring body hoped to inform its members of the rally through the principal's verbal notification to see if the members concerned wanted to join the rally. After clarification, we do not see any need to take any further follow-up action. In fact, as I said just now, if teachers are worried about the relationship between contract renewal and the rally, we can see that in fact, the school has already completed the process of contract renewal at the end of May, so whether or not teachers join the rally actually has nothing to do with contract renewal.

MR CHEUNG MAN-KWONG (in Cantonese): *President, the Secretary has not replied as to whether or not he would submit a report to the Legislative Council.*

PRESIDENT (in Cantonese): Secretary, will a report be submitted to the Legislative Council?

SECRETARY FOR EDUCATION (in Cantonese): President, since we have approached the school concerned and followed up this matter and it has also improved communication with its teachers, we think that at the present stage, this incident has actually come to a close.

MR CHEUNG MAN-KWONG (in Cantonese): *President, I believe that you also understand that I am asking him to submit an investigation report to the Legislative Council.*

PRESIDENT (in Cantonese): Mr CHEUNG has made a request. Secretary, can a report on this incident be submitted?

SECRETARY FOR EDUCATION (in Cantonese): President, after this incident, we had communicated with the school management and the school management had also communicated with its teachers. At the present stage, we do not see any need to continue to follow up this matter. However, since the Member has raised a request just now, I will go back and discuss with my colleagues and give him a reply in due course.

MR LEUNG KWOK-HUNG (in Cantonese): *Does he know that the HKFEW has supported the rule of the communist party for a long time? In the past, a Legislative Council Member was its representative in the Legislative Council. This is very simple. I think that this practice of closet politics is not right. In order to cover up something shady done by a school sponsoring body, they said that they would go back and see if they could prepare a report. Is this accountability? In addition, the Secretary must not follow other people's example, saying that they would only disclose what they knew*

PRESIDENT (in Cantonese): Mr LEUNG, you should raise your supplementary question.

MR LEUNG KWOK-HUNG (in Cantonese): *On behalf of Mr CHEUNG Man-kwong, I*

PRESIDENT (in Cantonese): You should raise your supplementary question.

MR LEUNG KWOK-HUNG (in Cantonese): *This is because the political party to which Mr CHEUNG Man-kwong belongs also said that it would publish a report but part of it could not be disclosed because it involves the communist party, so they could not disclose it. Is he going to follow their example by*

saying that part of it is related to HKFEW schools, so it cannot be disclosed? The Secretary has to be accountable but they do not have to be, so the Secretary must not be subjected to their bad influence. Is he going to follow the approach of the Democratic Party?

PRESIDENT (in Cantonese): Mr LEUNG, you should raise a supplementary to the main question.

MR LEUNG KWOK-HUNG (in Cantonese): *This is what Mr CHEUNG Man-kwong said. He said that this was the beginning of terror politics. This is the beginning of closet politics.*

PRESIDENT (in Cantonese): Mr LEUNG, please do not voice any views beyond the scope of this question.

MR LEUNG KWOK-HUNG (in Cantonese): *Will the Secretary release a report in the way the political party to which Mr CHEUNG Man-kwong belongs did, saying that part of it involved other people, so it could not be disclosed? Would he do so? I am asking him to be accountable. If there is really a report, would he do so?*

PRESIDENT (in Cantonese): Mr LEUNG, you have already raised your supplementary question. Please sit down. Secretary, please reply.

MR LEUNG KWOK-HUNG (in Cantonese): *Would he do so?*

SECRETARY FOR EDUCATION (in Cantonese): President, as I said just now, after the incident, we had communicated with the school and the school had also communicated with its teachers. As regards the request of Mr CHEUNG Man-kwong just now, I will discuss with my colleagues to see if we have any

other details to share with Members at an appropriate time. I have nothing else to add.

MR LEUNG KWOK-HUNG (in Cantonese): *He has not answered my supplementary question. Would he act like the Democratic Party by saying that part of the report cannot be disclosed because two organizations are involved, one being the Education Bureau and the other being a secondary school of the HKFEW?*

PRESIDENT (in Cantonese): Mr LEUNG, I think the Secretary has already answered the part of your supplementary question that is relevant to the main question. Please sit down.

MR LEUNG KWOK-HUNG (in Cantonese): *Thank you, President. You are so astute.*

MS CYD HO (in Cantonese): *In fact, this is not the first time that there are reports about calling on students to join political activities and these two reports are perhaps just the tip of the iceberg. May I ask the Secretary if, apart from giving a written reply to the Legislative Council and issuing press releases, does he have some other more proactive measures to let school sponsoring bodies and all school principals know how to deal with matters relating to encouraging students to care about society, so as to differentiate between participation and observation clearly? In addition, is there any way to tell teachers, parents and students how they should cope with this kind of political pressure and how to lodge complaints and follow them up?*

SECRETARY FOR EDUCATION (in Cantonese): President, when we announce the curriculum framework, in fact, seven learning goals have been set out clearly. Perhaps let me talk about the two goals that may be related to this incident.

First, we hope that each student can be an informed and responsible citizen with a sense of global and national identity. Second, we also hope that each student can respect pluralism of cultures and views, and be a critical, reflective

and independent thinker. Under the premise of these learning goals, when designing the entire curriculum and introducing the curriculum to teachers and parents, we hope that students can be encouraged to consider issues from various angles. If they encounter controversial issues, we require teachers to analyse them with students in a multi-faceted approach. Students should also adopt an accommodating attitude in learning, for example, in the learning of such subjects as Liberal Studies or OLE. When they encounter social issues that are inevitably controversial, they should look at them critically from various perspectives. Concerning the Member's question on whether or not we have provided clear guidelines to schools, in fact, the answer is in the positive and we also believe that our teachers will teach our next generation in a professional manner.

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

MS CYD HO (in Cantonese): *No. Although guidelines are available, such incidents still happen. Therefore, just now, I asked the Secretary if the authorities have more proactive measures in place. The existing guidelines are not adequate in preventing this kind of incidents.*

SECRETARY FOR EDUCATION (in Cantonese): President, controversial issues often arise in society. Whenever such issues are encountered, for example, in this incident, we encouraged the schools concerned to enhance their communication with parents and students. In fact, we are confident that schools and their teaching teams will handle controversial issues in society in a professional manner. Of course, in the process of implementing education and curriculum reform, instances of various people holding different views are encountered from time to time. In these circumstances, we will surely take the initiative to get in touch with schools, hoping that schools can explain clearly to the stakeholders why certain activities are organized or why students are mobilized to join them.

PRESIDENT (in Cantonese): We have spent more than 21 minutes on this question. Second question.

Air Ventilation Assessments in Respect of Development Projects in Tsuen Wan District

2. **MR TAM YIU-CHUNG** (in Cantonese): *President, some residents of Tsuen Wan District consider that the development intensities of the four development projects at the TW5, TW6 and TW7 sites of the West Rail Tsuen Wan West Station, as well as Tsuen Wan Town Lot Number (TWTL No.) 393 are too high, and the wall effect created by these developments upon their completion will have impact on the air ventilation in the urban area of Tsuen Wan. It has been learnt that last year, the Tsuen Wan District Council (TWDC) commissioned an independent academic institution to conduct a detailed study on the overall impact of such four new development projects on the air ventilation in Tsuen Wan town centre. In this connection, will the Government inform this Council:*

- (a) whether the authorities know the specific details of the aforesaid study; whether they have assessed if the methodology adopted in the study, when compared with the Government's separate air ventilation assessments conducted for individual development projects, can reflect more accurately and comprehensively the impact of such development projects on the air ventilation in the Tsuen Wan District;*
- (b) whether the authorities will make reference to the outcome and recommendations of the aforesaid study, and implement improvement measures to reduce the adverse impact of such development projects on the air ventilation in the Tsuen Wan District, as well as correspondingly impose restrictions on the development projects which have not been put to tender; and*
- (c) given that in her speech on the motion "Reviewing afresh the use of land at the Kowloon waterfront" at the meeting of this Council on 9 December last year, the Secretary for Development indicated that the Government had removed TWTL No. 393 from the Application List, giving the Bureau more opportunities to consider with TWDC the overall accumulated effect brought by the sites of the above four*

projects so as to decide afresh the use of TWTL No.393 which had originally been designated for hotel development purpose, of the latest progress in this regard?

SECRETARY FOR DEVELOPMENT (in Cantonese): President, the Government issued the Technical Circular on Air Ventilation Assessments (AVAs) in 2006. It requires government departments and bureaux to conduct AVAs according to the Technical Circular when commencing major government projects, planning for new development areas and comprehensive redevelopment areas, and preparing new town plans and revising major town plans. The Government will also take into account their individual conditions and conduct AVA on the sites available for land sale to assess the impacts of the development project on the pedestrian wind environment, and to include appropriate provisions in the Conditions of Sale to ensure that the air ventilation condition in the area is maintained at an acceptable level.

Since 2006, when reviewing and revising outline zoning plans, the Government will also request, as appropriate, developers of sites zoned as "Comprehensive Development Area (CDA)" to submit AVA reports as part of the "Master Layout Plan" (MLP) submission for approval by the Town Planning Board (TPB). For other sites where planning permission is required, AVA may be required by TPB as an approval condition.

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

- (a) The Government is aware that the Community Building, Planning and Development Committee of the TWDC has commissioned The Hong Kong University of Science and Technology to conduct an AVA study for TW5, TW6, TW7 and TWTL No. 393. The Planning Department was also invited to be a member of the steering group of the study. According to Planning Department, the study has been carried out in accordance with the Technical Circular promulgated by the Government in 2006 and is still in its final stage. According to the Technical Circular, AVA can be conducted in

respect of an individual development project, several development projects or for an entire district. There is no question of which one is better than the other.

- (b) The three railway property developments of the West Rail Tsuen Wan West Station, that is, the development projects at the TW5, TW6 and TW7 sites are located at sites zoned as CDA. The MLPs of these development projects were submitted by the applicant, the former Kowloon-Canton Railway Corporation (KCRC), and planning approval was granted by the TPB between 2000 and 2001. Since the three aforesaid development projects were approved by the TPB before the promulgation of the Technical Circular on AVA, the applicant was not required to submit AVA reports.

Of the three development projects, the construction works of TW7 has already commenced. Regarding TW5, its MLP was approved by the TPB in 2000. Subsequently, the KCRC had taken the initiative to revise the approved MLP. The revisions include deleting a residential block at the waterfront site, constructing hotels at the non-waterfront area instead; and adjusting the disposition of the buildings, and widening the breezeway and view corridor to improve air ventilation and visual permeability. The revised MLP was approved by the TPB in 2005, and the building plan was also approved by the Buildings Department in 2009. Similarly, the MLP and building plan for TW6 were approved in 2000 and 2009 respectively. While the two projects at TW5 and TW6 can now proceed in accordance with the respective planning schemes, every effort will be made to achieve the best design in the detailed design stage.

The site TWTL No. 393 at Yeung Uk Road was included as a "hotel-only" site in the 2008-2009 Application List. As required by the Technical Circular, the Planning Department commissioned an AVA between 2007 and 2008 for the lot. Based on the findings of the study, the Planning Department revised the development parameters of the site by lowering the plot ratio, site coverage, and so on. Compared with the original scheme, the revised scheme put

forward by Planning Department would improve air ventilation significantly. Nevertheless, we noted the subsequent concerns of TWDC on the develop intensity of the site and considered the overall demand and supply condition of the hotel sites, thus decided to temporarily remove this hotel site from the Application List so as to examine in more details the impact of this site towards the development of the local community.

President, after preparing the draft written reply, I found that I might still not answer part (b) of the question raised by Mr TAM. Therefore, please allow me to give a brief supplementary answer. Considering the detailed explanation given by me earlier regarding part (b) of the question, in brief, although the TW5 and TW6 sites, which have already had approved planning schemes, have not yet been put to tender, there is already no room for further revising or restricting their development parameters. On the contrary, TWTL No. 393 was zoned as a "hotel-only" site. Although the Planning Department has earlier lowered the plot ratio of the lot according to the completed AVA, we will still be pleased to listen to the views expressed by the TWDC in this regard. This will naturally lead to my reply to part (c) of the question raised by Mr TAM.

- (c) In view of this, the Government has currently, no plan to include TWTL No. 393 in the Application List again. We will review the use of this lot and determine appropriate development parameters with regard to its use.

MR TAM YIU-CHUNG (in Cantonese): *President, the supplementary reply given by the Secretary just now gives me the impression that the TW5 and TW6 sites cannot be changed, and only TWTL No. 393 has room for change. Although the TPB has approved the planning schemes for TW5 and TW6 sites, given that the TWDC is currently conducting a study which has already reached the final stage, why can the authorities not discuss with the TWDC again when the outcome of the study is available? This is because when approval was granted years ago, the Technical Circular on AVAs had not yet come into being as it was issued in 2006. In other words, there was no explicit requirement in*

this regard at that time. Moreover, there is currently grave public concern about the impact of the planning of the district on air quality. So, should the Secretary consider discussing with the TWDC again ways to make adjustments or ways to prevent planning from affecting ventilation after the outcome of the study report commissioned by the TWDC is available?

SECRETARY FOR DEVELOPMENT (in Cantonese): President, the question raised by Mr TAM precisely points to the dilemma or a major obstacle facing us in striking a balance between development and the public's concern about the height and density of buildings. Certainly, from the angle of the district or members of the public, a more popular option is to retain undeveloped land for better ventilation and visual quality or to develop the site into open space. After all, Hong Kong has to satisfy the demand for land in various aspects. Located atop the West Rail, TW5 and TW6 can provide nearly 4 000 residential units in total. Should I mention housing supply in Hong Kong in another debate, I am afraid Members will ask me to provide more land for housing. Therefore, having regard to the situation in this regard and the fact that the planning schemes have already been approved and that the KCRC has earlier taken the initiative to introduce amendments, we think that these projects should be allowed to proceed. However, as I mentioned in the main reply, every effort will be made to achieve the best design in the detailed design. For instance, effort is still being made in such aspects as greening, orientation, and so on.

MR CHEUNG HOK-MING (in Cantonese): *President, in the past decade, the new buildings in Tsuen Wan have known to be increasing in terms of height and density. In fact, Tsuen Wan is no different from Causeway Bay and Mong Kok, and the pedestrian flows in these districts are equally heavy. Air quality has become a grave concern to members of the public. Of course, we can see from the main reply that due to the development density and the overall condition of hotel sites, the Secretary has temporarily removed the hotel site, namely TWTL No. 393, from the Application List. However, President, this does not mean that the Secretary can alter the use of this site in future and return it to Tsuen Wan so that it can be used as open space to be linked with the waterfront to form a direct breezeway, thereby improving the air quality in Tsuen Wan.*

May I ask the Secretary, in the light of the residents' demand and the actual conditions of Tsuen Wan at the present stage, whether the Government has any plan to remove TWTL No. 393 permanently from the Application List, so that members of the public will be able to enjoy fresh air again?

SECRETARY FOR DEVELOPMENT (in Cantonese): President, my supplementary written reply has actually demonstrated as pointed out by Mr TAM and Mr CHEUNG, the Government is quite open-minded towards the site TWTL No. 393 at Yeung Uk Road. This is because, unlike TW5 and TW6, its plan was not approved a long time ago; nor will the site directly make a considerable contribution to the housing supply in Hong Kong. Instead, it is a hotel site. Owing to the launch of our initiative in April this year to revitalize industrial buildings, we have seen that many former industrial sites or factory buildings will be transformed into hotels. Therefore, insofar as the overall land use is concerned, we have greater room to listen to the views expressed by the TWDC more seriously.

I would attempt to give Mr CHEUNG a brief response. In this regard, I have considerable room and I am really very pleased to examine afresh with the TWDC the best use of the site TWTL No. 393, particularly in tandem with the District Aspirations Study to be conducted shortly by us in Tsuen Wan in collaboration with the TWDC.

MR WONG KWOK-HING (In Cantonese): *President, the concerns of Tsuen Wan residents about wall effects and heat island effects are understandable. However, the present problem is that TPB approval was given to the several pieces of land mentioned above before the promulgation of the Technical Circular by the Government in 2006. As a result, the Secretary has indicated that it is very difficult to make changes. In this connection, may I ask the Secretary, after learning a lesson from this experience, whether the Development Bureau will, in undertaking district development in future, encourage, subsidize or allow district-level bodies, such as DCs, to be engaged in the planning of this sort of development during the preliminary stage? Or whether the Administration will engage district-level bodies in carrying out town planning or land development, so that views of all sides can be taken into account during the*

preliminary stage to prevent the recurrence of such incidents as the one occurred in Tsuen Wan?

SECRETARY FOR DEVELOPMENT (in Cantonese): Mr WONG proposed closer co-operation between the Government and district-level bodies or DCs, particularly in such work as town planning and revitalization of old areas. In fact, we have already taken concrete actions. At present, during the preliminary stage of a lot of district planning work, the Planning Department will, apart from undertaking some scientific assessments, actively discuss with DCs at the district level. As regards urban regeneration, Mr WONG might have noticed that we have advocated the setting up of a District Urban Renewal Forum in future in the hope of enhancing public engagement in district planning at an earlier stage.

Therefore, in response to Mr WONG's supplementary question, President, we will certainly undertake town planning through more public engagement channels.

MR TAM YIU-CHUNG (in Cantonese): *President, in her response to my supplementary question, the Secretary pointed out that it was very difficult to identify more land for the construction of more buildings. If TW5 and TW6 are not developed, there will be 4 000 less residential units, and the housing problem cannot be resolved.*

However, there was a precedent involving the Secretary. For instance, the plot ratio of the superstructure of Nam Cheong Station had been lowered, so that the situation was improved. Why can similar considerations not be given to TW5 and TW6? Furthermore, while the transport assessment of the district has not been undertaken, the Secretary indicated that every effort would be made to achieve the best design. What did the Secretary actually mean?

SECRETARY FOR DEVELOPMENT (in Cantonese): I would like to thank Mr TAM for mentioning the Nam Cheong Station, which is also situated above the West Rail. In fact, in 2007, the Chief Executive advocated in the first policy

address of the current-term Government the concept of "Progressive Development". In other words, every effort will be made to strike a balance between development and environmental protection. As a result, we were requested to review many outline zoning plans. At that time, the Chief Executive instructed the Government to examine afresh all properties atop the West Rail which have not yet been executed. As a result, it was considered that the development density was high, and the disposition of the buildings to be built on Nam Cheong Station and Yuen Long Station were way too crowded. Moreover, only wall-effect buildings could be built on Nam Cheong Station. This explains why we made the decision at that time. The decision was very difficult to make because we strongly believed that all districts would like us to review each and every project. Although the decision was very difficult to make, we finally made the decision after balancing a lot of factors.

Therefore, we have already examined TW5, TW6 and TW7 in the study conducted at that time. The situation of the sites was far better than that of Nam Cheong Station in terms of the overall plot ratio, shape of the site and disposition. Therefore, it was decided that we could only review Nam Cheong Station, and the development parameters of the three construction sites, namely TW5, TW6 and TW7, would remain unchanged.

MR WONG KWOK-HING (in Cantonese): *President, I would like to follow up the undertaking given by the Secretary just now. She said that although nothing could be done now to revise the project, every effort would be made to achieve the best design.*

May I ask the Secretary to further explain how the buildings can be designed to avoid the wall effects and the heat island effects and improve ventilation, so as to dispel the misgivings of Tsuen Wan residents? Can the Secretary give a verbal explanation; if she cannot do so, can she provide a written supplementary reply with regard to the detailed design?

SECRETARY FOR DEVELOPMENT (in Cantonese): At present, the design team is still studying various methods. However, generally speaking, after the development parameters, that is, the plot ratio, height and number of blocks, of

the buildings have been finalized, the so-called enhancement design is nothing more than the height of the podium — because a podium can block ventilation — and landscape greening by, for instance, building a podium garden to enhance ventilation. All these are design features which can be considered. Upon the completion of the design work, we will give an explanation to Tsuen Wan District, and I will be very pleased to submit the relevant design details to the Legislative Council.

PRESIDENT (in Cantonese): Third question.

Tree Management Work

3. **MISS TANYA CHAN** (in Cantonese): *President, on 14 June this year, a member of the public was killed in a tree collapse incident in Yuen Chau Kok Park, Sha Tin. In this connection, will the Government inform this Council:*

- (a) *given that the authorities have indicated that they have been conducting detailed analysis and study of the aforesaid tree collapse incident, whether the analysis and study will include if the inspections conducted before the collapse of the tree is sufficient, causes of the tree collapse and the issue of responsibility for the incident, and so on; if they will, of the details; if not, the reasons for that;*
- (b) *given that it has been reported that 16 trees in the vicinity of the collapsed tree were removed after the aforesaid incident, whether the decision to remove the trees has gone through the vetting and approving procedure of the Tree Preservation Board under the Leisure and Cultural Services Department (LCSD); if it has, of the details, including the vetting and approved date and the justifications; if not, the reasons for that; and*
- (c) *whether the aforesaid incident will cause the authorities to examine afresh the need for enacting specific legislation for tree management; if so, of the details, including the work plan and timetable for drafting the legislation; if not, the reasons for that?*

SECRETARY FOR DEVELOPMENT (in Cantonese): President, the Government is very concerned about the recent tree collapse incident. The Development Bureau has enhanced co-ordination with, as well as steer to, the tree management departments to ensure that precautionary measures are implemented conscientiously. Departments pay special attention to trees that may have problems at locations with high pedestrian or vehicular flow and take follow-up actions promptly to protect public safety.

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

- (a) The police have commenced investigation into the tree collapse incident that occurred on a cycle track in Yuen Chau Kok, Sha Tin in mid-June this year, with the co-operation of the LCSD. It is not appropriate for the Government to make further comments on the case at the present stage.
- (b) After the tree collapse incident, the LCSD conducted detailed inspections of 420 trees in the vicinity of the site of the incident and removed 16 of them. Although those trees removed did not pose imminent danger, their conditions had deteriorated after days of rain and had potential danger. After inspection, staff of the LCSD confirmed that no mitigation measures could be taken to save these trees and the LCSD decided to remove the 16 trees. The tree removal followed the established procedures, that is, the Regional Tree Team Manager agreed to the tree removal after inspection and the cases were reported to the Tree Preservation Board with detailed reasons afterwards.
- (c) The Task Force on Tree Management led by the Chief Secretary for Administration conducted a comprehensive review last year and concluded, after careful consideration, that it was not necessary to amend the legislation for the time being. Instead, a multi-pronged approach to implement various administrative measures should be adopted to enhance the professional standard of tree management work on all fronts. For instance, the Development Bureau should steer and co-ordinate the work of the tree management departments at both the policy and strategic level; proper tree planting and maintenance practices should be adopted; staff training should be

enhanced; in particular, tree risk management should be strengthened with protection of public safety as the primary consideration. These measures would only achieve results through solid work carried out in a pragmatic and continuous manner rather than by merely having a piece of legislation.

As reflected from the recent tree collapse incident occurring in an area under the jurisdiction of the Government, this is not an issue of statutory control. Rather, there is room for enhancement in our day-to-day tree management and risk assessment. I have given a written reply to the question raised by Mr CHAN Han-kan today regarding tree management, setting out relevant specific measures in detail. I shall not repeat them here.

To my understanding, advocacy for tree management legislation generally focuses on trees managed by private owners. Although Government has no intention of introducing tree legislation for the time being, we recognize that there is a need to enhance public awareness of tree risk management. The Tree Management Office has sent leaflets on "Pictorial Guide for Tree Maintenance to Reduce Tree Risks" and "Keep your Trees Safe" to owners' corporations, mutual aid committees and property management companies of all private residential estates in Hong Kong to remind private property owners and property management companies to inspect the trees within their premises to reduce risks.

President, members of the public would like our city to be filled with verdant trees. They should also be actively involved in tree management to ensure public safety. The top priority for the Development Bureau and the tree management departments at present is to press ahead with the improvement measures to achieve concrete results. We will review the effectiveness of these measures in due course before considering the need for legislative amendments.

MISS TANYA CHAN (in Cantonese): *President, I dare not say that having a piece of legislation is useless. But in view of the loss of two lives, it does seem that it is really useless.*

We may look at this report entitled "People, Trees, Harmony". Because of this incident, I have read it again. This report is actually well-thumbed because I have read it so many times. It is mentioned in the report that after the first fatal incident, the jury requested the establishment of a separate department for following up the issue of tree risk assessment. Then, the Government undertook to design a new tree risk assessment form.

In this report, the Government admits that there are many guidelines, and the relevant guidelines and technical circulars have become voluminous. In paragraph 3.9(c) of the report, the Government undertakes to prepare guidelines and toolkits. However, today, I wish to ask the Secretary — because Kathy NG has recently said on the radio that there are not yet any standardized forms, and I do not know whether she has talked about the progress of formulating guidelines I really want to know Has the Tree Management Office done these several tasks following our approval of allocating \$20 million for its establishment?

SECRETARY FOR DEVELOPMENT (in Cantonese): *President, I must point out that following the Chief Secretary for Administration's publication of the Report of the Task Force on Tree Management last year, we must first undergo funding and post creation procedures, and it was only in March this year that the Tree Management Office under the Development Bureau could be set up in accordance with the recommendation of the Coroner's Court on establishing a central unit for handling the task of tree management. Concerning all the follow-up work relating to the report as mentioned by Miss CHAN just now, we have been going about the task step by step. It must be said that the task is very onerous, involving an extensive scope of issues. So, we cannot possibly get all things done simultaneously. I cannot say that all the recommended tasks have been completed. But our colleagues have been working hard on all the issues, especially risk assessment and inspections because, as Members all know, the establishment of the Tree Management Office in March was soon followed by the rainy season, summer and the typhoon season, so it was most important to conduct proper risk assessment. For this reason, the relevant departments and*

all of us spent a huge amount of time on risk assessment and inspections on a priority basis.

So far, we have not standardized the inspection forms used by all departments. But this does not mean that there are any omissions in their respective records. The only thing is that the formats of their records have not yet been standardized. The Tree Management Office has undertaken to follow up this matter. It will make reference to the forms currently used by the various departments. If necessary, we will standardize all these forms.

Therefore, my simple reply to Miss CHAN's question is that we have been following up each and every task. But I am afraid that since the workload is very heavy and the scope involved is very extensive, we may not be able to proceed at the speed expected by Miss CHAN.

MR LAU WONG-FAT (in Cantonese): *President, after the incidents concerned, the government officials responsible for tree management stressed that visual inspection was an international practice of determining whether a tree was healthy. May I ask the Government how it can ensure that all front-line inspection personnel adopting visual inspection are very conscientious in their inspection of trees? Do such inspection personnel have to fill out any tree health reports after inspection?*

SECRETARY FOR DEVELOPMENT (in Cantonese): President, I note that Mr LAU wants to know how we can ensure that front-line personnel are conscientious in their visual inspection. I believe that this may be the most important task facing us now.

To begin with, I must say that any visual inspection based on simple observation is not acceptable. Actually, there is a set of standards and procedures governing the conduct of conscientious visual inspection, and such standards and procedures are internationally recognized. We require our front-line tree management personnel to follow all such standards and procedures and make records after their inspections. Therefore, as I have mentioned, each department now has a separate set of record forms. In the future, we will explore the possibility of standardizing such forms.

How can one conduct a conscientious visual inspection? This is exactly the most important part. I am convinced that our civil service colleagues are all very conscientious in rendering their services. We are duty-bound to assist front-line colleagues in managing trees conscientiously by providing them with training and experience sharing. The Tree Management Office is more than happy to make such efforts.

MR CHEUNG HOK-MING (in Cantonese): *President, the recent tree collapse incidents have indeed aroused social and public concern. The Government has put in place a series of measures which, I believe, will achieve the desired effect.*

President, I was brought up in the New Territories, so I know the characteristics of trees very well. The recent tree collapse incidents were actually the results of "intrinsic deficiency". In the early days, we planted Taiwan Acacia, Kukui and even Chinese Banyan on a massive scale. Such trees will easily break in times of gales.

The Government has put in place a series of measures, but I do not notice any government measures on the choice of species of trees planted in the past or to be planted in the future. For this reason, may I ask the Secretary whether the Government has, at the present stage, considered the possibility of reviewing the situation, planning ahead and replacing these few types of trees (which are very dangerous)?

President, in some cases, such trees are planted on the pavements and planters in urban areas, so there are not enough nutrients for them. While replacing such trees, will the Secretary also carry out some works to do away with the concrete, so that the trees concerned can have sufficient nutrients for their growth?

SECRETARY FOR DEVELOPMENT (in Cantonese): President, I agree with Mr CHEUNG that there is huge room for improving our greening and tree planting methods in the past. Therefore, as I mentioned in the main reply, the Development Bureau is currently tasked with monitoring tree management departments at both the policy and strategic levels, covering such aspects as

proper tree planting and maintenance practices and also the selection of tree types suitable for planting in Hong Kong.

In the final analysis, land is very scarce in Hong Kong, and the roads here are very narrow. Therefore, it is extremely difficult to find tracts of soil spacious enough for tree planting. Our current objective is to strike a balance as much as possible, so that the public can have green areas on the one hand, and their safety can be ensured on the other. The task mentioned by Mr CHEUNG will be handled by the Tree Management Office. As a matter of fact, of the 15 professional members in the Tree Management Office, 11 possess professional qualifications in this regard. We will ask them to make more efforts in tree planting methods, soil selection and choices of trees.

Mr CHAN HAK-KAN (in Cantonese): *President, our society often criticizes that the method of visual inspection adopted by the Government as a means of identifying tree problems is far too deficient. But the Government claims that visual inspection is fine and internationally recognized. It is pointed out in part (b) of the Secretary's main reply that since the tree collapse incident, 420 trees have been inspected and 16 of them have been removed as they posed potential danger and no mitigation measures could be taken to save them. This has induced me to wonder whether the visual inspections previously conducted by the Government were detailed and scientific enough. Will the Government abandon the method of visual inspection and adopt other more scientific and meticulous methods for inspecting trees in Hong Kong?*

SECRETARY FOR DEVELOPMENT (in Cantonese): President, my expert colleagues have advised me that there is actually some theoretical support for the method of visual inspection, and this method is also used in many places. However, the most important thing is that visual inspection should just be the first step. In case anything unusual with the tree trunk, branches and leaves are detected in the course of visual inspection, further testing work should be conducted. And, further testing work may be conducted with the aid of equipment. For this reason, I do not think that we should completely abandon the method of visual inspection, which is quite useful and cost-effective.

This is not a problem peculiar to Hong Kong. On 2 July, the Time Magazine of the United States reported an unfortunate tree collapse incident in the Central Park of New York City which also led to fatalities. An arborist thinks that the continuation of regular tree testing and inspections is an effective method. In general, some symptoms can be detected in the course of inspections. According to the arborist, certain symptoms can tell us that the tree trunk and branches may collapse. However, there is also a phenomenon known as sudden branch drop. This means that tree branches may collapse all of a sudden. This cannot be detected beforehand. We must therefore identify a tree management method more suitable for Hong Kong by making more reference to international experience. But there are millions of trees scattered all over Hong Kong Island, Kowloon and the New Territories, so I am afraid that given our existing manpower resources, we may not be able to carry out any "tree-based" and detailed inspection of each and every tree.

MRS SOPHIE LEUNG (in Cantonese): *President, I agree very much with the Secretary that tree collapse is not an issue of statutory control. Recently, I have had an opportunity of talking to a tree expert from Taiwan. He said that trees are living organisms, and sometimes, trees growing in nature may also rot or collapse. But in contrast, the urban environment may inflict much greater harm on trees. At present, insects are not the only threat to trees. In many cases, various bacteria, fungi and spores may eliminate an entire tract of trees.*

Some trees will remain relatively healthy in the first 40 or 50 years of their growth. But after they have grown up, bacterial attacks may become more serious. Hong Kong has by now entered a stage of old trees. Several decades ago, we rarely saw any tree collapse incidents except during typhoon attacks. But by now, our trees have already reached old age, and the chances of bacterial attacks are much greater. In this connection, may I ask the Secretary whether she will learn from other places with similar experience The trees in several areas have reached the age of 40 or 50, and many trees in the urban areas have started to rot. And, there are several hundred types of fungi. May I ask the Secretary whether she will consider the possibility of conducting joint studies with experts from other places? What can be done in this respect? The practice adopted in many countries is the immediate removal of trees, followed by the planting of new ones. Will the Secretary consider this idea?

SECRETARY FOR DEVELOPMENT (in Cantonese): All places are indeed very concerned about tree management. I have just returned from Singapore. Every time when I go to Singapore, my purpose is to learn from its experience of tree management as a garden city. The last time when I was there, it rained heavily, and many trees there also collapsed.

Therefore, my simple answer to Mrs LEUNG's question is that we will surely learn more from international experience, share experience with nearby cities with similar climate and make better efforts.

MS AUDREY EU (in Cantonese): *President, I wish to ask a question on paragraph 3 in part (c) of the main reply. The Secretary says, "To my understanding, advocacy for tree management legislation generally focuses on trees managed by private owners." I hope the Secretary can give us an explanation here because the Civic Party is drafting a set of tree legislation, and we think that the ambit of such laws must also cover the Government. We do not understand why the Government should ever think that it should be excluded from the ambit of such laws, not least because the many tree collapse incidents all involved trees managed by the Government. Therefore, why does the Government think that it should be exempted from such laws?*

SECRETARY FOR DEVELOPMENT (in Cantonese): First, let me clarify that I am not predicting that in case any tree laws are enacted in the future, the Government should be exempted. I only said, when responding to Miss Tanya CHAN's question, that to our understanding That day, we only meant to say that if there were no tree laws to provide statutory conservation, many private land owners would like to fell the trees on their land lots because they all wanted to see the development of their lands. I hope that Honourable Members can realize that the Government is determined to protect trees. Can we step up the measures? The answer is certainly yes. This was what we meant. In other words, if any tree management laws are enacted in the future, we basically have no special views on its applicability to the Government. I have recently been advocating an escalator safety law, and I have voluntarily proposed to bring the escalators in government buildings under the ambit of such a law. However, I hope Ms EU can understand that for the time being, we should accord priority to some practical issues. In the past 20 minutes, a number of Members already

raised many practical issues, and we will accord priority to them. Therefore, as far we are concerned, the enactment of laws may have to be dealt with in our future reviews.

MR WONG KWOK-HING (in Cantonese): *I wish to ask the Secretary via the President whether the Government will consider the idea of mobilizing the masses and the general public, so that all can join hands to monitor our trees, especially those trees posing danger. I hope the Secretary can reply to this question. Incidentally, I may cite an example here. Suppose the Government finds out that there are some 2 000 dangerous trees, can it categorize them into classes one, two and three according to the extent of danger they pose (I am just talking about an example) and then put a tag on each of them, so that passers-by or nearby residents and kaifongs can assist the Government in detecting the danger posed by particular trees and contact the Government immediately by using the emergency telephone number on the tree tags whenever such tree danger is detected? Can we say that such a practice will give greater assurance to both the Government and the public? By citing this example, I wish to ask the Secretary whether she will try to mobilize the masses to join hands to protect trees and monitor tree safety.*

SECRETARY FOR DEVELOPMENT (in Cantonese): Thank you, Mr WONG. This is exactly what I talk about in the last paragraph of my main reply. I hope that members of the public can participate actively in tree management. Mr WONG and other Members may remember that in the past two or three years, when we tackled the issue of public spaces in private development projects, we likewise adopted such an approach of social and community-wide monitoring. The Government provided sufficient information, uploading detailed information about the relevant locations, photographs and public spaces onto the Internet. And, we also provided a telephone hotline at the side of each public space. In case any member of the public raised a question, we would follow up the matter. We intend to apply such experience of social monitoring to tree management.

What we will first do is about Earlier on, after a tree inspection exercise, we found out that 2 000 trees would need follow-up. Here, let me first clarify that we do not have anything like a register of 2 000 dangerous trees.

This is not the case. Rather, that day, we conducted an "area-based" exercise in which visual inspections of the trees were conducted. In the end, we found that some 2 000 trees would need follow-up. Five hundred of these trees are in the Register of Old and Valuable Trees. This means that they need sustained monitoring because we all treasure them. Of course, some of these trees would need mitigation measures. But we are not talking about removal. Maybe, sometime after the implementation of mitigation measures, they will not have any more problems. We hope that following the announcement of the list, people can participate in community-wide monitoring. We will make an announcement in the middle of this month. Maybe, the number will not be as large as 2 000 because we have already done some work on certain trees. But I hope that when the time comes, Mr WONG can realize that the list we announce will enable the public to participate in monitoring because there will be photographs and information about locations to tell the distribution of these trees.

MR WONG KWOK-HING (in Cantonese): *President, the Secretary has not answered my question. The example I cited a moment ago is about putting a tag, or a certificate, on a tree in need of care.*

PRESIDENT (in Cantonese): Are you asking the Secretary to answer whether tags will be attached to these trees?

MR WONG KWOK-HING (in Cantonese): *Yes.*

SECRETARY FOR DEVELOPMENT (in Cantonese): I have also considered this idea. And, as a matter of fact, tags are already put on the trees around government works sites. But I frankly do not think that this is tidy. That is why we have to examine the proposal more carefully. If Members have any better proposal, I do call on them to put them forward because we cannot cause any harm to trees, nor can we nail any tag onto them. Given such a constraint, how we can put up any tags is a matter that requires further thoughts.

PRESIDENT (in Cantonese): This Council has spent more than 24 minutes on this question. Fourth question.

Protection of Consumers' Rights and Interests

4. **MS STARRY LEE** (in Cantonese): *President, a large yoga centre closed down in mid-May this year, affecting more than 13 000 members. Some of the affected members have criticized that when consumers choose to make prepayment for services, they are unable to learn about the business status of the service providers, making it impossible for them to guard against any pitfalls. They have also pointed out that the banks offered private loans through merchants to customers for making prepayment for services, but as the loan formalities are handled by staff of the merchants rather than the banks, it is possible that in order to promote sales, the staff avoid mentioning to customers loan terms which may be unfavourable to them. There have been comments that as the prepayments received from members by the yoga centre amounted to nearly \$80 million but the amount of assets of the centre was only some \$4 million, it raises doubts as to whether the incident involved fraud, misfeasance or other misconduct of the directors. In this connection, will the Government inform this Council:*

- (a) *whether it will consider requesting companies which charge customers prepayments for services to deposit the received payments to a special bank account, so as to facilitate the Hong Kong Monetary Authority (HKMA) to monitor the money flow of such funds;*
- (b) *whether the HKMA will consider enhancing supervision of the bank loan procedures handled by merchants for their customers, so as to ensure that consumers fully understand the credit risks to be borne by them; and*
- (c) *whether the Financial Secretary will consider appointing an inspector under section 143 of the Companies Ordinance (Cap. 32) to investigate whether the above incident involved fraud, misfeasance or other misconduct of the directors?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, prepayment for goods or services is becoming an increasingly popular form of consumption. Both consumers and businesses stand to benefit from this mode of consumption — consumers normally enjoy discounts and the cash flow of businesses can be improved. Problems may however arise, when traders with no intention or ability to supply the contracted products trick consumers into making prepayment.

At present, consumers can institute civil action when they encounter such situations. However, most consumers may not be willing to go to the Court for dispute resolution. Depending on the facts of individual cases and the sufficiency of evidence, the abovementioned unfair practice may at present be caught by criminal offences under the Theft Ordinance and the common law offence of "conspiracy to defraud". However, the evidential threshold required is high.

To address the inadequacy in existing law, the Commerce and Economic Development Bureau plans to put in place new criminal provisions specific to consumer transactions, as distinct from offences in the area of general criminal law, to prohibit the practice of accepting payment with the intention at the time of acceptance not to supply the contracted products. The Bureau will soon issue a consultation document to solicit public views.

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

- (a) We appreciate the intended purpose of the suggestion, as set out in part (a) of the main question, of requiring prepayments to be deposited in a special bank account. Nevertheless, there are a host of specific implementation issues to be resolved.

First of all, a wide spectrum of industries currently accept prepayments for goods or services. Even in respect of a specific industry, it would be a daunting task to formulate a reasonable and objective yardstick for determining when individual traders may withdraw deposits from the special accounts set up to hold the prepayments, not to mention the formulation of general criteria to be applicable to all industries receiving prepayments. Besides,

considerable administrative costs would be involved in the operation and regulation of the proposed accounts. Depending on the actual situation, the resultant increase in costs may be passed onto consumers. Small businesses may be more vulnerable to changes in costs, and as a result, the "market habitat" may be altered.

In addition, the suggestion of asking service providers to deposit prepaid amounts in designated bank accounts is similar in effect to banks withholding such funds for a period to help manage their credit risk, which already occurs in some cases. However, this would affect the cash flow of the merchants. Therefore, in considering the proposal, we need to strike a balance between protecting consumers and the business operating environment for the merchants. The important point is to ensure that consumers understand the terms and conditions of the agreements they enter into and the obligations these agreements entail.

As a matter of fact, the offer of discounts to consumers is normally contingent upon businesses being able to receive prepayments. Such discounts would not be made available if the payments are deposited into a special account. Having considered the above factors, we believe that a more pragmatic approach is to prohibit the practice of accepting prepayments without the intention or ability to supply the contracted goods or services by creating a new criminal offence.

- (b) The HKMA is discussing with the banking sector ways to avoid possible misunderstanding by customers of the terms of credit agreements. The focus is on ensuring that customers who enter into instalment payment plans in prepayment for services are provided with clear and specific terms and conditions of the agreements at the point of sale. The terms and conditions should make clear that the agreement constitutes a loan, and the customers' repayment obligations in case the services are not provided for any reason, including whether the customer will be able to stop payment of any of the relevant loan amount. The HKMA intends to issue guidance to authorized institutions in this regard in the next month or so.

- (c) At present, we do not consider it necessary for the Financial Secretary to appoint an inspector under section 143 of the Companies Ordinance to investigate the relevant company. We understand that many Planet Yoga members have reported their case to the police. The police is now making enquiries and following up the case. If there is evidence suggesting that the case involves criminal act such as fraud, the police will take appropriate action.

MS STARRY LEE (in Cantonese): *President, I am particularly disappointed and dissatisfied with part (c) of the Secretary's main reply. In answering a question from a Member of the Legislative Council last year, the Secretary said that where significant or great public interest was involved, the Financial Secretary had the power to appoint an investigator to investigate certain companies under sections 142 and 143 of the Companies Ordinance after considering a number of factors, and that as at the end of last year, the Ordinance had been invoked to investigate 38 companies. This yoga centre which has been closed down had a membership of over 10 000, but it may be impossible for these members to recover even one cent of the amount prepaid by them. Besides, its provisional liquidator has been queried about having a conflict of interest, and its independence is also questioned by these victims.*

President, I would like the Secretary to tell us whether the interest of these 10 000-odd members does not constitute significant or great public interest and the Secretary, therefore, said in part (c) of the main reply that he does not consider it necessary to exercise the power conferred by section 143 of the Companies Ordinance? If not, why is this power not exercised?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, as I mentioned in my main reply, with regard to the complaints against Planet Yoga, most of the cases have been lodged with the police. The police are currently investigating these complaints and we consider the current procedures appropriate. As for the exercising of the discretion by the Financial Secretary under section 143 of the Companies Ordinance to conduct investigation, it certainly has to involve significant or great public interest. It is

also necessary to consider a number of factors, such as the scope and gravity of the complaint, the difficulties envisaged in the course of investigation as well as the estimated costs and effectiveness, the availability of other remedial measures, and so on. Considering the present circumstances, as I also said in the main reply, the investigation conducted by the police is appropriate.

MS STARRY LEE (in Cantonese): *The part that the Secretary has not answered is this: Does the interest of these 10 000-odd members not constitute significant or great community interest?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, I think the follow-up action being taken now of carrying out investigation has been effective.

DR SAMSON TAM (in Cantonese): *The Secretary said in the main reply that if the prepayments are deposited into a special bank account, the operating funds of the companies will be affected. This, I agree. That is why he said that there would be difficulties in implementation and the cost would be increased. In this incident, or like what happened in similar incidents, the total loan amount or the risks involved was as high as \$80 million but the amount of the company's assets was only some \$4 million. Given such a significant discrepancy between the two amounts, the bank should have easily noticed that this absolutely entailed extremely huge risks. In this connection, I wish to ask the Secretary whether it will discuss with banks or the HKMA, requesting banks to require companies to take out credit insurance when cases of substantial loan ratio are identified, so that even if there are problems with the companies, compensation would be provided by the insurer?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, insofar as this issue is concerned, and as I mentioned in the main reply, if a company maintains the practice of charging prepayments when it has the intention but not the ability to provide the service, we will study

the existing legislation to find out in what way we can combat such practice. In this connection, we have proposed to include new legal provisions on top of the existing legislation to regulate unscrupulous sales practices.

Dr TAM asked whether it was possible to set up a regulatory body of a larger scale at another level, or impose regulation, through banks, on companies' cash flow and asset ratio. This will involve the setting up of a regulatory mechanism which is quite massive in scale, and in my view, as set out in the main reply, a massive regulatory mechanism will involve colossal costs of regulation, and it will even have a great impact on business operation. So, considering the current circumstances, I think more statutory powers should be conferred on us for combating unscrupulous sales practices, and when signing these agreements, the customers must understand their own obligations.

MR WONG TING-KWONG (in Cantonese): *President, prepayments are made in a great variety of ways, and many industries are also involved. I would like to ask the authorities whether they will consider first, setting a ceiling for the amount of prepayment or the period for providing the service, and second, putting in place a mechanism of appointing a trustee as the middle-man between consumers and service providers in that the trustee will collect prepayments from consumers and then pay the service providers by instalments, so that in the event of a breach of contract by either party, the victim can recover the balance from the trustee, thereby protecting the rights and interests of both consumers and service providers.*

PRESIDENT (in Cantonese): Are you asking the Secretary whether he will consider the two proposals made by you? Secretary, please reply.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, as far as I understand it, the HKMA is currently discussing some measures with the banking sector to, among other things, enhance transparency by, for instance, making it easy for customers to understand that payment by instalments constitutes a loan. Besides, we will look into various ways to strike a balance between providing greater protection to consumers and

the pressure of cash flow faced by the industries. We are in the course of exploring some ideas with banks, with a view to identifying ways to enhance consumer protection. As for the specific arrangements, I hope we can continue to conduct studies on them.

As regards the proposal of trusteeship, I can see some difficulties because if we have to set up a mechanism of trusteeship, it should be a mammoth mechanism, but is it the most cost-effective option? I personally think that further studies are still warranted.

MR FRED LI (in Cantonese): *President, the problem of prepayment has been discussed by the Legislative Council for many times. Could the Secretary please enlighten me on this: He said in the main reply that to address the inadequacy in existing law, legislative amendments will be introduced and a public consultation document will be published on prohibiting the practice of accepting payment with the intention at the time of acceptance not to supply the contracted products or services — if yoga business is involved. Such being the case, from a legal viewpoint, how can the accused party be proven to have such an intention or otherwise? To laymen like me, will it be very difficult to do so? If a person has this intention, who should verify it and how can it be proven? Should it be the responsibility of the defence to produce evidence to prove that the accused party has or has not this intention? Or, should it be the responsibility of the prosecution to prove that the opposite party has or has not this intention and then, most importantly, whether such intention is substantiated and whether or not the relevant products or services for which prepayments are made have been provided? Can the Secretary explain how the service or goods provider can be proven to have this intention or not to have this intention, as well as who will provide it and how will it be provided?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, insofar as this issue is concerned, as I said earlier, we have already put forward some ideas on the policy. As for the legislative proposals against unscrupulous practices in service delivery, the Commerce and Economic Development Bureau will publish a consultation document later for discussion by Members on relevant occasions.

MR JAMES TO (in Cantonese): *President, concerning part (a) of the main question, I have repeatedly said that there seems to be an omission in the factors that the Secretary has taken into consideration. Certainly, the first pre-requisite is that the administrative costs involved must be affordable, and that is, there must be economy of scale. But after considering all the factors, the Secretary seems to have omitted the point that after this protection mechanism is actually set up, consumers would be ready to place more confidence in the service providers and this will cause the "pie" to become bigger. As a result, in terms of the use of funds and even the scale of business, the operators or the relevant industry will stand to benefit from it, even if banks will release the pre-payment to the operators in phases for the purpose of regulation. But in the opposite scenario, I wonder if the Government has ever thought about this: If it does not do so, after these two incidents in which over 10 000 customers have suffered losses and felt aggrieved and come to realize that they are given no protection at all, the public will naturally feel apprehensive of prepayment for goods or services and this will, on the contrary, lead to a shrinkage of the entire industry, irrespective of what industry it is. However, the Secretary has entirely failed to consider this factor in part (a) of the main reply. I wonder if he has considered this, or is it that his analysis based on those factors considered by him is not feasible?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, with regard to the view of Mr James TO, we have actually analysed it before. We are of the view that if we have to set up such a massive regulatory mechanism or if it is to cover different ways of prepayment in consumption, the design will be very complicated and it will be very difficult to decide when the shops can receive the payment or when the payment should be transferred to their accounts.

Generally speaking, cash flow is, after all, a major problem, because without the restraint imposed by risk protection, there will be restrictions in considering when the payment should be transferred to the shops, and their cash flow will be affected. We, therefore, must make an assessment of the current situation, so as to ascertain whether this is desirable from the viewpoint of cost-effectiveness. According to our preliminary studies, it has to be a mammoth mechanism. Under the current circumstances, we consider that there are other options, including the methods that I proposed earlier, for improving the

sales practices, while providing consumers with more information and other alternatives to seek refund protection.

MR PAUL CHAN (in Cantonese): *President, my supplementary question is actually related to the supplementary question raised just now. The Secretary said that consideration would be given to introducing criminal provisions to criminalize the practice of accepting payment without the intention or ability at the time of acceptance to supply the products. However, I believe it would be very difficult to do so, because under the provisions targeting companies in liquidation in the Companies Ordinance, if a director still takes out loans or makes purchases on credit knowing that the company has no ability to make repayment, once the company starts a process of liquidation, the director will be held personally responsible without any limitation of liability and is required to make compensation, which is a case of fraudulent trading.*

But history shows that there has not been a case of successful prosecution. This is why I have great misgivings about whether the method proposed can be a solution. Rather, I think what is mentioned in part (a) of the main reply is actually very common and that is, for the purpose of credit risk management, banks do not pay the relevant amounts to shops immediately after the customers signed the credit cards to make payments and instead, they will pay the shops in several times separately. I think Members in this Chamber have this experience when purchasing uncompleted flats, as the payment will be deposited into the bank account of the law firm and then paid to the developer according to the progress of the construction works. When drawing up guidelines for banks, will the HKMA conduct studies in this respect and provide banks with guidelines accordingly? In other words, the objective is to ensure that when making payment to the shops, banks do not purely consider from the management of credit risks and instead, they will be the "gate-keeper" at the same time. The Secretary said that doing so would affect the cash flow of shops and their operation would hence be affected. President, I am sorry that I cannot accept this. Why? We are talking about prepayment, which means that the customers have paid a sum of money to be deposited there

PRESIDENT (in Cantonese): Mr CHAN, please do not debate with the Secretary.

MR PAUL CHAN (in Cantonese): *Yes.*

PRESIDENT (in Cantonese): Please state your supplementary question directly.

MR PAUL CHAN (in Cantonese): *Well, I would like him to answer the question that I raised earlier concerning the guidelines of the HKMA. Thank you.*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): I thank Mr CHAN for his supplementary. He mentioned earlier the different arrangements or practices of banks, as well as the timing of the transfer of payment to shops. Indeed, there can be different arrangements. But if we require all banks to allow consumers who paid by instalments with their credit cards to, for instance, have the right to stop payment, this would in effect cause all banks to defer payment to shops, which will ultimately affect the cash flow of shops. Besides, as I said earlier, consumers can enjoy discounts because banks have made cash payment to the shops. So, if that is not the case any more, what will happen to the discounts? But then, should the Government draw up uniform guidelines to require all shops to adopt a uniform practice? I think this may not necessarily be the best way out. However, the HKMA is currently discussing with the banking sector how consumers can be better protected against the risk of prepayment. We hope that some guidelines can be provided in a month or two.

PRESIDENT (in Cantonese): We have spent over 22 minutes on this question. Fifth question.

Policy on Leasing and Sale of Government Properties

5. **MR PAUL CHAN** (in Cantonese): *President, in recent years, the community is concerned about the short supply of housing in Hong Kong and has urged the Government to make available more land on the market or strive to increase the supply of housing on the market. Yet, the Government Property Agency (GPA) invited tenders for purchase in one parcel of the two blocks with a total of 168 units together with car parking spaces of former government quarters at Ventris Road, Hong Kong last year, instead of selling these units directly to members of the public, and the tender was eventually awarded to a real estate developer. In this connection, will the Government inform this Council:*

- (a) *of the number of former government quarters sold by tender for purchase in one parcel by the GPA in the past five years, and whether the Government had compared and reviewed the differences between the proceeds from the resale of such properties by the successful bidders and those yielded by the sale of such properties by the Government; if it had, please list, by the date of sale, the respective locations, names, quantities, numbers of units and car parking spaces involved and the prices of such properties, as well as the review outcome; and of the number of former government quarters which the GPA plans to sell by tender for purchase in one parcel in the next five years, and list, by the intended date of sale, the respective locations, names, quantities, numbers of units and car parking spaces involved and the estimated tender prices of such properties;*

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

- (b) *given that quite a number of members of the public hope that the Government can increase the housing supply, whether the Government will review the current policy on the leasing and sale of government properties and, placing the interests of members of the public above all else, consider giving priority to leasing or selling all vacant government quarters to members of the public, instead of selling them by tender for purchase in one parcel to individual real*

estate developers, so as to avoid depriving the public the opportunities of renting or purchasing such properties; if not, of the reasons for that; and

- (c) *given that the Director of Audit pointed out in his report published in March 2008 that some government properties under the management of the GPA had remained unused for a long period of time, and it has also been reported in recent months that the situation has not improved since then, whether the Government has held the officials of the relevant bureaux or government departments accountable for that or recorded relevant remarks in their performance appraisals; if it has, of the details; if not, the reasons for that, and whether it will take such actions against them?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, the GPA has in place a clear and effective strategy to deal with surplus government quarters properly. The ultimate objective of Government is to dispose of surplus government quarters in the open market. As an interim measure, some quarters pending sale would be let to private tenants at market rental to generate revenue for Government's coffers.

Generally, there are two ways to dispose of surplus government quarters. For quarters located on intact development sites which are suitable for residential use, the GPA will return the sites together with the quarters to Lands Department for land sale. One example is the sale by auction of the former government quarters site at Mt. Nicholson Road at the end of this month. The remaining surplus quarters are mainly individual units or whole blocks of quarters in private housing estates, and will be disposed of by the GPA by tender or public auction. The number of such surplus quarters has been small, and their disposal cannot effectively help increase the supply of residential flats. For instance, the 144 surplus government quarters sold by the GPA over the past five years are insignificant when compared with over 1 400 000 private residential units in Hong Kong.

In putting up surplus government quarters for sale, the GPA will adopt the most appropriate and cost-effective disposal method in light of the actual situation. If Government only owns individual residential units in a housing

estate, the GPA will sell the units concerned individually. Over the past five years, the GPA sold a total of 20 such units.

If the surplus quarters involve a whole block of building in a housing estate, the GPA will usually sell them in one parcel. This has the advantage of disposing of all the units concerned in one go, thus saving the high costs involved in managing and maintaining such old quarters. The additional administrative and marketing costs required for future resale of individual unsold units can also be avoided. In addition, selling in one parcel enables buyers to opt to make investment in refurbishing the building before reselling or leasing out the flats. Buyers may also seek to consolidate the ownership with a view to redeveloping the site. Under such circumstances, the selling price would, to a certain extent, reflect the redevelopment potential of the land, thus bringing more revenue for Government's coffers. Over the past five years, the GPA sold out a total of 124 surplus quarters together with parking spaces by tender for purchase in one parcel, comprising the two blocks of quarters at Ventris Road as mentioned in the question and the single-block quarters at Wylie Court. For details, please see the Annex.

According to our understanding, some of the abovementioned 124 surplus quarters are still held by the buyers and have not yet been resold. Hence, we do not have complete information at this stage for comparing the selling prices of Government and the resale prices set by the buyers. As a matter of fact, we do not think it is appropriate to make such comparison. From Government's perspective, what is important is that we have sold the quarters concerned by open tender to the highest bidders. Such tender process has ensured that Government would obtain the highest price the market could offer at that time. The buyers will then decide whether to make further investment in refurbishing the properties for resale by taking into account factors such as the future price trend of the property market, purchasing power and needs of end-users, cost of capital, and so on. The resale price will depend on the prevailing market conditions, and the buyers have to bear the risk of fluctuation in property prices. As for whether the GPA will sell other surplus quarters in one parcel in the next five years, we have no specific plan at this moment.

The vacant government premises in the three buildings as mentioned in Report No. 50 of the Director of Audit (the Audit Report) published in March 2008 and reported by the media in recent months were originally reserved for use by the MTR Corporation Limited as mass transit railway entrance/exit areas

(reserved areas). As we explained to the Public Accounts Committee (PAC) before, to change the use of the three reserved areas would involve, among others, various legal and technical issues. The PAC has made recommendations on this matter and released its Report No. 50. According to the established mechanism, we reported the progress in the Government Minute (GM) submitted to the Legislative Council in October 2008, the annual progress report to the PAC in November 2009 and the GM to Legislative Council in May 2010. In sum, we generally agree with the recommendations of the Audit Report and PAC. The GPA, Buildings Department and other departments concerned have been actively following up the recommendations since then, with a view to identifying solutions to the legal and technical issues involved. The GPA is taking forward the work relating to the change of the use of the reserved areas progressively. We will closely monitor the progress, and will report to Members the latest progress in detail in the annual progress report to be submitted to the PAC this year.

Annex

Former Government Quarters Sold by Tender for Purchase in One Parcel
Summary of Sales Information (2005-2010)

<i>Year of Sale</i>	<i>Name of Property</i>	<i>No. of Units</i>	<i>No. of Carparking Spaces</i>	<i>Selling Price(HK\$)</i>
2007	Block A, Wylie Court, 15, 17, 19, 21 and 23 Wylie Path, Kowloon	40	40	410,800,000
2009	Blocks A and B, Winfield Building, 1, 3 and 5 Ventris Road, Hong Kong	84	84	2,142,500,000
Total		124	124	

Notes:

- (1) In 2005 and 2010, the GPA invited tenders for purchase in one parcel of the 46 surplus quarters together with carparking spaces at 8 and 10 Caldecott Road. As the bids submitted by all the tenderers in those two tendering exercises were lower than the market values as assessed by the GPA, no tender was awarded.
- (2) In addition to the 124 surplus quarters units listed above, the GPA had also sold 20 individual units by tender or public auction in the past five years.

MR PAUL CHAN (in Cantonese): *It can be seen from the main reply of the Secretary that the GPA has adopted a very perfunctory approach in handling these public assets, and that it disregards the interests of the public and the government coffers for the sake of convenience. Why do I say so? Take a look at the Annex: Over the past five years, for units sold by tender in a whole block, the selling price of the 84 units concerned in 2009 was \$2.1 billion, averaging about \$25.5 million per unit. As such, the Administration's remark that 144 units are insignificant when compared with the 1.4 million residential units in Hong Kong is both confusing and misleading to the public. I have looked up the annual reports of the Rating and Valuation Department. Between 2005 and 2008, only 700-odd to 1 400-odd large units with an area of more than 1 000 square metres were completed every year. So, the proportion of these 100-odd units is very high.*

In fact, taking the transactions in 2009 as an example, putting up these units for tender in a whole parcel fetched a selling price of \$2.1 billion. Only large property developers may have benefited from it. I think that these units should be sold individually, so that members of the public may achieve home ownership. So my supplementary question is: When the Government handles these surplus quarters in future, will priority be accorded to selling these units to members of the public by auction or tender, instead of selling them in a whole block or in a whole parcel to consortia for the sake of convenience, particularly for the whole blocks of buildings which have neither redevelopment values nor further room for development, just like the units at Ventris Road?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Deputy President, according to the figures in my hand, among the existing surplus quarters of the GPA, only the 46 quarters at Caldecott Road are suitable for sale by tender for purchase in one parcel. Members may recall that the GPA invited tenders for these properties in one parcel in 2005 and 2010, but none of them were sold eventually as the bids fell short of the valuation of the GPA. For these units, we will continue to keep an eye on their actual situation.

DR SAMSON TAM (in Cantonese): Deputy President, I would also like to further ask the Secretary about the tendering exercise of the GPA for the purchase of the units concerned in one parcel in 2005 and 2010 that he

mentioned just now. The Secretary pointed out that the bids submitted in these two exercises fell short of the market values as assessed by the GPA. May I ask how the GPA determined the market values? How many bids were received in each of those two exercises? Was it because the amounts involved were so high that there were not enough consortia to participate in the exercises?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Deputy President, I do not have at hand the figures mentioned in the supplementary question of Dr TAM. Of course, in conducting valuation, the GPA will adhere to the most professional principles and approaches in determining the prices in the light of the market situation, as the Government will dispose of its properties in the way that public funds will be safeguarded.

DR SAMSON TAM (in Cantonese): *Can the Secretary submit supplementary information after the meeting, stating the number of consortia involved in those two tendering exercises?*

DEPUTY PRESIDENT (in Cantonese): Secretary, can you provide written reply on the part about which information is not currently available?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Deputy President, I will check what information can be provided in reply to the Member's question. (Appendix I)

MR JAMES TO (in Cantonese): *Deputy President, I very much agree to the analysis of Mr Paul CHAN just now, particularly on the ground that the current market supply of units of similar sizes is actually scarce. I would like to put these questions to the Government: When these dozens of units or other similar units are sold in future, will it consider ways to increase the opportunity for individual members of the public to purchase these units? Or even the policy in this respect is inclined to large consortia to accord them priority in purchasing these units, so that they can then pursue demolition and reconstruction through ownership consolidation? Does the Secretary for Financial Services and the*

Treasury act in the same way as Secretary Carrie LAM so as to make civil servants or other people living in old government quarters feel very scared and uneasy, as the ownership of their properties can be consolidated very easily for compulsory sale? Is it the intention of the Government that consortia can unify the ownership of units very easily for the application of compulsory sale, at the expense of the desire of members of the public to live in peace and work in contentment? Is it the overall policy of the Government? If not, why are individual members of the public denied the opportunity to purchase these units?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Deputy President, I have explained earlier that our policy is to dispose of surplus properties. If the selling prices of certain units are inappropriate, that is, the units concerned cannot be disposed of, we will lease them out, but our policy is to sell these properties. Therefore, it is very clear that our policy objective is to safeguard public funds.

I have also explained earlier why some properties are disposed of in a whole block, while some separately. It depends entirely on the state of individual properties, because from the perspective of safeguarding public funds, we think that the value of some properties will increase by disposing of them in a whole block to generate more revenue for the government coffers. Of course, we have also disposed of many properties separately, but as reflected in some figures, this approach may not elicit corresponding response in the market. For instance, over the past five years, the GPA put up 27 individual units for sale, but only 20 units were sold. In other words, seven units were not taken up. Therefore, we will consider ways to dispose of units with regard to the receptive capacity of the whole market and from the perspective of how to maximize gains for the coffers.

DEPUTY PRESIDENT (in Cantonese): Mr TO, which part of your supplementary question has not been answered?

MR JAMES TO (in Cantonese): *My point is, when selling these units to individual members of the public, the point to consider is not necessarily on selling them altogether. In the situation mentioned by the Secretary, where 20*

of the 27 units have been successfully sold, 20 members of the public have benefited from it. As such, should government policy be only concerned about having all the units taken up by the market? If this is so, large consortia can certainly take up all of them, right? In this case, does it mean that even those 20 members of the public will not be able to benefit from it?

DEPUTY PRESIDENT (in Cantonese): You have stated your supplementary question clearly.

MR JAMES TO (in Cantonese): *Is that what he means?*

DEPUTY PRESIDENT (in Cantonese): Secretary, you have actually made a reply, but can you say more clearly why not all properties are put up for sale separately?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Deputy President, I have explained that we consider the issue from the perspectives of economic benefits and gain maximization for the government coffers. Under certain circumstances, we think that selling properties in a whole block can fetch the highest prices.

MR PAUL TSE (in Cantonese): *Deputy President, part (c) of the main question mentioned that in the report published by the Audit Commission in March 2008, it was stated that some properties under the management of the GPA had remained unused for a long period of time. It has also been mentioned in media reports that the situation has yet to improve, but this problem may only be the tip of the iceberg. May I know, apart from the three blocks of buildings with technical or legal complexities, whether the Government has any established policy to regularly review when and how government properties (including residential and commercial buildings) should be handled, such that they will not remain unused, and relevant officials will also be appropriately monitored with regard to accountability?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Deputy President, what is involved is not three blocks of buildings. I have explained earlier that they are what we call vacant government premises in the three blocks of buildings. They were originally reserved for use by the MTRC as railway entrance/exit, but later on, they were not used in this way, thus becoming surplus areas. We have said that many legal and technical issues have been involved when dealing with those premises. The legal issues include deeds, ownership and so on, which take a very long time to sort out.

As regard these circumstances, the GPA has also accepted the views of the Director of Audit, and agreed that there are shortfalls in this respect. In this regard, the GPA has taken many immediate follow-up actions, and the technical and legal issues involved have been gradually solved. We will later submit a report on the follow-up actions in this respect.

MR PAUL TSE (in Cantonese): *My question is not about those three blocks or three parts. My question is: What mechanism is in place to regularly monitor government properties other than those three parts, and to put relevant officials under appropriate monitoring and sanction?*

DEPUTY PRESIDENT (in Cantonese): Secretary, please make a reply with regard to accountability.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Deputy President, the job of the GPA is to manage government properties effectively, and it acts in accordance with the policy. For example, properties not used by the Government will either be sold or leased out to ensure effective management.

As a key Controlling Officer, the Government Property Administrator shall, under the Public Finance Ordinance, be held accountable for the government properties under his management. Just like other civil servants, the performance of the Government Property Administrator is of course monitored

under an appraisal system. The GPA is one of the departments under my purview, so today I reply to Members' questions on behalf of the Government.

MR JAMES TO (in Cantonese): *Deputy President, we have earlier passed a legislation on compulsory land sale, which has aroused much outcry in town.*

Deputy President, may I ask the Secretary, when these vacant government quarters were put up for sale, whether there was a policy intention that government quarters were also to be sold to pave the way for more big buyers and large consortia to own more titles of certain estates where many civil servants were living, so that they could pursue compulsory sale more easily? Deputy President, this is really an eye-opener. This seems to be the first time we see such a policy. Has the Secretary for Financial Services and the Treasury been instructed by or told to follow the line taken by Secretary Carrie LAM to extend this policy to the government quarters that he puts up for sale?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Deputy President, I have actually explained it very clearly, and I do not understand the relationship between this practice and compulsory land sale. This practice has long been the government policy for handling properties, that is, we will seek to maximize gains for public funds when putting up government properties for sale. In this respect, I believe Members of the Legislative Council understand that the Government has adopted this fiscal policy all along.

DEPUTY PRESIDENT (in Cantonese): Which part of your supplementary question has not been answered?

MR JAMES TO (in Cantonese): *Perhaps I have not made my point clear, so the Secretary has misunderstood my question. My point is: The fourth paragraph of the main reply mentioned that when selling properties, "buyers may also seek to consolidate the ownership with a view to redeveloping the site." The difference between selling quarters separately to individuals and selling them in a whole parcel to a certain consortium is that, if the consortium has already owned a few*

blocks of properties in the estate concerned, such that its share of ownership has reached 30% to 40%, it will find it easier to knock down the minority owners one by one, thus breaking up the families of the civil servant colleagues of the Secretary and causing them to move from place to place. This is exactly what the current situation is. If the Secretary sells all the units separately such that minority owners will have more bargaining power when consortia intend to acquire individual units, the civil servant colleagues of the Secretary will still have a place to stay upon retirement, and they at least can preserve some bargaining power. Nevertheless, this is not the Government's intention.

Deputy President, is my explanation clear?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Deputy President, please allow me to make some explanation. These are surplus quarters, that is, they are no longer quarters for civil servants. They used to be quarters, but no longer so. In between, we will lease them out in the market for rental collection purposes. Once the decision to sell a whole block of properties is made, the Government will transfer the ownership to the successful bidder. I mentioned consolidating the ownership for a whole block of building in my main reply. What I meant to say is that in the course of development, it will be easier to resolve such issues as revenue maximization or refurbishment, and so on, if one whole block of building is involved.

DEPUTY PRESIDENT (in Cantonese): The Council has spent 22 minutes on this question. Mr TO, which part of your follow-up question has not been answered?

MR JAMES TO (in Cantonese): *Those two individual buildings can be among those five or six buildings*

DEPUTY PRESIDENT (in Cantonese): Mr TO, we are not conducting a debate now. The Secretary has made a reply.

MR JAMES TO (in Cantonese): *If a large consortium has acquired those two buildings, it will find it easier to acquire other buildings.*

DEPUTY PRESIDENT (in Cantonese): Mr TO, if you want to follow up this issue, please do so at relevant Panel meetings. The Secretary has made a reply, only that you may not be satisfied with his reply.

The Council has spent 22 minutes on this question. Last question seeking an oral reply.

Allowances Provided to Elderly and Other People in Need

6. **MR LEUNG KWOK-HUNG** (in Cantonese): *Deputy President, regarding various types of payments under the Comprehensive Social Security Assistance (CSSA) Scheme, the Old Age Allowance (OAA) (commonly known as the "fruit grant") and the Disability Allowance (DA), will the Government inform this Council:*

- (a) *whether the Government will increase various types of payments under the CSSA Scheme, the OAA and the DA immediately in response to the aggravating inflation and continuous rising rent and food prices; if it will not, of the reasons for that; if it will, the amounts of increases, the effective date of the increase (whether the increase will have retrospective effect from April this year, adopting the same practice in the civil service pay adjustment), and the date of disbursement;*
- (b) *given that the Government reduced in 1999 and 2003 the standard rates of CSSA payments (by 10% to 20% and 11.1% respectively), special grants (including payments to cover telephone bills, dental filings and spectacles, removal expenses and rent deposit, and so on) and long-term supplement on the ground of deflation, whether the authorities will restore these payments to their original levels; if they will, of the time of the restoration and the amounts of increases; if not, the reasons for that; and*

- (c) *given that the applicants for the CSSA, the OAA and the DA must have been Hong Kong residents for at least seven years and have resided in Hong Kong continuously for at least one year immediately before the date of application (that is, not being absent from Hong Kong for more than 56 days during that year), of the number of such applicants whose applications were turned down in each of the past five years because they did not meet both or either one of the aforesaid residence requirements; whether the Government had assessed if the refusal of their applications would render these people unable to support their own living; given that following the High Court decision on 21 June this year that the requirement of one-year continuous residence in Hong Kong imposed on CSSA applicants breaches the Basic Law, the Social Welfare Department (SWD) has suspended this requirement immediately, whether the Government will immediately lift the aforesaid two residence requirements imposed on OAA and DA applicants; if it will, when the requirements will be lifted; if not, of the reasons for that; and whether the Secretary for Labour and Welfare, being a Principal Official under the Accountability System, will take the blame and resign to shoulder the responsibility for implementing such illegal requirement over the years?*

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Deputy President, the CSSA Scheme is designed to provide financial support to families in need to meet their basic daily needs, whereas the Social Security Allowance (SSA) Scheme, made up of the OAA and the DA, helps elderly people aged 65 or above and persons with severe disability in Hong Kong meet special needs arising from their old age or severe disability respectively.

In the three parts of his question, Mr LEUNG Kwok-hung has enquired about the adjustment mechanism and residence requirements under the two Schemes. My reply is now set out below:

- (a) The standard payment rates under the CSSA Scheme and the rates of allowances under the SSA Scheme are adjusted on an annual basis to

maintain their purchasing power, taking into account the movements of the Social Security Assistance Index of Prices (SSAIP). The SSAIP, which is compiled by the Census and Statistics Department (C&SD), reflects the impact of price changes on CSSA recipients. In the last adjustment cycle (that is, the period between November 2008 and October 2009), the moving average of the SSAIP indicated little room for a downward adjustment of the CSSA standard payment rates and the rates of allowances under the SSA Scheme. Having regard to the economic situation in society, we decided to freeze these rates for a period of 12 months with effect from February 2010. We will continue to closely monitor the movements of the SSAIP and will adjust the CSSA standard payment rates and the rates of allowances under the SSA Scheme ahead of the next annual adjustment cycle where necessary. The Administration activated this mechanism in mid-2008 and adjusted the CSSA rates upward by 4.4% in August that year ahead of the annual adjustment cycle.

In addition, to ensure that the SSAIP can reflect more accurately the latest expenditure patterns of CSSA households, the SWD updates the weighting system of the SSAIP (that is, the relative expenditure share of individual items of goods and services covered by the SSAIP) every five years on the basis of the findings of the Household Expenditure Survey on CSSA Households (the Survey). The SWD and the C&SD have already commenced the latest round of the Survey for the year 2009-2010.

Civil service pay is part of the employment terms for staff and its nature is completely different from that of the two social security schemes mentioned above. There is also no connection between the rate adjustment mechanism for civil service pay and that for social security.

- (b) Mr LEUNG Kwok-hung mentioned in his question the downward adjustments of the CSSA rates made by the Administration in 1999 and 2003. We have explained on numerous occasions over the past years that the measures were implemented for their own reasons.

The adjustment made in 2003 was due to previous overestimations of inflation and the continuous deflation since 1999, resulting in an overshoot of the CSSA standard payment rates by 12.4% as at March 2002. The Administration therefore obtained the approval of the Finance Committee and adjusted the rates downward by 11.1% in April 2003 according to the established mechanism, to bring the purchasing power of these rates back to their original levels.

The introduction of a series of measures to encourage able-bodied CSSA recipients to seek jobs and the tightening of the CSSA standard rates and special grants for these recipients since June 1999 were, on the other hand, the results of the rapid growth in CSSA expenditure and the number of CSSA cases involving able-bodied recipients back then, which had caused public concern about the latter's over-reliance on the CSSA. The authorities implemented these measures after extensive public consultation and the approval of the Legislative Council. That said, the Director of Social Welfare can consider exercising discretion to offer assistance to individual recipients encountering exceptional hardships, having regard to the actual circumstances of their families.

Furthermore, the Government has introduced a number of one-off measures in recent years in response to the changes in the economic environment, sharing with members of the public the fruit of the economy in times of prosperity and providing relief in difficult times. These include the provision of one additional month of the standard rate of CSSA payment and allowance under the SSA Scheme. The latest disbursement was made on 7 June this year.

- (c) On the requirements of residence in Hong Kong, since 1 January 2004, CSSA and SSA applicants aged 18 or above must have been Hong Kong residents for at least seven years (that is, the seven-year residence requirement) and have resided in Hong Kong continuously for at least one year immediately before the date of application (that is, the one-year continuous residence requirement). The above residence requirements provide a rational basis upon which our public resources are allocated, help sustain a non-contributory social

security system that faces an increasing demand and strike a balance among the interests of various sectors in society. However, having regard to the judgment of the High Court on the 21st day of last month (June) that the one-year continuous residence requirement under the CSSA Scheme violates the Basic Law and the Hong Kong Bill of Rights, the SWD has ceased the execution of this requirement under the CSSA Scheme. We are carefully examining the judgment, its implications and the merits of an appeal. According to the legal advice of the Department of Justice, the judgment targets at the CSSA Scheme and has no direct impact on the residence requirements for the OAA and the DA legally.

In the past five years, 167 CSSA applications, 31 OAA applications and 212 DA applications were rejected for the reason that the applicants failed to meet the seven-year residence requirement. Details are set out in Annex A. The number of CSSA, OAA and DA applications rejected because the applicants did not meet the one-year continuous residence requirement is listed in Annex 1. The SWD does not keep any statistics on the number of applications that were rejected for not meeting both of the residence requirements.

If the Social Security Field Units of the SWD receive CSSA or SSA applications from persons who do not meet the residence requirements, the case workers will explain the situation to the applicants, including the arrangements for the Director of Social Welfare to exercise discretion. To enhance transparency, the SWD has published a pamphlet on the residence requirements to facilitate the public's understanding of these requirements under the CSSA Scheme and the SSA Scheme and the main factors that the Director of Social Welfare will take into account in exercising discretion.

I must reiterate that it is not the original policy objective of the SSA to help recipients overcome financial hardships. Nor is the CSSA the only way to help those in need of assistance. When there are proven needs and subject to the applicants meeting the relevant eligibility criteria, other forms of assistance and support are

available. These include employment support services, emergency relief, temporary grants from charity trust funds, medical waivers, child care services, assistance in kind and placement in singleton hostels.

Annex 1

Number of applications for CSSA, OAA or DA rejected
for the sole reason of not meeting the seven-year residence requirement

<i>Year</i>	<i>Number of applications rejected</i>		
	<i>CSSA</i>	<i>OAA</i>	<i>DA</i>
2005	25	1	1
2006	34	2	8
2007	34	6	39
2008	32	12	72
2009	42	10	92

Annex 2

Number of applications for CSSA, OAA or DA rejected
for the sole reason of not meeting the one-year continuous residence requirement

<i>Year</i>	<i>Number of applications rejected</i>		
	<i>CSSA</i> <i>(The SWD keeps such figures from June 2007)</i>	<i>OAA</i>	<i>DA</i>
2005	No record	2 297	254
2006	No record	1 855	247
2007	30	2 233	308
2008	55	3 121	397
2009	34	2 810	414

MR LEUNG KWOK-HUNG (in Cantonese): *Deputy President, the Secretary mentioned in part (c) of the main reply that "We are carefully examining the judgment, its implications and the merits of an appeal. According to the legal*

advice of the Department of Justice, the judgment targets at the CSSA Scheme and has no direct impact on the residence requirements for the OAA and the DA legally." What did he mean by this? That means Secretary WONG Yan-lung told him that although they had lost the court case, the Court remarked that its decision would only impact on the CSSA Scheme and other allowances would not be affected. They had not yet lost the court case and you could still stand it. WONG Yan-lung is the barrister of the SAR Government and he is a big, big barrister. He had certainly made this remark because he was talking about the law. However, I am asking you about the policy. WONG Yan-lung and Elsie LEUNG had remarked that an executive order or administrative direction is also legislation. As a result, the Administration lost three court cases in a row, such that we had to enact legislation here four years ago. Members may recall that we did so in haste.

Your so doing is tantamount to asking a person to engage in litigation. You had to undergo a judicial review before doing good deeds. I think this is the case. Precisely, you "will not weep until you see the coffin" and you will not turn over a new leaf until you have lost the court case. The Government always makes its people resort to its legal aid (because they are poor) to obtain by winning a lawsuit what the policy originally entitles them to have. Do you not feel shameful? I am now asking about the policy. Do you think the arrangement that only the people aged above 65 can apply for the OAA

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

MR LEUNG KWOK-HUNG (in Cantonese): *As he is a rather dull-witted person, I have to explain it clearly, so that after he has given an answer*

DEPUTY PRESIDENT (in Cantonese): You have already made a detailed explanation. Please raise your supplementary question.

MR LEUNG KWOK-HUNG (in Cantonese): *Deputy President, I very much appreciate your forbearance. Please bear with me 15 seconds more and that will do. DA applicants are the most pitiful people. What is the point in talking about the law with them? I now have this question for you and I am now holding you accountable. Policy-wise, do you think they should be provided with DA and treated on a par with CSSA recipients? As far as social status is concerned, they are in a more disadvantaged position. We are talking about the policy, so I am not directing this at WONG Yan-lung but Secretary Matthew CHEUNG.*

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Thanks to Mr LEUNG for his views and question. As clearly mentioned in the main reply, we are now examining in detail the judgment and its implications, including its impact on the policy, before deciding our way forward. I wish to reiterate that regarding the policy on requiring applicants to reside in Hong Kong continuously for one year before making an application, we proposed it on good grounds. We hoped that government resources could be put to effective use. In fact, the two Schemes are different in certain aspects. The CSSA Scheme relates to a person's financial conditions and it really pertains to meeting financial needs. The OAA and the DA have no connection with a person's financial conditions *per se*..... Generally speaking, as Members are aware, there is no means test whatsoever for the DA and no test on income and assets will be conducted at all. As for the OAA provided to elderly people aged 70 or above, we will not factor in their financial background either. Hence, Members have to understand that in these circumstances, and given the large number of applicants and their varying service recipients, we definitely have to handle this issue with care. At present, we are still examining in detail the judgment and its implications before deciding what should be done.

(Mr LEUNG Kwok-hung rose to his feet)

DEPUTY PRESIDENT (in Cantonese): We are not conducting a debate now. He has already given an answer.

MR LEUNG KWOK-HUNG (in Cantonese): *I wish to ask him*

DEPUTY PRESIDENT (in Cantonese): Mr LEUNG, you have to accept the fact that the Secretary has given an answer. He said that he would examine it.

MR LEUNG KWOK-HUNG (in Cantonese): *..... But there should be a direction in his examination. I am precisely asking him to provide a figure: How much public money will be spent on providing the OAA and the DA*

DEPUTY PRESIDENT (in Cantonese): Mr LEUNG, just now, you asked the Secretary whether or not consideration would be given to the policy. The Secretary has given the answer and that is: He is examining the judgment and the possibility of giving consideration in this regard will not be ruled out. Please sit down.

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

MR ALBERT CHAN (in Cantonese): *I mainly pinpoint the determination of the amount of CSSA payment. Certainly, as said by the Secretary just now, with respect to the so-called "fruit grant", the financial aspect will not be taken into consideration. However, very often, in vetting CSSA applications, assessment is made on the basis of the whole family. A number of elderly people who live with their children are not financially supported by the latter. They rely on the "fruit grant" to make ends meet and this is a fact cast in iron. Hundreds of thousands of elderly people rely on the "fruit grant" to afford the necessary expenses incurred in their daily living and they are living in abject poverty. Will the Secretary conduct any review of this problem? Moreover, in tandem with conducting the relevant review, regarding the elderly people who live with their family members but are not taken care of by their children, can their children be spared the requirement of signing the so-called "bad son statement"? Given that the present situation has led to the deterioration of family problems and the*

policy on vetting CSSA applications is too stringent, some elderly people are compelled to live apart from their children.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): I thank Mr CHAN for his question. On this issue, we have conducted detailed discussions at the Subcommittee on Poverty Alleviation (some time later, we will also conduct a debate). In my view, the name "bad son statement" is actually an unfortunate label. In the Government, there has never been a form called the "bad son statement". This form is only used to prove that elderly people have a genuine need for assistance from the Government in the financial aspect. That means their family members or children are unable to take care of them. This arrangement is necessary and we must be adamant to the usage of public money, which comes from taxpayers. If we confirm that elderly people have such a need, we absolutely can provide appropriate assistance. In fact, the Director of Social Welfare may, upon various grounds, exercise discretion so that children living with elderly people do not have to sign that form. That means after proof has been produced and if we also opine that the elderly people concerned are in need of assistance, the Director of Social Welfare may grant discretionary approval.

MR ALBERT CHAN (in Cantonese): *The series of questions I raised just now relate to the thrust of the review of the "fruit grant"*

DEPUTY PRESIDENT (in Cantonese): I will call upon the Secretary to give an answer, all right? Your specific question is: In examining the judgment and conducting the review, will he also conduct a review in this regard?

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Deputy President, we are talking about two points. Basically, we are now focusing on the implications arising from the judgment and its legal grounds. We have to examine and analyse these matters with care. Hence, after completing such work and identifying a direction, we will give an account.

MR LEE CHEUK-YAN (in Cantonese): *I feel disappointed with the Secretary's earlier remarks that the "fruit grant" had no connection with a person's financial conditions. I think he really has no idea about the hardships of the people. A great many elderly people really have to rely on the "fruit grant" to maintain their living and they have a number of reasons for not applying for the CSSA, but rather living on the "fruit grant". I hope he will not make such a remark again that the "fruit grant" is only an added grace. In fact, to some elderly people, it is really a sum of money to "keep them alive".*

At present, there were 3 000-odd elderly each year who were prevented from making an application on the ground of violating the requirement of one-year continuous residence in Hong Kong. The Secretary said that they would examine the judgment but it was pointed out in the main reply that "the judgment targets at the CSSA Scheme and has no direct impact on the residence requirements for the OAA and the DA legally." May I ask the Secretary: Although this court case might relate specifically to the CSSA Scheme, have you examined the relevant legal principle? The legal principle is that the requirement of one-year continuous residence in Hong Kong violates the Basic Law and the Hong Kong Bill of Rights. Has the Government applied the Basic Law and the Hong Kong Bill of Rights to the OAA rather than just applying this principle in this judgment? After applying this principle, have you found that the same problem also exists in various allowances? Will any amendment be made immediately to the relevant requirement? I also hope that you will abandon an appeal because this pertains to the well-being of the people. In fact, it is meaningless to engage in litigation with them.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Thank you Mr LEE. I wish to clarify one point here. First, just now, you highlighted my earlier reference to the "fruit grant". At that time, I discussed it from the financial angle and I was not suggesting that elderly people Some elderly people are really in dire need of the "fruit grant" of \$1,000. This is a fact that everyone knows; otherwise, the Government would not have increased its amount to \$1,000. What I mean is that applicants aged 70 or above are not required to undergo any means test and Members also know that the requirements imposed on elderly people aged between 65 and 69 are lax. A couple making an application can have assets and an income up to \$250,000 and \$9,000-odd respectively. I merely wish to bring out a message and that is, we cannot make

such a simple comparison between the two allowances. CSSA payment relates to the financial conditions of a person, who relies on such payment to sustain basic living standards, and it is a daily necessity. Just now, he asked us whether or not consideration would be given to the legal angle and the Basic Law. We will give consideration to these matters. Hence, we need to spend time conducting a detailed examination to ascertain the impact before deciding how the matter should be dealt with.

MR LEUNG YIU-CHUNG (in Cantonese): *Deputy President, I wish to follow up the supplementary question raised by Mr LEE Cheuk-yan. Since this case related specifically to the eligibility requirement of one-year continuous residence in Hong Kong imposed on CSSA applicants, just now, Mr LEE Cheuk-yan requested the Secretary to examine the relationship between this eligibility requirement and the one imposed on OAA and DA applicants, in the hope that this could be taken as the point of departure. We think that in addition to the Hong Kong Bill of Rights and the Basic Law, humanitarian issues are also involved and this is also very important. Deputy President, in order to reduce financial expenses, some elderly people return to the Mainland and live there. However, for compliance with the requirement of residence in Hong Kong, they need to travel repeatedly between Hong Kong and the Mainland, which they find very difficult. Coupled with the fact that some of them are at an advanced age or suffer from illnesses but still have to do so, the situation has been aggravated. I have these questions for the Secretary. Regarding the figures you have in hand, elderly people who had resided in Hong Kong for less than seven consecutive years and were therefore not granted the OAA did not account for a large but small number while there were 3 000-odd people who had taken up residence for less than one year. In fact, if the requirement of continuous residence were to be relaxed, in your estimation, what would happen to these two figures? Would the situation become totally unacceptable, just as you said just now? Would the economic environment of Hong Kong and the Government's resources really be unable to cope with the changes?*

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Deputy President, I thank Mr LEUNG for his question. As present, there are nearly 500 000 elderly people receiving the OAA. If Members opine that the residence requirement has to be completely lifted, it will be difficult for this to be achieved and Members also know the reasons. This is because so doing will render

elderly people who have departed Hong Kong for a prolonged period of time and resided somewhere else eligible for the right to which they believe they are entitled. Hence, we have to handle this issue with care. As for elderly people who are currently receiving the "fruit grant", in fact, Members know clearly that we provide for an absence period of 240 days for them to leave Hong Kong. As long as they have lived in Hong Kong for 90 days, they may enjoy the convenience brought by this absence rule. At present, we are examining the possibility of further relaxing the 240-day absence rule. We are now working on this and examining this situation.

DEPUTY PRESIDENT (in Cantonese): We have spent 24 minutes on this question. Oral questions end here.

WRITTEN ANSWERS TO QUESTIONS

Drugs Included in Hospital Authority Drug Formulary

7. **MR ALAN LEONG** (in Chinese): *President, according to a paper provided by the Government to the Panel on Health Services of this Council on 11 May of this year, Ranibizumab (Lucentis), which is licensed in Hong Kong for the treatment of wet age-related macular degeneration (AMD), is a self-financed drug on the Hospital Authority (HA) Drug Formulary (the Formulary), and it is not covered by the safety net provided by the Samaritan Fund (the Fund) either. However, the governments of more than 20 countries and regions across the globe, including Korea and Australia in our neighbourhood, have committed to bear the full medical costs for the treatment of wet AMD. In this connection, will the Government inform this Council:*

- (a) *whether it knows if the Drug Utilization Review Committee (DURC) of HA has made any recommendation to the Fund on the inclusion in its scope of subsidies those drugs listed on the Formulary which are for treating wet AMD (such drugs); if DURC has made such recommendations, of the reasons for the Fund not accepting them; if not, the reasons for that;*

- (b) *whether it knows, apart from the aforesaid drug, if there was any recommendation made in the past three years by DURC on the inclusion of other drugs in the scope of subsidies of the Fund, which had eventually not been accepted; if there were such recommendations, of the reasons for that, and how the public knows whether or not individual drugs have been recommended by DURC to be included in the scope of subsidies of the Fund; and*
- (c) *given that certain countries provide subsidies to patients for drugs used in the treatment of wet AMD while such drugs are still undergoing clinical tests, whether the authorities will consider making reference to the practices adopted in those countries and introduce measures to provide subsidies to all needy patients for using such drugs during the testing stage, irrespective of whether the patients participate in the tests, before such drugs are listed as standard drugs on the Formulary, with a view to providing assistance to needy patients suffering from wet AMD and so as to avoid their not being able to receive the most appropriate treatment due to financial reasons; if they will, of the details of such measures; if not, the reasons for that?*

SECRETARY FOR FOOD AND HEALTH (in Chinese): President, there are two vascular endothelial growth factor (VEGF) inhibitors commonly used by ophthalmologists to treat wet AMD, namely Ranibizumab (Lucentis) and Bevacizumab (Avastin). The two drugs are derived from the same monoclonal antibody and hence have similar molecular structure. Ranibizumab (Lucentis) is licensed in Hong Kong for the treatment of wet AMD in 2007. It is a self-financed drug on the HA Formulary for wet AMD treatment. Bevacizumab (Avastin) is licensed in Hong Kong for the treatment of colorectal cancer in 2005. It is a self-financed drug on the Formulary for cancer treatment. Although Bevacizumab (Avastin) is not licensed for the treatment of wet AMD, prescription of the drug beyond its licensed indication (or off-label use) for treating wet AMD is a common international practice.

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

- (a) Over the past year, the DURC of HA has discussed twice whether recommendations should be made to the Samaritan Fund Management Committee (SFMC) to include Ranibizumab (Lucentis) in the scope of subsidies of the Fund. However, the treatment options for the disease are still evolving, and no international consensus has been reached on the optimum regimen of the drug in treating wet AMD (that is, the number of injections to be administered). Also, the long-term safety, efficacy and cost-effectiveness of the drug require further study to prove. Hence, the DURC of HA has not hitherto made a recommendation to the SFMC for including the drug in the scope of the Fund.

Large-scale studies are being conducted in six overseas countries (including the United Kingdom, the United States and Germany) to further ascertain the efficacy, drug safety and cost-effectiveness of various treatment options for wet AMD. The findings will be published by end of 2010 to early 2011. On the other hand, the HA is planning to conduct a local clinical study this year to compare two VEGF inhibitors commonly used for wet AMD treatment, including Ranibizumab (Lucentis) and Bevacizumab (Avastin), so as to accumulate more local experience in the use of the drugs. The HA will summarize the data of the local clinical study, closely observe the latest developments in international scientific evidence, and take into account the findings of the large-scale studies to be published in determining the appropriate positioning of such drugs in the Formulary for the treatment of wet AMD.

- (b) In the past three years (2007-2008 to 2009-2010), all recommendations made by the DURC on the inclusion of drugs in the scope of the Fund were accepted by the HA. During the same period, a total of seven additional new drugs and a total of 13 new indications were included in the scope of the Fund.

The Formulary and information on the Fund (including the list of specified drugs subsidized by the Fund) have been uploaded to the

HA website for public information. Patients may also make enquiries with their doctors or medical social workers. Besides, the HA will meet regularly with patient groups to collect their views on the Formulary.

- (c) As mentioned above, the HA is planning to conduct a local clinical study this year to compare, under specific treatment options, the efficacy, drug safety and cost-effectiveness of two VEGF inhibitors commonly used for wet AMD treatment, including Ranibizumab (Lucentis) and Bevacizumab (Avastin). Patients with suitable conditions will be invited to participate in the clinical study and use the relevant drugs on a trial basis without any charge by the HA. If patients do not participate in the clinical study, the HA will continue to provide them with traditional treatment through highly-subsidized public health care services. Patients may also opt to use Ranibizumab (Lucentis) at their own expense for the treatment of wet AMD.

Given that the findings of the large-scale international studies will be published by the end of this year to early next year, and that HA will be informed of the preliminary data of the local clinical study around the same time, we will, at a suitable juncture, expeditiously review the positioning of such drugs in the Formulary for treatment of wet AMD.

HA will make reference to the practices in different countries and continue to closely monitor the needs of wet AMD patients so as to provide them with appropriate support.

Provision of Public Rental Housing Units in the New Territories

8. **MR ALBERT CHAN** (in Chinese): *President, I have recently received complaints from quite a number of members of the public, who pointed out that while they were successfully registered on the Waiting List (WL) for public rental housing (PRH) units in the New Territories four years ago, they are still waiting for the Housing Department to handle over 40 000 applications with higher*

queuing numbers ahead of their applications before it is their turn to undergo the income-cum-asset test. In this connection, will the Government inform this Council:

- (a) of the current number of applications on the WL for PRH units in the New Territories and, among them, the number of applications in which the applicants have already waited for more than three years, together with a breakdown by the district chosen by such applicants;*
- (b) of the respective numbers of PRH units in the New Territories which were built and completed in each of the past five years; and*
- (c) whether it will consider expediting the construction of more PRH units in the New Territories, so as to meet the rapidly growing demand for PRH within the district; if it will, of the details, if not, the reasons for that?*

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): President, my reply to the question is as follows:

- (a) The waiting time refers to the time between the date of first registration until flat offers, but excluding the duration of cases being frozen during the application period, such as the applicants have not yet fulfilled all the requirements, say in respect of the residence rule, and so on. The waiting time for PRH may vary from time to time, depending on the number of applications for and supply of PRH flats in the District, and so on. PRH applicants can choose among the four WL Districts⁽¹⁾, namely Urban, Extended Urban, the New Territories and the Islands. To ensure rational and effective allocation of limited public housing resources, in general, applicants cannot specify the location or estate within the WL District, save for applications with individual special circumstances and referred by the relevant department or organization. Therefore, we do not have

(1) WL applicants with the application registration date or equivalent registration date after 30 September 2006 can only opt for non-Urban Districts.

a breakdown of the number of applicants who have waited more than three years on a district basis.

As at the end of May 2010, out of a total of about 132 000 live applications on the WL, there were about 25 000 applications (or 19%) applying for rehousing in the New Territories. Among the 25 000 live applications applying for rehousing in the New Territories, some 2 980 applications had waiting time of over three years but no flat offer had been given. Out of these 2 980 applications, the vast majority (2 900 applications) were Quota and Points System (QPS)⁽²⁾ applications. Only some 80 applications (or around 0.3% of all live applications applying for rehousing in the New Territories) were ordinary family applications in the New Territories queue with waiting time over three years without any flat offer. The relative priority in allocation for QPS applicants depends on the points they receive. For the 2 900 QPS applications, the QPS applicants concerned have relatively lower points. As for some 80 (or 0.3% of all live applications applying for rehousing in the New Territories) ordinary family applications waiting for flats in the New Territories for three years without flat offer, the relatively longer waiting time is mainly due to individual reasons such as changes in the circumstances of the applicant during application (such as a change in the household size), or the applicant, due to individual special social or medical grounds, has obtained the recommendation of the relevant department (for example, Social Welfare Department) or organization (for example, the Hospital Authority) for a specific estate where the availability of suitable flats is low (the applicant will be informed of such situation).

- (2) The Hong Kong Housing Authority introduced the Quota and Points System for Non-elderly One-person Applicants in September 2005 to rationalize and re-prioritize the allocation of PRH units to non-elderly one-person applicants. The relative priorities for PRH allocation to applicants under the QPS are determined by the points the applicants receive according to the points system. Points are assigned to the applicants on the basis of their age at the time of submitting the PRH applications, their waiting time and whether they are living in PRH. In general, the older the applicants, the higher the points they receive. The higher the number of points accumulated, the earlier an applicant will be offered a PRH flat. The target to maintain the average waiting time at around three years is applicable to general WL applicants, but excluding non-elderly one-person applicants.

- (b) The annual PRH flat production in the New Territories^{Note} for the past five years is as follows:

<i>Year/Flat production</i>	<i>2005-2006</i>	<i>2006-2007</i>	<i>2007-2008</i>	<i>2008-2009</i>	<i>2009-2010</i>
New Territories	0 unit	2 400 units	5 400 units	3 200 units	2 400 units
Territory-wide	17 200 units	7 200 units	13 700 units	19 100 units	15 400 units

Note:

New Territories refers to the North District, Tai Po, Tuen Mun, Yuen Long and Sai Kung (excluding Tseung Kwan O)

In addition to new flat production, the number of PRH flats recovered is also an important source of public housing supply.

- (c) The public housing construction programme in the coming five years has generally been firmed up. Most of the projects are either at the construction or advanced detailed design stage. In this light, there would not be any major change to the overall flat production and the construction timetable.

In order to meet the target of maintaining the average waiting time for PRH at about three years, the Government and the Hong Kong Housing Authority (HA) will continue to identify suitable sites for PRH development in different regions, including the New Territories. The HA regularly monitors the land and flat supply as well as the public demand for PRH.

Daya Bay Nuclear Safety Consultative Committee

9. **DR MARGARET NG** (in Chinese): *President, it has been reported that a small increase in radioactivity was observed in the reactor cooling water at Unit 2 of the Daya Bay Nuclear Power Station (DBNPS) on 23 May this year, which has aroused grave public concern, and CLP Power Hong Kong Limited will submit an investigation report on the incident to the Daya Bay Nuclear*

Safety Consultative Committee (NSCC). In this connection, will the Government inform this Council, whether it knows:

- (a) the operation of NSCC; whether NSCC has held meetings regularly and made public the minutes of its meetings, and whether it will submit annual reports to the Government;*
- (b) the criteria for the appointment of members to NSCC, the list of incumbent NSCC members and their respective years of service; and*
- (c) when and how NSCC learned about the aforesaid incident; the actions taken by NSCC after learning about the incident, and whether it has put forward any recommendation to the authorities; if so, of the details?*

SECRETARY FOR SECURITY (in Chinese): President,

(a) to (c)

The Daya Bay Nuclear Safety Consultative Committee (the Committee) is formed by the Daya Bay Nuclear Power Operations & Management Company (DNMC) in the Mainland with its members being invited by DNMC to join the Committee. As such, the Committee is neither formed nor appointed by the HKSAR Government and has no obligation to submit reports to the HKSAR Government. It is understood that the Committee has a Chairman, two Deputy Chairmen and a number of members, comprising university president, nuclear and environment experts, professors, academics, doctors, medical practitioners, media and engineers.

In regard to the responsibilities of the Committee, when they learned about event and their response, they had issued a media statement on 16 June which is now attached for reference.

As a matter of fact, in case of any events relating to the DBNPS, the HKSAR Government will contact the Hong Kong Nuclear Investment Company (HKNIC) and the Guangdong authorities direct

to seek further information. HKNIC is a wholly owned subsidiary of China Light & Power Holdings Limited (CLP). The DNMC will notify HKNIC of all Licensing Operational Events. The HKNIC submits monthly reports of Licensing Operational Events to its Board with members including representatives of the Environment Bureau and the Security Bureau. The HKNIC also uploads such information on its website for the public's reference.

On the other hand, the HKSAR Government and the Guangdong authorities have established an official contingency notification channel. In simple terms, the PEACO,GD is responsible for co-ordinating contingency actions to be taken by various Guangdong authorities in response to events at the DBNPS. In case of a contingency event or accident at the plant, the DBNPS operator will inform the PEACO,GD and the relevant state organizations immediately. The PEACO,GD will notify the HKSAR Government in accordance with the contingency notification arrangements agreed between the two sides.

Apart from the existing notification mechanism, the HKSAR Government has also set up its warning system for active monitoring so as to obtain first-hand information. One of the major components of this warning system is Hong Kong Observatory (HKO)'s Environmental Radiation Monitoring Network, which comprises 10 radiation monitoring stations for recording ambient gamma radiation levels continuously. In addition, the Water Supplies Department (WSD) operates two identical online Water Contamination Monitoring Systems at Muk Wu Pumping Station to monitor incoming drinking water from Guangdong. The alarms at HKO and WSD will be activated immediately if there is any abnormal change in the radiation level.

Furthermore, a sudden power interruption at the DBNPS may indicate the occurrence of an abnormality at the power plant, though this situation does not necessarily mean a nuclear event. If such power interruption occurs, apart from being notified by the DBNPS, the System Control Centre of CLP will also be able to detect it immediately through its own monitoring system. CLP will alert the

Electrical and Mechanical Services Department and the HKO in accordance with the established notification mechanism.

Upon receipt of any alarm, the departments concerned will follow relevant procedures and review their monitoring data immediately. They will also seek verification from relevant authorities, assess the situation, and assist the Security Bureau in activating the contingency plan according to the prevailing situation.

The Administration will review the existing arrangement for handling nuclear events and the notification mechanism with a view to strengthening co-ordination with all concerned parties.

Annex

16 June 2010

For Immediate Release

Daya Bay Nuclear Safety Consultative Committee
Media Statement

The Daya Bay Nuclear Safety Consultative Committee (Committee) Chairman Dr Raymond HO, Vice Chairman Prof LEE Cheuk-fan, Mr Henry WU King-cheong, and committee member Dr Laurie WAN Shek-luen today held a meeting to review media reports on the 23 May incident at the Daya Bay Nuclear Power Station (Daya Bay) over the past two days. The Committee issues the following statement to make clarification to some media reports:

1. It was incorrect for some news reports to allege that the 10 June meeting of the Committee lasted for only 10 minutes. At the two-hour meeting, committee members had a wide-ranging discussion particularly about the 23 May incident and keenly expressed their opinions and raised questions, which were comprehensively answered by the management of the Daya Bay Nuclear Power Station. The Committee was satisfied with the Daya Bay management's report that in accordance with the technical specifications of the general operating rules, the radioactivity of the Primary Coolant Circuit would be continuously monitored and a task force

would be formed to follow up on the incident. The Daya Bay management will report findings to the Committee when ready.

2. The Committee understood from the Daya Bay management that the incident was a slight increase of radioactivity between the fuel rod and the Primary Coolant Circuit of the water cooling system. Since the Primary Coolant Circuit of the reactor's water cooling system is a fully enclosed design with shielding provided by the pressure boundary and pressure vessel of the Primary Coolant Circuit and does not have contact with the external environment, therefore the incident did not have a safety impact and will not cause leak of radioactivity to the external environment. The radiation monitoring findings of the Hong Kong Observatory and the Daya Bay Nuclear Power Station showed that the radioactivity level since May has remained stable. Some media reports alleging a leak of radioactivity to external environment and that the staff of Daya Bay Nuclear Plant had been exposed to unnecessary radiation were incorrect and irresponsible.
3. The Committee agrees that the incident is not significant enough to be classified as a Level-0 event and hence under international standards there is no need to report the incident. The Committee is of the view that Daya Bay's proactive reporting and explanation of the incident is a good practice.

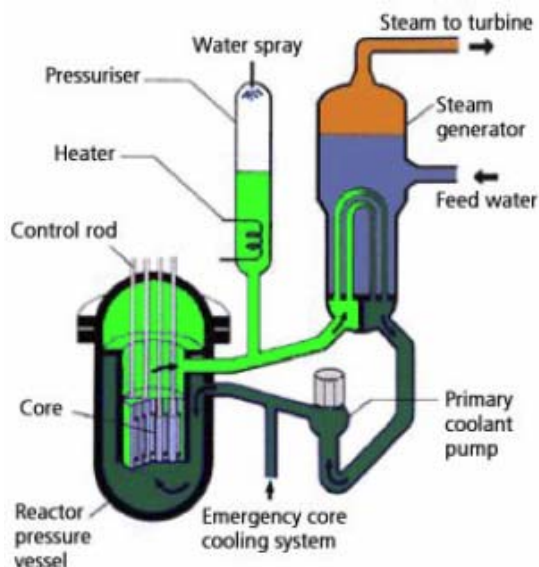
Notes to editor:

1. About the Daya Bay Nuclear Safety Consultative Committee (text available in Chinese only)

Information on the Daya Bay Nuclear Safety Consultative Committee:

- Committee members comprised of university president, nuclear and environment experts, professors, academics, doctors, medical practitioners, media and engineers, and so on.
- Committee members are invited by Daya Bay Nuclear Power Operations & Management Company (DNMC).
- The roles of the Committee are:

- (i) to discuss the reports on the planning and implementation of nuclear safety on operational and construction matters of the nuclear power stations under the operation and management of the DNMC;
 - (ii) to communicate with the residents in Hong Kong and Macao on the safety situation of Daya Bay and Ling Ao; and
 - (iii) to provide opinions and suggestions on nuclear safety based on national nuclear safety regulations, with reference to the nuclear safety information of international nuclear safety organizations and nuclear safety situations.
2. Please refer to the diagram downloaded from Hong Kong Observatory or click onto the provided link for information on the Primary Coolant Circuit.



Hong Kong Observatory's Diagram of the Primary Coolant Circuit

<http://www.hko.gov.hk/education/dbcp/pow_stat/eng/r7.htm>

3. For media enquiries, please call the Committee Chairman and two Vice-Chairmen.

Quality of Fixtures in Public Housing Estates

10. **MR WONG KWOK-KIN** (in Chinese): *President, I have recently received complaints from members of the public about the rusting problem of the hinges of the aluminium windows in quite a number of units in Upper Ngau Tau Kok Estate and Lam Tin Estate, which were completed for occupation for less than a year, necessitating the replacement of nearly 100 000 hinges. It has been reported that results of laboratory test have indicated that the quality of those hinges fails to meet the standard specified by the Housing Department (HD) in the contracts. Regarding the quality of fixtures in public housing estates (PHEs), will the Government inform this Council:*

- (a) which parties bear the costs for replacing the hinges;*
- (b) of the number of complaints received by the authorities in the past five years about problems involving public housing fixtures in PHEs completed for occupation for less than a year, which required maintenance arranged by the HD;*
- (c) of the respective current numbers of PHEs completed and under construction the aluminium windows of which were/are supplied by the contractors which provided the aforesaid problem hinges, and whether such contractors also supplied other public housing fixtures in addition to aluminium windows; if they did, of the fixtures involved and progress of such projects;*
- (d) whether a set of criteria is in place at present for contractors to follow when the HD awards contracts for installation of aluminium windows, to ensure that the materials provided by the contractors meet the requirements of the HD; whether projects are followed up and inspected by qualified works staff of the HD upon completion; if not, of the reasons for that; if so, whether the authorities have reviewed the inspection criteria and procedures subsequent to the occurrence of the aforesaid incident; whether the authorities will draw up a list to preclude contractors with poor records from bidding for works contracts of the HD again; and*

- (e) *given that there have been repeated problems with the quality of public housing fixtures recently, whether the authorities will carry out detailed reviews and studies on the quality of public housing; if they will, whether they will consider setting up an ad hoc group to follow up the matter and review the problems brought by the use of pre-cast units in building public housing, with a view to preventing the recurrence of similar problems; if not, of the reasons for that?*

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): President, my reply to the question is as follows:

With regard to the incident of defective window hinges at Upper Ngau Tau Kok Estate and Lam Tin Estate, the root of the problem lies in the deviation in chemical composition of the raw material for stainless steel. The current set of comprehensive monitoring procedures on the construction of the aluminium windows including stages such as design, supply and installation, and so on, is effective. But this incident reflects the importance of quality assurance of building materials in the upstream of the supply chain.

- (a) Under the Hong Kong Housing Authority (HA)'s building contracts, responsibility to ensure material compliance rests with the contractors. In this incident, the concerned contractors have admitted responsibility and will be responsible for the entire replacement cost for window hinges of all flats in Upper Ngau Tau Kok Estate and Lam Tin Estate. The HA does not need to bear any cost.
- (b) According to records, over the past five years, there have been a small number of complaints or reports on defects from tenants in public rental housing estates within one year of completion. An average of about 0.2 defect per flat was recorded. The problems were mainly related to wall finishes, plumbing and drainage, and ironmongery, and so on. These were minor in nature. Once complaints or reports on defects are received, the HD will take prompt follow-up action and arrange for the maintenance works to be carried out at a time convenient to the tenant in order to minimize the possible nuisance and disturbance.

- (c) In the past five years, the supplier of the defective aluminium window hinges in the incident took part in three building projects for the HA, namely Upper Ngau Tau Kok Estate Phases 2 and 3, Lam Tin Estate Phases 7 and 8, and Lei Yue Mun Estate Phase 2. The concerned supplier is not taking part in any project currently under construction.

In February 2010, we took six aluminium window hinges by random sampling from Lei Yue Mun Estate for laboratory tests. Results revealed that only one sample contained a carbon content slightly higher than the specification requirement. The chemical compositions of all other samples fully complied with the specified requirements. Although no rusting and breakage problem have been found in Lei Yue Mun Estate since its population intake three years ago, we will closely monitor the situation there. If there are any abnormalities, we will take immediate follow-up action.

- (d) The HD has been exercising stringent control over the aluminium window quality through inspection, close supervision on workmanship and checking. The scope of windows inspection is in line with the industry practice. In the contract specification, we clearly set out the performance requirement of the aluminium windows. Under the contract, the contractor is responsible for the design, supply and installation of the aluminium window. The current inspection procedures in relation to aluminium window are as follows:

- (i) submission of sample, shop drawing and structural calculation to ensure the design, proposed materials, components and structural strength comply with specification requirement;
- (ii) carry out performance test to ensure satisfactory performance in the areas of water penetration, air infiltration and structural adequacy;
- (iii) on-site delivery verification including documentation, visual and measurement checks;

- (iv) periodic inspection during installation to ensure that workmanship complies with specification requirement;
- (v) perform water-tightness test to ensure no seepage; and
- (vi) carry out final inspection by visual and functional test to all flats to ensure proper installation and smooth operation of all windows. All hinges are checked for proper fixing and with no missing screws.

The overall inspection and checking process is undertaken by professional and qualified staff. We followed this process in Upper Ngau Tau Kok Estate and Lam Tin Estate. All window hinges were inspected at the time of completion. However, the defects in material composition which resulted in rusting and breakage could not be detected under normal inspection procedures and did not surface until some time after occupation. We have uploaded the incident of defective window hinges to the Material Database at the HA's intranet, notifying colleagues of the details.

- (e) The defective window hinge incident in Upper Ngau Tau Kok Estate and Lam Tin Estate reinforces the importance of managing the quality of raw materials in the upstream part of the supply chain in the construction industry. To avoid a recurrence of the problem, the HA is now actively working with the stakeholders in the construction industry to extend the product certification scheme to aluminium window and four-bar hinge assembly. This scheme can further strengthen the monitoring of product quality and deliver better assurance.

In the interim, the HD would take the following immediate steps to strengthen control of the quality of windows supplied for HA's construction sites:

- (i) requiring contractors to submit mill certificates and manufacturer's test reports for stainless steel window components;

- (ii) carrying out surveillance tests on the mechanical and chemical properties of four-bar hinges;
- (iii) carrying out surveillance tests on the endurance of fasteners and other hardware; and
- (iv) carrying out random checks on the workmanship of the hinge pivots to ensure they are squarely pinned for smooth movement.

Renovation of Offices and Procurement of Office Furniture and Stores by Heads of Government Departments

11. **MR WONG KWOK-HING** (in Chinese): *President, it has been recently reported that certain heads of government departments (HoDs) were alleged to have misused public funds to procure unnecessary appliances, office equipment and furniture for their own use, and carry out unnecessary renovation works for their offices. Such incidents have aroused public concern about whether or not government officials have abused their office and misused public funds. In this connection, will the Government inform this Council:*

- (a) *of the respective numbers of HoDs who had, in the past three years, used public funds to carry out renovation works for their own offices, and procure additional furniture, electrical appliances and expensive office equipment for their own use; of the government departments and ranks to which they belonged, together with a breakdown by the amount of expenditure involved (that is, below \$5,000, \$5,000 to \$10,000 and above \$10,000);*
- (b) *whether there are application procedure, regulatory standards and approval mechanism in respect of the use of public funds by HoDs to cover the aforesaid expenses at present; if so, of the details; if not, the reasons for that; and*
- (c) *given that the public is concerned about the situation of senior government officials using public funds to procure stores or services for their own use, whether the Audit Commission will conduct an*

independent audit review on the aforesaid situations of HoDs using public funds, so as to eliminate the worries of the public expeditiously?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Chinese): President, the Architectural Services Department (ArchSD) is responsible for the routine maintenance, minor improvement works and regular refurbishment of government offices (including offices of staff at various ranks). The expenditures in question are related to routine maintenance and minor improvement works, and are mainly charged to two expenditure subheads. The expenditure in respect of routine maintenance is funded by the provision under ArchSD's Head 25 Operating Account Subhead 000 Operational expenses — Maintenance of government buildings, while the expenditure in respect of minor improvement works is funded by the provision under Subhead 3101GX of Head 703 — Buildings of the Capital Works Reserve Fund.

Irrespective of the ranks of office users, the ArchSD will deal with works requests for government offices according to certain established criteria. These criteria include the degree of wear and tear and the maintenance cycle of office facilities. For example, carpets would only be replaced after having been used for not less than six years, and internal wall redecoration would only be carried out not less than four years after the last redecoration. If the proposed works requests are considered to be in order, the ArchSD will process the funding applications in accordance with the established procedures. For projects funded by the ArchSD under Head 25 Subhead 000, approval will be given by designated officers of the ArchSD, depending on the amounts involved. For funding applications under Subhead 3101GX, approval will be given by designated officers of Treasury Branch or ArchSD, depending on the amounts involved.

As for procurement of furniture, electrical appliances or office equipment for government offices, the relevant expenditure will generally be funded by the provision under Operating Account Subhead 000 Operational expenses of individual departments. According to the Public Finance Ordinance (Cap. 2), the HoD as the controlling officer shall be responsible and accountable for all public moneys for which he is the controlling officer.

Regarding the expenditure figures requested by the Member, the computer records of the ArchSD do not contain information on project costs categorized by ranks of office users. At the central level, we have also not collected information on the expenditures arising from procurement of furniture, electrical appliances and office equipment by departments for their respective HoD under Subhead 000 Operational expenses. Nevertheless, as we understand, of the 10 HoDs mentioned in the press reports in question, since the office facilities of four of them had already reached the end of the maintenance cycle, the departments concerned took the opportunity of the change of office of HoDs to carry out minor works in their offices. The total project costs involved were about \$120,000. Furthermore, seven out of the 10 departments concerned have procured furniture, electrical appliances and office equipment for the offices of their HoDs at a total cost of about \$180,000.

According to section 9(3) of the Audit Ordinance (Cap. 122), the Director of Audit shall not be subject to the direction or control of any other person or authority in the performance of his duties and the exercise of his powers under the Ordinance. The Audit Commission therefore decides at its own discretion whether to conduct a value-for-money audit study on a particular expenditure item or proposal. According to the Audit Commission, it will review the need for carrying out audit studies from time to time. In assessing such a need, the Commission will have due regard to a number of factors such as materiality, risk, auditability, timeliness and value added.

Facilitating Operation of Hong Kong Manufacturers Through Taxation Arrangements

12. **MR JEFFREY LAM** (in Chinese): *President, the Financial Services and the Treasury Bureau indicated earlier that it had invited the Joint Liaison Committee on Taxation to study whether Hong Kong manufacturers on the Mainland, who are required to undergo upgrading and restructuring to tie in with the national policies, might continue to be entitled to depreciation allowance in Hong Kong for their machinery after restructuring their business from "contract processing" to "import processing". In this connection, will the Government inform this Council:*

- (a) *of the scope and timetable of the aforesaid study; and*
- (b) *how it ensures that Hong Kong's taxation provisions tie in with the relevant national policies and actual operation of the aforesaid manufacturers, so that such provisions will not become obstacles in their operation?*

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

- (a) We understand that Hong Kong manufacturers wish to obtain depreciation allowance in Hong Kong for machinery and plants made available for use by Mainland enterprises free of charge under "import processing" arrangements. As indicated in our letter of 10 March 2010 to the Legislative Council Panel on Financial Affairs and our reply to a written question raised by the Legislative Council on 17 March 2010, we consider that the completeness of the anti-avoidance provisions in the Inland Revenue Ordinance would be affected if the relevant restriction is relaxed. There are also practical difficulties in the implementation and the provision could easily be abused. Hence, we need to consider thoroughly the feasibility of relaxing the relevant restriction, including whether there are effective measures to plug tax evasion loopholes. We would complete the study as soon as practicable.
- (b) We have all along maintained a fair and neutral tax system and adopted a territorial source principle of taxation. While adhering to the established taxation principles, we examine the existing tax regime from time to time with a view to considering measures that would be conducive to the overall economic development and be able to cope with the social development trend in Hong Kong. Relevant bureaux and departments keep liaison with professional bodies and business organizations from time to time so as to understand the operations of Hong Kong businessmen in the Mainland. We welcome views from different sectors of the community on tax matters and would consider reviewing relevant tax provisions as necessary. One of the examples is the

abovementioned review on depreciation allowance for machinery and plants under "import processing" arrangements.

Cases of Judicial Review

13. **MR ALBERT HO** (in Chinese): *President, the figures provided by the Government reveal that the waiting time for the Judiciary to handle judicial review (JR) cases and appeals against refusal of leave had increased in the past three years, with the average waiting time from listing to hearing of leave applications increased from 13 days in 2007 to 28 days in 2009; the average waiting time from listing to appeal hearing in respect of refusal of leave increased from 43 days in 2007 to 87 days in 2009, while the average waiting time from listing to hearing of substantive JR cases increased from 100 days in 2007 to 125 days in 2009. In this connection, will the Government inform this Council whether:*

- (a) it knows the reasons for the increase in the waiting time for the Judiciary to handle JR cases in the past three years;*
- (b) it has studied if the aforesaid figures indicate that the resources put by the Judiciary in handling JR cases are inadequate; and*
- (c) it has continuously kept in view the capability of the Judiciary to handle JR cases, and whether the Government has taken corresponding measures in response to the aforesaid increase in the waiting time for handling JR cases; if so, of the details?*

CHIEF SECRETARY FOR ADMINISTRATION (in Chinese): President, the Administration has consulted the Judiciary on the question and has received the following information and response.

JR cases are heard in the High Court: the Court of Appeal for appeal hearings and the Court of First Instance for hearings of leave applications/substantive cases. JR cases have to be considered in the context of the civil caseload of which they form a part. The lengthening of the average waiting time of JR cases in 2009 was mainly due to the increased caseload and

the growing complexity of civil cases in the High Court (including JR cases). The following figures show an increase in the civil caseload by 27% from 2007 to 2009:

2007	2008	2009
21 078	21 899	26 849

It should be noted that some cases involve multiple parties. In these cases, the waiting time may be longer as a result of the fixing of trial dates which would be convenient to all parties and their counsel.

To cope with the increasing workload of the High Court, the Judiciary has made full use of all available courtrooms and has already engaged the maximum number of deputy judges who could be accommodated in the available courtrooms so as to reduce the waiting time in the High Court. To make room for further improvement, the Judiciary secured funding from the Finance Committee of the Legislative Council in February 2010 to construct three additional civil courtrooms in the High Court. Upon completion of the works scheduled for December 2011, it is expected that the Judiciary would have greater flexibility to deploy additional judicial resources to cope with the caseload in the High Court more effectively.

Meanwhile, the Judiciary would continue to monitor the situation closely and would make every effort to further improve the waiting time for JR cases. Each JR case would be considered on its own merits. Those which are considered urgent would be handled with priority and, whenever justified, expedited hearings would be arranged.

DesignSmart Initiative

14. **DR SAMSON TAM** (in Chinese): *President, the DesignSmart Initiative (DSI), which was set up in 2004, includes four funding schemes, namely Design Research Scheme (DRS), Design-Business Collaboration Scheme (DBCS), Professional Continuing Education Scheme (PCES) and General Support Scheme (GSS). It was initially estimated that the Initiative would benefit about 700 projects in five years; however, as at the end of April 2010, only 323 projects had*

been approved under the DSI, amounting to only 46% of the projection. In this connection, will the Government inform this Council of:

- (a) the reasons why the total number of projects approved is lower than the projected number, as well as what new measures and actions are in place to improve the utilization rate of the funding schemes;*
- (b) the number of applications received so far for each of the aforesaid four funding schemes and, among such applications, the number of those which were approved; and*
- (c) the average time required at present for vetting and approving each application; whether it has received complaints about the time taken to vet and approve applications being too long; if it has, of the details; and whether it will consider streamlining the vetting and approving process in order to encourage more applications; if it will, of the details; if not, the reasons for that?*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Chinese): President, with the Legislative Council's funding approval, the Government launched the \$250 million DSI in 2004 to strengthen support for design and innovation, instill design and creative elements into our businesses, and build Hong Kong into a focal point of design excellence in the region. Apart from \$70 million set aside to support the initial operation of the Hong Kong Design Centre and the implementation of the Design Incubation Programme, \$180 million was allocated to four schemes under the DSI, namely, the DRS, the DBCS, the PCES and the GSS, which are collectively known as the Design Support Programme (DSP).

As at end June 2010, a total of 485 applications had been received under the DSP, among which 333 applications had been approved, involving a total of \$147 million in funding. The DSP has largely achieved its objectives, which include:

- Supporting major design events organized by the industry — the DSP supports the organization of events such as the "Business of Design Week" (BODW), "Project 9707" and its roving exhibition in European and North American cities, "Fashion World Talent

Awards", and so on. Participants all gave positive response to these events, irrespective of whether they came from the industries or were members of the public. There was no exception with participants from overseas, who considered that these activities helped them better understand the achievements of the Hong Kong design sector;

- Promoting the use of design by small and medium sized enterprises (SMEs) — more than 40% of the participating SMEs employed the use of design for the first time, and 60% of the participating SMEs succeeded in obtaining patents, copyright, trademarks or other forms of intellectual property; and
- Encouraging the industry and academic institutions to conduct research projects for promoting the long-term development of the design sector.

My reply to the question raised by the Honourable Member is as follows:

- (a) The DSI was a new policy initiative when first launched in 2004. It was initially estimated that the DSI would benefit about 700 projects over five years. However, utilization was lower than estimated at the beginning, as it had taken a longer time for the design and business sectors to get to know and understand the DSI. With enhanced awareness about the DSI and promotion by the Administration, the number of applications has gradually increased. The total number of applications received during the three financial years from 2007-2008 to 2009-2010 was three times that recorded in the first three years of operation (that is, from 2004-2005 to 2006-2007). To date, nearly 500 applications have been received and more than 80% of the funding allocation has been granted.

The Administration has been reviewing the DSI by phases and has introduced measures to improve its utilization. These measures include allowing both design companies and SMEs to apply for funding under the DBCS (previously only design companies were eligible for submitting application), with each applying SME eligible for a maximum grant of \$100,000 for four projects at most; abolishing the periodic theme solicitation approach of the DRS and lifting restrictions on the theme of incoming applications, while

accepting applications throughout the year; allowing applications for rerun of projects previously funded by the GSS and PCES to enable applicants to develop longer-term projects which should be run on a sustainable basis for the benefit of the industry.

The number of applications received or approved is just one of the many indicators to measure the effectiveness of the DSP, and cannot fully reflect the actual situation. For instance, the DSP has funded a wide range of large-scale activities organized by the local design industry, including the annual BODW. As a single application, such event has been growing in scale year by year. It comprises various forums, symposiums, awards and exhibitions, covering a wide array of issues and achieving far greater results than a normal individual project.

- (b) As at end June 2010, the number of applications received for each of the four funding schemes under the DSP is as follows:

	<i>Number of Applications Received</i>	<i>Number of Applications Approved</i>
GSS	55	28
DRS	20	6
PCES	25	15
DBCS	385	284
Total	485	333

- (c) The DesignSmart Secretariat (the Secretariat) has not received any complaints about the time taken to process the applications. Some applicants have made enquiries to the Secretariat about the time needed for vetting the applications, but they all indicated that they appreciated and understood the situation after the Secretariat explained to them the procedures involved.

The Secretariat has made a performance pledge to complete the vetting procedures and inform the applicant of the assessment result within 50 clear working days after receipt of full information.

In general, upon receipt of all necessary information from the applicant, the Secretariat will clarify the details of the application with the applicant; compile a preliminary assessment; submit the application to the Assessment Panel for consideration; arrange Assessment Panel meetings; and inform the applicant of the assessment result after receiving the recommendation of the Assessment Panel.

The processing time for each application depends on whether the applicant has provided all the necessary information and documents, as well as how promptly the applicant responds to enquiries from the Secretariat. To be prudent, the Assessment Panel will also request the applicant to attend assessment meetings to present its application and answer questions. In the 2009-2010 financial year, for example, the Secretariat has been able to complete the processing of most applications in accordance with the pledge.

The vetting and approval procedures under the DSI are kept under regular review and would be streamlined as appropriate. However, to ensure the proper use of public funds, the Secretariat and the Assessment Panel must take into account all the necessary information when carefully considering an application before they can determine whether an application should be supported.

To speed up the processing of applications, the Secretariat, with the support from members of the Assessment Panel, has increased the frequency of the Assessment Panel meetings from four to six times each year in the initial operation to 19 times in the 2009-2010 financial year.

Repairs to Squatter Huts

15. **MR LAU KONG-WAH** (in Chinese): *President, recently, a number of squatter residents have sought my assistance who allege that the Government has failed to resolve the squatter problem over the years, and as most squatter residents cannot afford private housing, nor have they been arranged to move*

into public rental housing (PRH), it is therefore difficult for them to improve the quality of their accommodation. Such residents have also pointed out that their squatter huts, which are made of tin plates and wood, have become dilapidated and are even on the verge of collapsing subsequent to years of being affected by winds and rain. Hence, they hope that the Lands Department will allow them to carry out repairs using more solid materials such as bricks and concrete, but their applications were rejected. They have indicated that they are perplexed by the inconsistencies between the standards for vetting and approving the repair and rebuilding of squatter huts and those of licensed structures. In this connection, will the Government inform this Council:

- (a) of the current number of squatter huts and licensed structures in Hong Kong, their distribution in various districts as well as the respective numbers of residents;*
- (b) of the respective numbers of applications for repair and rebuilding of squatter huts and licensed structures received in the past five years, their outcome, including the number of applications rejected, and the justifications for that;*
- (c) of the current number of staff members responsible for vetting and approving applications for repairing squatter huts and the time normally required for vetting and approving the applications;*
- (d) whether there are staff responsible for investigating the conditions of squatter huts; whether it will exercise discretion to allow and assist the residents in repairing squatter huts which are at risk of collapsing;*
- (e) given that most of the squatter huts have been built for a long time and many of them are dilapidated, whether the Government will consider compassionately the housing needs of the residents, relax the existing policy on maintenance of squatter huts and allow the residents to carry out repairs with more solid materials; if it will, of the details; if not, the reasons for that; and*

- (f) *whether the authorities have plans to resolve the squatter problem comprehensively, conduct registration and statistical survey of squatter occupancy again, draw up a timetable for demolishing squatter huts in Hong Kong and rehouse the residents to PRH; if so, of the details and the estimated time for completing such initiatives?*

SECRETARY FOR DEVELOPMENT (in Chinese): President, regarding each part of the question, my reply is as follows:

- (a) The table below shows the current number of squatter huts and licensed structures for residential use in Hong Kong according to their distribution in various districts:

<i>Type of temporary structures</i>	<i>District</i>	<i>Number</i>
Squatter huts	Hong Kong	2 713
	Kowloon	1 542
	New Territories East	32 475
	New Territories West	48 844
	Total	85 574
Licensed structures	Hong Kong	51
	Kowloon	10
	New Territories East	4 726
	New Territories West	11 655
	Total	16 442

The licences referred to above include Government Land Licences and Modification of Tenancy Permits. The number of licences above is the number of licences that the Lands Department has issued. Some licences may cover more than one temporary structure. On the other hand, the number of squatter huts also includes some licensed structures which bear a squatter survey number at the same time.

The Government has not conducted other statistical survey on squatter occupancy since the Squatter Occupancy Survey conducted

in 1984. As such, the Government is unable to provide the current number of residents in squatter huts. Besides, the Government also does not have information on the number of residents in licensed structures.

- (b) (i) Applications for repair and rebuilding of squatter huts received in the past five years are as follows:

<i>Number of applications for repair</i>	<i>Accepted</i>	<i>Rejected</i>
177	177	0

<i>Number of applications for rebuilding</i>	<i>Accepted</i>	<i>Rejected</i>
7	2	5

Major reasons for rejecting the above applications for rebuilding include:

- (1) The squatter huts were substantially damaged or destroyed in natural disasters (for example, fire, flooding, typhoon, and so on) and were not suitable for use or occupation, and the relevant departments suggested that the occupants should be permanently evacuated;
- (2) The occupants of the squatter huts wished to use permanent materials to rebuild the squatter huts and applied for a short-term tenancy/short-term waiver to regulate his/her squatter huts. However, the applications could not be accepted because the squatter huts were located in potential development areas/intensive squatter areas; or
- (3) The squatter huts were located in non-development clearance areas. Non-development clearance areas normally include areas which need to be cleared due to environmental improvement or safety reasons.

- (ii) Applications for rebuilding of licensed structures received in the past five years are as follows:

<i>Number of applications for rebuilding</i>	<i>Processing/ Accepted</i>	<i>Rejected</i>
96	76	20

Major reasons for rejecting the above applications for rebuilding include:

- (1) The applications were not submitted by the licensee/land owner;
 - (2) The proposed rebuilding area did not tally with the area permitted under the licence and the proposed rebuilding was situated in layout plan.
- (c) There are about 320 staff members in the Squatter Control Unit (SCU) under the Lands Department. One of the duties of the SCU is to vet and approve applications for repairing squatter huts. The time normally required for vetting and approving such applications is about 10 working days.
- (d) Investigating the conditions of squatter huts is not within the working ambit of the SCU. If a squatter hut is at risk of collapsing, the occupant has to arrange for repair on his/her own. But if the occupant has difficulty in housing because his/her squatter hut is at risk of collapsing, the SCU will refer the relevant case to the Housing Department or the Social Welfare Department so that the relevant department can arrange rehousing for the occupant in temporary shelter, interim housing unit or public housing unit.
- (e) The Government conducted a territory-wide Squatter Structure Survey in 1982. The purpose was to freeze the number of squatter huts at that time. Surveyed squatter huts are still unauthorized structures though they are allowed to remain in existence on a temporary basis. In normal circumstances, surveyed squatter huts will be cleared when the areas in which they are located are included

in development clearance programmes or environmental improvement programmes, or for safety reasons. As such, the Government does not encourage squatter hut residents to use permanent materials to rebuild or repair squatter huts.

- (f) These squatter control measures have effectively helped to contain the proliferation of squatter huts. Considering the housing needs of squatter hut residents, the arrangements outlined above still apply and we have no plan to alter the current policy on squatter clearance and control.

Implementation of Energy-efficient Plans in Schools

16. **MR ABRAHAM SHEK:** *President, according to government information, for every degree Celsius cooler one sets the temperature of the air conditioner, the power consumption will increase by 10%. Environmental protection groups have urged the Government to formulate a long-term policy on the energy-efficient use of air conditioners in classrooms. In this connection, will the Government inform the Council:*

- (a) *whether a comprehensive energy-efficient approach to regulate air-conditioned classroom temperature had been adopted in the past three years with reference to factors such as humidity, carbon emission and noise in the neighbourhood; if so, of the details; if not, the reasons for that;*
- (b) *of the measures it had implemented in the past three years to review the effectiveness of the publicity and educational programmes on carbon-cum-energy emission reduction in schools and, where appropriate, details of the follow-up reviews by the Environmental Campaign Committee;*
- (c) *whether the Government will implement in schools a mechanism similar to the comprehensive target-based environmental performance framework; if not, of the reasons for that; and*

- (d) *whether it had assessed in the past three years the feasibility to forge ahead voluntary recognition schemes with reference to overseas experience such as that in Australia and Singapore, to award schools which have over-achieved the minimum energy efficiency targets in part (c); if the assessment outcome indicates that it is feasible to do so, of the details; if the assessment outcome indicates otherwise, the reasons for that?*

SECRETARY FOR THE ENVIRONMENT: President, the Education Bureau issued a circular to schools in 2006 urging them to maintain the temperature of air-conditioned premises at 25.5°C, so as to reduce energy consumption, improve air quality and combat the problem of global warming.

The Development Bureau and the Environment Bureau established in April 2009 a comprehensive target-based environmental performance framework for new and existing government buildings, which set up targets in various areas of environmental performance including energy efficiency, renewable energy, indoor air quality and greenhouse gas emission, and so on. Among these targets, some were specifically set for schools. For new schools to be constructed by the Government with construction floor area of more than 10 000 sq m, they are required to outperform the Building Energy Codes issued by the Electrical and Mechanical Services Department by at least 5%, and achieve reduction in greenhouse gas emission through lowering energy consumption by at least 20% below the average consumption level for existing buildings of that type. Moreover, all new schools without air-conditioning should aim to have at least 0.5% of their electricity consumption met by renewable energy. The abovementioned environmental performance target is applicable to both government schools and aided schools.

Environmental management practices including energy conservation by schools are widely promoted by schemes such as the Hong Kong Green School Award (HKGSA). Organized by the Environmental Campaign Committee, Environmental Protection Department and the Education Bureau, the HKGSA provides an objective benchmarking system for assessing schools' performance in setting environmental policy, provision of infrastructure, environmental management and education. Participating schools will be assessed on their energy conservation performance among various environmental performance

aspects. Participating schools which have met the benchmark score for an individual environmental aspect will be awarded a Certificate of Appreciation. Participating primary and secondary schools which have met the benchmark scores for all four environmental aspects will be awarded the "Hong Kong Green School" status, whereas pre-schools will be granted an "Outstanding Award". Outstanding primary and secondary schools with all-rounded environmental performance will also be recommended to compete for the Sectoral Awards of the Hong Kong Awards for Environmental Excellence in the Schools Sector.

The HKGSA has been well-received by schools since its introduction in 2000. A total of 213 pre-schools, 305 primary schools and 203 secondary schools have participated in the award scheme. Under the Primary School and Secondary School Categories, a total of 165 schools have been granted the "Hong Kong Green School" status, and 40 schools have received 98 Certificates of Appreciation. Under the Pre-school Category, 15 schools have been presented with the Outstanding Award, and 47 schools have received 80 Certificates of Appreciation.

To promote energy efficiency and reduce carbon footprint, the Environment and Conservation Fund provides funding to schools to switch to better energy efficient installations, such as T5 fluorescent tubes and room coolers with Grade 1 energy label. As at June 2010, 213 applications from schools have been approved, involving a total funding of \$53 million. About 20 projects have been completed, estimated to be reducing carbon emission by around 300 tonnes every year.

Inspection and Caring of Trees

17. **MR CHAN HAK-KAN** (in Chinese): *President, it has been reported that the Development Bureau revealed in early June this year that after inspections conducted by a number of government departments, it was found that the health of the majority of the trees in Hong Kong was in normal conditions, but about 2 000 of them required further detailed inspection. Subsequently, a tree-falling accident occurred in Yuen Chau Kok Park, Sha Tin, on 14 June this year, causing the death of a male passer-by, which has aroused concern of the community about the issue of tree management and caring. In this connection, will the Government inform this Council:*

- (a) *of a breakdown, by the name of government departments, of the respective numbers of trees under the custody of the relevant departments at present, the number of trees in need of further inspection, and the manpower involved, as set out in the following table;*

<i>Department</i>	<i>Manpower responsible for tree management under its custody (general staff and those who are certified arborists)</i>	<i>Number of trees under its custody</i>	<i>Number of trees which require further detailed inspection</i>
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- (b) *of the specific information required to be filled in by various government departments at present after finishing visual inspections of the trees under their custody, so as to facilitate follow-up actions in the future; whether various government departments currently prepare visual inspection reports in an uniform format; if not, of the reasons for that, and whether the Tree Management Office (TMO) under Development Bureau will consider requiring the various departments to use a uniform format;*
- (c) *whether the TMO has drawn up arrangements for further inspection of trees; if so, of the details (including the specific procedure for further inspection and the percentage of trees to be further inspected);*
- (d) *given that the typhoon season is approaching, whether the various government departments will expedite the process for further inspection of trees; if so, how they will complement the work in terms of manpower; if not, of the reasons for that, and what short-term measures are in place, so as to avoid the recurrence of tree-falling incidents; and*

- (e) *given that Development Bureau is conducting a study on the establishment of a database of important or problematic trees, when the study is expected to be completed; what information will be included in the database, and whether it will be made public for information?*

SECRETARY FOR DEVELOPMENT (in Chinese): President, the Task Force on Tree Management led by the Chief Secretary for Administration published the Report of the Task Force on Tree Management — People, Trees, Harmony in June last year. Pursuant to the recommendations of the Report, the Development Bureau in conjunction with the tree management departments implemented the tree risk assessment arrangements in January this year.

Tree risk assessment is conducted step by step in two stages. In the first stage which involves an "area basis" assessment, the departments first identify those areas with high pedestrian or vehicular flow under their management. In the second stage involving a "tree basis" assessment, the departments carry out visual assessment for tree group inspections at locations with high pedestrian or vehicular flow in accordance with a systematic methodology and procedures.

During tree group inspections, the departments will identify trees that may need particular care (such as Old and Valuable Trees and stonewall trees) as well as dead trees and trees with major health or structural problems that may pose hazards to the public. Then detailed inspections, including visual assessment, will be conducted for these trees individually. Subject to the specific condition of the trees (for example, when it is necessary to ascertain whether there is internal rot or tree cavity), further inspections using equipment (for example, resistograph or sonic tomograph) will be conducted where necessary for assessing the improvement measures required. This assessment methodology has made reference to internationally recognized best practices.

After the tree management departments have completed tree group inspections, they have identified about 2 000 trees requiring detailed inspections.

My reply to the question raised by Mr CHAN Hak-kan is as follows:

- (a) The number of trees under the purview of the tree management departments, the manpower involved in tree management, and the number of trees requiring detailed inspection as identified in the afore-mentioned tree group inspections are set out in the Annex.
- (b) According to the guidelines issued by the TMO of the Development Bureau, tree management staff are required to keep records of tree group inspections as well as detailed inspection of individual trees. Tree group inspection records contain mainly basic information on tree groups such as location, tree species, tree height, tree age group, and general health and structural condition of the tree group; trees identified as requiring particular care (such as Old and Valuable Trees and stonewall trees), or dead trees and trees with major health or structural problems which may pose hazards to the public; and recommended follow-up measures on trees with problems. Detailed inspection records for individual trees contain details of the trees inspected such as location, tree species, basic overall condition of the trees, tree crown condition, branch condition, trunk condition, root condition, people or property that may be affected by the trees if fallen, tree risk assessment and recommended follow-up measures for risk mitigation. In setting the above requirements for inspection records, the Development Bureau has made reference to internationally recognized best practices.

Some tree management departments (such as the Agriculture, Fisheries and Conservation Department, the Leisure and Cultural Services Department, the Housing Department and the Highways Department) have previously drawn up their own tree inspection record format. According to information provided by the departments, the content of their inspection records are broadly consistent with the guidelines issued by the TMO. The TMO will, in conjunction with the tree management departments, examine whether a standardized record format should be adopted.

- (c) The TMO has enhanced inspection of tree risk management work carried out by the tree management departments. This includes,

among others, random inspection of the tree inspection records completed by departmental staff and random inspection on site of the condition of trees under the care of individual departments. For cases where outstanding follow-up actions are identified, the TMO will urge the departments to take early action and will provide, where necessary, professional advice. According to the action plan of the TMO, random inspections on site totalling 52 man-days (including preparation of pre-inspection information and post-inspection records as well as referral of cases to relevant departments for follow-up) have been completed as at 6 July this year. The random inspection cases cover all 18 districts across the territory with special emphasis on locations with high pedestrian or vehicular flow. The inspections are conducted by staff with professional arborist qualifications.

- (d) Tree risk assessment is not a one-off exercise. It needs to be carried out continuously as part of day-to-day tree maintenance work. As living organisms, trees face the natural cycle. They grow, age, become weak and die. Their health and structural conditions change with time and their surroundings, and especially in bad weather. The tree maintenance departments will closely monitor the conditions of trees during the typhoon and rainy season. Should there be any change in the risk level, immediate follow-up action will be taken. In addition, to further enhance tree risk management, the Development Bureau has agreed with the tree management departments on the following improvement measures:
- First, the departments should ensure that all day-to-day tree management work is conducted in a professional and careful manner. They should also adopt measures to ensure the quality of their work through, for example, close supervision of front-line work and internal audit.
 - Second, all departments should handle tree complaint cases promptly so as to identify problematic trees as soon as possible and take necessary follow-up actions.

- Third, the TMO has enhanced monitoring of tree management work carried out by departments. This includes, among others, random inspection of the tree inspection forms completed by the departments and random inspection on site of the condition of trees under the care of individual departments.
 - Fourth, the tree management departments will closely monitor the conditions of trees during typhoon and rainy season. Should there be any change in the risk level, immediate follow-up actions will be taken. In the light of the circumstances and where there are no other feasible risk mitigation measures, trees will be removed as a last resort so as to eliminate the threat to public safety.
 - Fifth, enhancement of training. The TMO has provided training courses to over 2 230 government staff and contractor staff following the implementation of tree risk assessment arrangements early this year. The TMO will continue to arrange more training for the tree management departments in the light of their operational needs. It will also encourage staff of various levels to obtain professional qualifications in arboriculture, with a view to generally raising the professional standard of tree management staff.
- (e) The Development Bureau, together with the tree management departments, is now collating information on trees which have undergone detailed inspections in recent months with a view to releasing information on trees for which the tree management departments have carried out detailed inspections but the improvement measures for which have not yet been completed as well as trees requiring special attention (for example, Old and Valuable Trees and stonewall trees) to the public in an appropriate manner in the middle of this month.

Annex

The respective numbers of trees under the care of various tree management departments, the manpower involved in tree management as well as the numbers of trees requiring detailed inspection⁽¹⁾

<i>Department</i>	<i>Manpower responsible for tree management under its care (general staff and those who are certified arborists)⁽²⁾</i>	<i>Number of trees under its care</i>	<i>Number of trees which require further detailed inspection⁽³⁾</i>
Agriculture, Fisheries and Conservation Department	83	A large number of trees are under its care. Exact figure is not available.	About 20
Architectural Services Department	11	A large number of trees are under its care. Exact figure is not available.	About 140
Civil Engineering and Development Department	9	About 1 300	About 40
Drainage Services Department	16	About 24 000	About 20
Highways Department	21	About 500 000	About 400
Housing Department	31 ⁽⁴⁾	About 78 000	About 400
Leisure and Cultural Services Department	210	Over 700 000	About 1 000
Water Supplies Department	6	About 49 000	About 60

Notes:

- (1) There are differences in the way trees on unallocated and unleased Government lands and trees planted within government facilities are managed. There is a very large amount of unallocated and unleased Government land (with a total area of 33 000 hectares), spreading across the territory. The Lands Department, as the land administration department, could only look to its staff to identify trees that may have problems and take follow-up actions when discharging their day-to-day functions of land control and management on receipt of referrals and complaints.
- (2) Figures in this column include only the number of government staff involved in day-to-day tree management (on a full-time or part-time basis), but exclude the manpower temporarily deployed on a need basis. Figures in the column also exclude senior staff of the departments involved in tree management (particularly at the strategic level). Besides, individual departments have engaged contractors or non-government personnel to assist in tree management.
- (3) The departments have conducted detailed inspections of the trees in this column. These trees include Old and Valuable Trees and stonewall trees in normal condition, as well as trees that have undergone detailed inspection but without the need for any improvement measures or with improvement measures already completed.
- (4) Front-line management staff in 160 housing estates also provide assistance.

Compact Fluorescent Lamps and Fluorescent Tubes

18. **MS AUDREY EU** (in Chinese): *President, compact fluorescent lamps (CFLs) and fluorescent tubes have been more commonly used by the public in recent years, but such products contain mercury which may cause pollution if they are improperly disposed of. The Government launched a Fluorescent Lamp Recycling Programme (the Programme) on 15 March 2008, aiming to recycle 400 000 used CFLs and fluorescent tubes and deliver them to the Chemical Waste Treatment Plant at Tsing Yi for treatment. In this connection, will the Government inform this Council:*

- (a) of the total number of CFLs recycled each year since the implementation of the Programme;*
- (b) of the quantity of mercury-containing waste treated last year by the Chemical Waste Treatment Centre at Tsing Yi;*
- (c) whether the authorities have, since the implementation of the Programme, considered increasing the number of collection points and extending the network of collection points to include the estate offices of the Housing Authority in various districts, courts of the Home Ownership Scheme and offices of District Council members; if so, of the details; if not, the reasons for that;*
- (d) whether it has considered extending the types of participating companies in the Programme to those in the catering and retailing industries, as well as property management companies of commercial buildings; if so, of the details; if not, the reasons for that;*
- (e) whether it has compiled statistics on the quantities of CFLs and fluorescent tubes disposed of at landfills in 2008, 2009 and 2010 (from January till to date); if so, of the details; if not, the reasons for that;*
- (f) whether it knows the respective quantities of CFLs and fluorescent tubes imported into Hong Kong in each of the past three years; and*

- (g) *of the projected quantities of CFLs and fluorescent tubes to be discarded in Hong Kong in the coming three years; if a projection has not been made, of the reasons for that?*

SECRETARY FOR THE ENVIRONMENT (in Chinese): President, the Programme, launched by the Environmental Protection Department (EPD) in March 2008, provides households with free collection and treatment for all used fluorescent lamps, including fluorescent tubes, CFLs and high intensity discharge lamps. The objective is to reduce the environmental risk from improper disposal of these lamps and to recover useful materials for recycling.

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

- (a) The quantities of used fluorescent lamps recovered under the Programme as at April 2010 are as follows:

<i>Year</i>	<i>Quantities recovered (No.)*</i>
2008 (from March)	164 000
2009	312 000
2010 (as at April)	106 000

Note:

* including fluorescent tubes, CFLs and high intensity discharge lamps

- (b) In 2009, the Chemical Waste Treatment Centre in Tsing Yi treated 192 tonnes of mercury-containing chemical waste.
- (c) The EPD provided 53 public collection points for the community when the Programme was launched in 2008. With our continuous efforts, the number of public collection points has increased to 68. Recently, a chain housewares store has agreed to join the Programme. The number of public collection points will further increase to 124 this August when 56 outlets of the store begin to place collection bins at the shops.

Besides, a total of 788 housing estates have joined the Programme. They include 157 public rental housing estates under the Housing Authority, 57 Home Ownership Scheme estates, 38 Housing Society estates, 58 government quarters and 478 private housing estates (including 17 Tenants Purchase Scheme estates). Separately, our mobile collection vehicles collect used fluorescent lamps in different areas weekly. On the whole, the Programme covers all 18 districts to provide collection service to the residents.

- (d) In addition to collecting used fluorescent lamps generated by average households under the Programme, the EPD has set up the Chemical Waste Treatment Centre in Tsing Yi to provide collection and treatment of used fluorescent lamps directly to commercial and industrial entities, including caterers, retailers and commercial property management companies.
- (e) As used fluorescent lamps disposed of at landfills have usually been mixed with other waste, we do not have the data concerned.
- (f) The Census and Statistics Department's figures show that the net imports of fluorescent tubes and CFLs stood at 13.7 million in 2007, 21.1 million in 2008 and 17.9 million in 2009.
- (g) The Government has not projected the quantities of used fluorescent lamps to be discarded in the coming three years. With the increasing public awareness on energy saving, we anticipate a rise in the use of such products as CFLs by the public. We will continue through implementation of the Programme to encourage the public to properly dispose of the used fluorescent lamps so as to prevent the disposal of these lamps at landfills.

Regulation of Pleasure Vessels

19. **MS MIRIAM LAU** (in Chinese): *President, according to the relevant rules made by the Director of Marine under the Merchant Shipping (Local Vessels) Ordinance (the Ordinance) (Cap. 548), any person who wishes to operate within Hong Kong waters a pleasure vessel with an overall length*

exceeding 15 m must pass the examination for Pleasure Vessel Operator (PVO) Grade 2 Certificate. Some members of the public have relayed to me that as the examination for the certificate is conducted in written or oral form only and it is not compulsory for the candidates to undergo practical operating skills tests, the operation of jet-skis and speedboats for water-skiing, and so on, which are equipped with powerful engines and can travel at high speed, by persons who only hold the Certificate may easily cause accidents with serious consequences. In this connection, will the Government inform this Council:

- (a) of the numbers of accidents involving various types of pleasure vessels according to the reports received by the authorities in the past five years and, among them, the casualties involved, years of operating experience of operators of the vessels involved in the accidents and the types of certificates they held;*
- (b) of the justifications for not making it compulsory for applicants of PVO Certificate (irrespective of Grade 2 or 1) to undergo practical operating skills tests; whether it has assessed which party should be held responsible in the event that an accident occur because the vessel operator who holds a valid certificate does not have practical operating experience, and if the aforesaid forms of examination are similar to those in other regions;*
- (c) whether the authorities will consider amending the examination rules for PVO Certificate to require the applicants to undergo specified hours of practical operating skills training and pass the skills examination, in addition to written and oral examinations, before they are issued the relevant certificates, so as to enhance safety at sea; if so, of the specific timetable; if not, the reasons for that; and*
- (d) given the popularity of water sports in Hong Kong in recent years, particularly jet-skis and speedboats for water-skiing which are equipped with powerful engines and can travel at high speed but the persons who operate such vessels are only required to hold PVO Grade 2 Certificate, whether the authorities will consider adding a restriction in such certificate on the engine power or speed of the*

vessels which holders of the certificate are permitted to operate, so as to enhance safety at sea; if so, of the details; if not, the reasons for that?

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): President, the Marine Department (MD) is responsible for maritime navigational matters and the safety standards of all classes and types of vessels in Hong Kong to ensure compliance with international and local safety standards by vessels licensed in Hong Kong and using Hong Kong waters. My reply to the questions on operational safety and related matters of pleasure vessels in Hong Kong is as follows:

- (a) From 2005 to 2009, there were in total 103 accidents (on average 20.6 accidents a year) involving mechanical pleasure vessels in operation, causing two dead and 26 injured. The accident in which two died in 2005 was caused by a lack of proper look-out, speeding and failure to display navigation light during night navigation. Both pleasure vessel operators involved had held a certificate for operation for over eight years.

A breakdown of the accidents involving the mechanical pleasure vessels in operation as recorded by the MD from 2005 to 2009 is at Table 1:

Table 1

<i>Categories of Accidents</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>Total</i>
Collision of vessels	25	8	12	9	12	66
Grounding	6	-	6	2	8	22
Overturning/listing	5	3	-	1	3	12
Contact	-	-	1	2	-	3
Total	36	11	19	14	23	103

Of the 124 operators involved in the above accidents, 63 held PVO Grade 2 Certificate, while the remaining 61, PVO Grade 1 Certificate. Only six PVO Grade 2 Certificate holders in six of the

accidents had held the certificates for less than a year. On average the rest had held their PVO certificates for eight years. Table 2 below shows the years of experience and types of certificate held by the operators:

Table 2

<i>Years of Experience</i>	<i>PVO Grade 2 Certificate</i>	<i>PVO Grade 1 Certificate</i>
Less than a year	6	5
One to two years	9	7
Two to three years	10	4
Three to five years	10	9
Five to 10 years	11	14
More than 10 years	17	22
Total	63	61

Note:

To be eligible for PVO Grade 1 Certificate examination, a pleasure vessel operator must have first obtained a PVO Grade 2 Certificate.

- (b) The Ordinance provides for the making of rules for the certificates of competency examination for pleasure vessel operators, and the requirements of the examinations are listed in the rules. The current mode of examination adopted in Hong Kong is similar to that in Canada and Australia. The MD had consulted the industry and obtained their endorsement in drawing up the requirements.

To protect all other persons and property involved in an accident, section 23C(1) of the Ordinance requires the owner, charterer or coxswain of any pleasure vessel to be insured against third party risks when using the vessel in the waters of Hong Kong. Similar to the third party risk insurance for motor vehicles, the insurance policy will not cover any vessel operator and crew of the party at fault but will cover any other person on board the vessel and any of the injured party and their property.

- (c) The current examination system of the PVO certificates has been in effective use for many years. It is similar to that of some overseas countries and has been endorsed by the industry. Besides, as most of the accidents involving pleasure vessels over the past five years were minor ones and there was no indication that they were caused by the incompetence of the vessel operators, the current system which does not make it compulsory for applicants for PVO certificates to undergo practical operating skills tests can continue to be in use. Having said that, the Administration will review the arrangements from time to time.
- (d) The PVO certificates do not stipulate the permitted power of vessels or any speed limit. However, the MD has issued guidelines to the public and promulgated speed restricted zones in Hong Kong waters, including the Victoria Harbour and popular bays, such as the Deep Water Bay on Hong Kong Island and Pak Sha Wan in Sai Kung, stipulating that all boaters (including pleasure vessel operators) must observe the relevant speed limits. Furthermore, all boaters (including pleasure vessel operators) must also comply with the International Regulations for Preventing Collision at Sea and navigate at a safe speed having regard to marine traffic and changes in weather conditions.

Given that most of the accidents involving pleasure vessels happened in popular water sports areas, apart from issuing public guidelines in the form of a notice to stipulate the speed limits for pleasure vessel operators in these areas, the MD has, in collaboration with the Marine Police, stepped up patrol in speed restriction zones, popular bays and water sports areas to prevent accidents. In addition, the MD has jointly organized water safety campaigns with the Hong Kong Police Force and the Leisure and Cultural Services Department to raise the public's awareness of water sports safety through television announcements of public interest and talks.

Elderly Health Centres

20. **MR ANDREW CHENG** (in Chinese): *President, regarding the services provided by elderly health centres (EHCs), will the Government inform this Council:*

- (a) of the total amount of funds allocated to EHCs, the total number of members, the percentage of such number in the population eligible for enrolling as members, the number of elderly people waiting for enrolling as members and the median waiting time, in each of the past 10 years;*
- (b) of the respective numbers of male and female members of EHCs in the past three years, as well as the percentage of such numbers in the population eligible for enrolling as members; whether EHCs had provided examination services for their members which focused on male or female diseases; if they had, of the examination items included and the annual expenditure involved;*
- (c) whether the authorities had, in the past three years, assessed the effectiveness of the services of EHCs on improving the health of the elderly, if the services are welcomed by members of the public and are sufficient; if an assessment had been conducted, of the outcome; if not, whether they will consider conducting such an assessment; and*
- (d) whether the authorities will, when considering the strategy for developing primary care, allocate to EHCs part of the newly-increased resources for improving the primary care development in response to the increase in the elderly population, so as to increase the services provided by EHCs; if they will, of the details; if not, the reasons for that, and which items will have priority in receiving such resources as well as the justifications?*

SECRETARY FOR FOOD AND HEALTH (in Chinese): President, the Government has always attached importance to the health of elders. The Department of Health (DH) currently provides comprehensive primary health care services, including health assessment, physical check-up, health education,

individual counselling and curative treatment, to elderly members aged 65 or above, through 18 EHCs in the territory. The objectives of the EHCs are to enhance primary health care for the elders, improve their self care ability and encourage them to adopt a healthy lifestyle.

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

- (a) In each of the past 10 years, the total amount of funds allocated to EHCs, total number of members, percentage of enrolled members in the population aged 65 or above, number of elders on the waiting list for enrolment as new members and the median waiting time of the EHCs are set out below:

<i>Year</i>	<i>Total amount of funds allocated (\$m)</i>	<i>Total number of members</i>	<i>Percentage of enrolled members in the population aged 65 or above</i>	<i>No. of elders on the waiting list for enrolment as new members (as at the end of December of each year)</i>	<i>Median waiting time (months)</i>
2000	92.0	42 662	5.9%	2 292	2.6
2001	82.9	42 410	5.6%	8 783	5.4
2002	85.3	42 310	5.4%	16 185	9.2
2003	94.6	39 973	5.0%	19 973	17.1
2004	80.2	39 659	4.8%	24 886	23.4
2005	84.1	37 644	4.5%	27 967	33.2
2006	87.8	38 042	4.5%	26 669	37.2
2007	89.0	38 138	4.4%	22 660	38.3
2008	92.4	38 453	4.4%	16 740	30.2
2009	96.3	38 676	4.3%	13 046	23.8

- (b) The number of enrolled members of the EHCs by sex and the percentage of members of different sex in the population aged 65 and above in the past three years are set out below:

<i>Year</i>	<i>Number of enrolled members</i>		<i>Percentage of enrolled members in the population aged 65 and above</i>	
	<i>Male</i>	<i>Female</i>	<i>Male</i>	<i>Female</i>
2007	13 713	24 425	3.4%	5.2%
2008	13 760	24 693	3.4%	5.2%
2009	13 809	24 867	3.3%	5.2%

A nurse will first conduct an in-depth interview by way of questionnaire and a preliminary assessment for each elder undergoing health assessment. Based on the nurse's assessment, physical examination will then be carried out on the elder by a doctor according to the needs of individual elders. This may include a digital rectal examination for prostate lesions among male elders, or a cervical smear for screening of cervical cancer among female elders. Such examinations designated for detection of male- or female-specific diseases are part and parcel of the overall health assessment and medical examination and there is no separate calculation for the expenses arising from them.

- (c) The Government evaluates and assesses the service effectiveness and performance of EHCs from time to time, mainly by using the annual statistics on the number of enrolments, attendances of health education activities, and attendances of medical consultation and health assessment as criteria for the evaluation and assessment. The services provided by EHCs have been well received by the elders since their establishment, with about 80% of the old members renewing their membership each year.
- (d) The Government mainly uses the past and anticipated numbers of membership enrolment and attendances for health assessment and medical consultation for formulating the estimated provision for the Elderly Health Service.

The Government allocates about \$90 million to subsidize the services of EHCs in each year. In view of the ageing population, demand for primary health care services for elders will only increase in the long run. It is not possible to meet the health care needs of all elders through the EHCs alone. The provision of highly subsidized primary health care services by EHCs is not the most cost-effective and sustainable way to deliver services to elders.

Indeed, the EHCs are not the only providers of primary health care services for elders. Other service units under the DH, the Hospital Authority, community service organizations and private health care providers also provide relevant services. Elders can also receive

health care services offered by non-governmental organizations (NGOs) which are reasonably priced.

Enhancing primary care services is one of the major health care reform proposals of the Government. Building on the recommendations of the Working Group on Primary Care (chaired by the Secretary for Food and Health and comprises representatives from the health care professions and other relevant sectors), the Government's primary care development strategy mainly covers the following three areas:

- (i) developing primary care conceptual models and clinical protocols to establish a comprehensive and effective model for provision of primary care services;
- (ii) setting up a Primary Care Directory to promote the family doctor concept and comprehensive primary care services; and
- (iii) devising feasible models which can effectively enhance primary care services in the community through the implementation of various pilot projects.

The Government will brief the Legislative Council Panel on Health Services on the primary care development strategy in Hong Kong on 12 July 2010. Pursuant to the strategy, the Task Forces formed under the Working Group on Primary Care will study the provision of primary care for the elderly and develop the relevant conceptual models and clinical protocols to determine the scope of services which need to be developed. Furthermore, the Government has implemented a series of pilot projects since 2009, including the Elderly Healthcare Voucher Pilot Scheme, the Elderly Vaccination Subsidy Scheme, programmes that enhance the care of chronic disease patients (who are mainly elders) in public hospitals and clinics, the Public-Private Chronic Disease Management Shared Care Programme, and so on. Through these pilot projects, the Government seeks to devise effective models to enhance primary care to cater for the needs of different population groups (including the elderly).

On resources front, the Government has earmarked a total of about \$2.93 billion for the period 2009-2010 to 2012-2013 for enhancing primary care services and implementing the primary care development strategy. Out of this sum, \$1.818 billion will be used on the above projects currently under implementation for the benefit of the elderly while another \$194 million is allocated to the Primary Care Office recently established under DH for the period 2010-2011 to 2012-2013 for implementing the primary care development strategy. The work includes implementing and evaluating various pilot projects to enhance primary care (including the pilot projects mentioned above to support chronic disease patients); conducting primary care-related research projects; undertaking work on training and capacity building related to primary care; supporting the overall promotion of primary care; developing and promoting primary care conceptual models and clinical protocols as well as the Primary Care Directory; setting up community health centres or networks; enhancing primary dental services and oral health promotion programmes in collaboration with the dental profession, and so on.

BILLS

Second Reading of Bills

Resumption of Second Reading Debate on Bills

DEPUTY PRESIDENT (in Cantonese): Bills. We now resume the Second Reading debate on the Companies (Amendment) Bill 2010.

COMPANIES (AMENDMENT) BILL 2010

Resumption of debate on Second Reading which was moved on 3 February 2010

DEPUTY PRESIDENT (in Cantonese): Mr Paul CHAN, Chairman of the Bills Committee on the above Bill, will address the Council on the Committee's Report.

MR PAUL CHAN (in Cantonese): Deputy President, in my capacity as Chairman of the Bills Committee on the Companies (Amendment) Bill 2010 (the Bill) and the Business Registration (Amendment) Bill 2010 (the Bills Committee), I submit the Bills Committee's Report to this Council. I will first highlight several major issues deliberated by the Bills Committee in scrutinizing the Bill.

The Bill mainly seeks to:

- (1) provide the legal basis for online applications for company registration and filing of company documents;
- (2) improve the company name registration system; and
- (3) expand the scope of statutory derivative action (SDA) to cover "multiple" derivative actions.

The Bills Committee held a total of eight meetings to have discussions with the Administration. The public, including chambers of commerce, business and industry associations, relevant professional bodies and company secretarial service providers, had been invited to give their views on the two Bills.

The Bills Committee generally supported all the proposed amendments. A number of its members were concerned that the proposed electronic regime for company registration would be susceptible to exploitation by persons with ulterior motives due to the lack of appropriate measures to verify the identities of those submitting applications for registration. An applicant might use a forged identity and any subsequent enforcement action against the user would be futile given the forged information provided. These members considered that proper safeguards should be put in place in implementing the electronic registration regime. A number of deputations, including those from the accountancy and company secretarial service sectors, also highlighted the need to verify the authenticity of the applicants' identities and their supporting documents.

Having regard to members' views, the Administration undertook to take measures to verify the identities of applicants for company registration in

implementing the electronic registration regime in the future. Noting that the above measures will be implemented as administrative arrangements and would not be spelt out in the legislation, the Bills Committee requested that the relevant government official should give assurance in his speech at the resumption of the Second Reading debate on the Bill about the implementation of these measures, and that the Administration would revert to the Panel on Financial Affairs if substantial changes were made to these measures in future. The Administration agreed to these requests.

Regarding empowering the Registrar of Companies (the Registrar) to act pursuant to a court order to direct a "shadow company" to change its name, Dr Margaret NG expressed concern about the effectiveness of the proposed arrangements in addressing the problem of "shadow companies". She queried why the Registrar did not strike off a company which had failed to comply with the Registrar's direction to change name pursuant to a court order, but resorted to replacing a company's name by its registration number.

The Administration advised that intellectual property practitioners had made various suggestions on how the company registration regime could be strengthened to tackle the "shadow company" problem. Having regard to the need to protect the interests of third parties, such as creditors, the Administration considered it more appropriate to empower the Registrar to replace the company's name by its registration number than striking the company off the register. The Administration was of the view that generally speaking, the intellectual property practitioners were satisfied with the proposed arrangement.

Under the existing section 22A of the Companies Ordinance and the new section 22A(1A) proposed to be added to the Bill, a company may, under certain circumstances, apply to the court to set aside the Registrar's direction to change its name. Mr Albert HO expressed the view that given the cost and time involved in court proceedings, the Administration should examine the feasibility of having appeals against such directions heard by the Administrative Appeals Board instead of by the court. The Administration advised that as it would take time to work out the relevant arrangements and such an arrangement would involve amendments to the Administrative Appeals Board Ordinance, the

Administration proposed that the matter be considered in the Companies Ordinance rewrite exercise. The Bills Committee agreed to the Administration's proposed arrangement.

As the scope of multiple SDA proposed by the Administration is wider than that specified in the Court of Final Appeal's ruling in relation to the *Waddington* case, the Bills Committee requested the Administration to explain the rationale for its proposal, as well as relevant provisions and cases in other comparable jurisdictions. The Administration confirmed its policy intention that the proposed extension of SDA to a member of a related company went further than the decision in the *Waddington* case. The proposal sought to enhance the protection of the interests of minority shareholders, in particular those in a group of companies. In making the proposal, the Administration had taken into account the relevant provisions in other jurisdictions. The proposed scope of multiple SDA was similar to the scope of the relevant legislation in Australia, but more limited in scope compared to that in Singapore.

In this regard, Mr Ronny TONG agreed with the Hong Kong Bar Association's view that the Administration had failed to provide sufficient justifications for expanding the scope of SDA to include a shareholder of a subsidiary company of a specified corporation and a shareholder of another subsidiary company of the same holding company. Mr TONG also expressed concern that the Administration's proposal might open the floodgate of frivolous, trivial or vexatious derivative actions.

The Administration explained to the Bills Committee that the leave requirement in the current Companies Ordinance operated as a filter on applications, and the experience in other jurisdictions where the scope of SDA had been extended did not indicate that the floodgate of frivolous, trivial or vexatious derivative actions would be opened.

The Bills Committee agreed with the amendments proposed by the Administration and supported the resumption of the Second Reading debate of the Bill.

This is the end of my report as Chairman of the Bills Committee.

Deputy President, the followings are my personal views.

The Companies Registry (CR) is developing Phase II of the Integrated Companies Registry Information System (ICRIS), which is expected to come on stream at the end of 2010 or early 2011. By that time, apart from filing company documents online, members of the public can also make online applications to form new companies on the same day, as well as applying for business registration on the same day. Apart from saving time, this measure also saves applicants the trouble of visiting two different government departments, that is, the Companies Registry and the Inland Revenue Department, as is necessary at present. The introduction of one-stop service for going through the formalities online is a truly business-friendly initiative that arguably represents a kind of progress.

To tie in with the changes in the registration process, the Administration has proposed to amend the relevant parts in the Companies Ordinance and the Business Registration Ordinance. Although the provisions requiring scrutiny are not that many, as I reported just now, the Bills Committee spent nearly four months and held a total of eight meetings to complete the scrutiny. This reflects the complexity of amending the Companies Ordinance.

Deputy President, the Companies Ordinance is one of the longest and most complex pieces of legislation in Hong Kong, with over 600 sections and subsections and 20-odd schedules. The last major review of and amendment to the Ordinance took place in 1984. The amendment then was based mainly on the Companies Act 1976 of the United Kingdom and it was made more than a quarter of a century ago. There have been amendments to the Companies Act in the United Kingdom on many occasions in the past 25 years. There have also been some amendments to the Companies Ordinance in Hong Kong since 1984 but they were only piecemeal amendments that lagged far behind the times. The present business environment in Hong Kong is indeed far more complicated than that 25 years ago.

Take such structured products as the Lehman Brothers minibonds as an example, it was only after the Lehman minibonds incident that people began to

notice that at the retail level of promoting structured investment products issued to the public, it was possible to do so in accordance with the Companies Ordinance or the Securities and Futures Ordinance and, depending on the structure and design of the structured products concerned, even "safe harbour" provisions are available in the Companies Ordinance. When considering applications, the requirements of these two pieces of legislation may not be the same. As a result, gaps in the regulation of structured products for small investors appeared at the retail level, giving rise to opportunities that can be exploited. Although the Government published a consultation paper several months ago with the intention of plugging this loophole, the damage done to the public has actually been very great.

I believe that if Hong Kong wants to further develop into a world-class financial and business centre, the company laws in Hong Kong must be modernized and there is an urgent need to completely rewrite the Companies Ordinance.

In 2006, the Government launched a comprehensive exercise to rewrite the Companies Ordinance. Subsequently, the Administration prepared draft clauses of the Companies Bill for public consultation in two phases. Deputy President, the draft clauses of the Companies Bill comprised 10 Parts, 954 clauses and 818 pages, so we can see how much hard work Members surely will have to put in when the Bill is introduced into the Legislative Council for scrutiny in the future. This is a very complex and onerous task and the energy and time needed will indeed be formidable. I take this opportunity to appeal sincerely to the Administration to introduce this Bill into the Legislative Council for scrutiny at an early date.

Deputy President, apart from introducing the bill relating to the Companies Ordinance rewrite exercise into the Legislative Council for scrutiny as early as possible, I think the Administration should also introduce a corporate rescue bill into the Legislative Council as soon as possible.

The Law Reform Commission of Hong Kong recommended in 1996 the introduction of a statutory corporate rescue procedure in Hong Kong known as "provisional supervision", whereby a moratorium on legal action would be provided to a company in financial difficulty to enable these companies to have

time and scope to discuss debt restructuring arrangements with its creditors or bring in new investors, in the hope of rescuing companies with survival value and help them tide over their difficulties, whereas their employees can also retain their means of livelihood.

On two occasions in 2000 and 2001, the Administration introduced the relevant bills into the Legislative Council. However, due to the lack of consensus among stakeholders, the bills were not passed eventually.

Nowadays, it can be said that among developed economies, Hong Kong is the only jurisdiction with no corporate rescue procedure. This has made Hong Kong lag far behind the main trend and it is also a major shortcoming in Hong Kong's role as an international financial and business centre.

The corporate rescue procedure was originally scheduled to be reviewed in the context of the consultation on the Phase II rewrite exercise of the Companies Ordinance. However, at a meeting with the Chief Executive early last year, I suggested to him that Hong Kong should enact legislation on the relevant procedure as soon as possible because at that time, the financial tsunami was battering Hong Kong with all its might and a piece of legislation on corporate rescue appeared to be all the more important. Subsequently, after discussions by the Task Force on Economic Challenges, the Administration decided to handle this matter independently ahead of the schedule by introducing relevant legislation for a corporate rescue procedure.

Deputy President, although I welcome this decision of the Administration, I notice that in the last legislative exercise, the reason for the failure of the bill to be passed was the inability to resolve such issues as settling wages in arrears and other payments owed to employees and former employees before initiating provisional supervision. To address this problem, I notice that the consultation paper has put forward a proposal, namely, to give priority to payments owed to employees in the rescue process. The method of payment can be divided into two parts, the first being the payment employees are entitled to under the Protection of Wages on Insolvency Fund in the event of the closure of their companies and this sum of money will be paid before the restructuring plan comes into effect. As regards the other part, that is, other payments owed to

employees, the company concerned will be required to pay them within 12 months after the restructuring plan has come into effect.

Deputy President, I believe this is an excellent proposal that merits careful consideration by various stakeholders. I also hope that various stakeholders can bear in mind the overall interests of Hong Kong and make a compromise by focusing on finding a solution acceptable to all.

Deputy President, I also take this opportunity to ask the Administration to introduce the relevant bills into the Legislative Council for scrutiny without further delay.

Thank you, Deputy President.

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

(No Member indicated a wish to speak)

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

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Deputy President, first of all, I am grateful to Mr Paul CHAN, Chairman of the Bills Committee, and other members of the Bills Committee for their efforts in scrutinizing the Companies (Amendment) Bill 2010 in the past few months and voicing a lot of valuable opinions, thereby refining the Bill and enabling the Second Reading to resume today.

The main aim of the Bill is to tie in with the Companies Registry's development of Phase II of the Integrated Companies Registry Information System (ICRIS II), which will provide the service of receiving applications for the incorporation of companies and filing of company documents by electronic means. The ICRIS II is expected to come on stream early next year. For this reason, legislative amendments to the Companies Ordinance (the Ordinance) are

required at this stage to facilitate the applications for incorporation of companies by electronic means, which include allowing the signing of incorporation forms using passwords, streamlining the attestation requirements for signatures by founder members, and allowing the issue of electronic certificates of incorporation by the Registrar of Companies (the Registrar), and so on.

At the same time, the Bill will also expedite the process of company name approval by the Company Registry. Simply put, a company name will be accepted for registration instantaneously if it satisfies certain preliminary requirements, for example, the company name concerned is not identical to another name on the register or does not contain certain specified words or expressions which require the Registrar's prior approval. Thereafter, if the company's name is subsequently found to be objectionable, the Registrar will be empowered to direct the company in question to change its name within a period specified by the Registrar.

Regarding the suggestion raised by a member of the Bills Committee to have appeals against the Registrar's directions about company names to be heard by the Administrative Appeals Board, since other legislative changes are involved, we will follow this up in the Companies Ordinance rewrite exercise after considering the feasibility of this suggestion.

To tie in with the Business Registration (Amendment) Bill 2010, the Second Reading debate of which will also be resumed later today, the Companies Registry will provide one-stop service upon the coming on stream of ICRIS II, that is, any person who submits an application for company incorporation will be deemed to have applied for business registration at the same time. Upon the implementation of the aforementioned arrangement, the processing time for incorporating a local company and registering a business by electronic means will be greatly reduced from an average of four working days to less than one working day. This will greatly enhance Hong Kong's business environment and put Hong Kong on a par with comparable jurisdictions like the United Kingdom and Singapore in this regard.

As Mr Paul CHAN mentioned just now, during the scrutiny of the Bill, the Bills Committee and some deputations expressed their concern about how to verify the identities of those who submit applications for company incorporation by electronic means. To address their concern, the Companies Registry will

implement a registration system to require any person who wishes to use the ICRIS to register as registered users before electronic incorporation and filing of document. Put simply, registration can be done in person at the Companies Registry's office, or registration can be done online using digital certificates issued by the HongKong Post or any recognized Certification Authorities, or registration can be done online after registering as user on the website of the Companies Registry after the identity of the applicant has been duly verified by a local professional. The above measures can help verify the identities of ICRIS users. Upon the request of the Bills Committee, we will revert to the relevant Panel of the Legislative Council if substantial changes are made to the foregoing registration arrangements in future.

In addition to the above amendments relating to company registration, we will also introduce other amendments to the Ordinance through this Bill. First of all, we propose to strengthen Hong Kong's company name registration system to enhance enforcement against "shadow companies". These so-called "shadow companies" are companies incorporated in Hong Kong with names very similar to certain trademarks or trade names of other companies. They pose themselves as the representatives of the owners of such trademarks or trade names to produce counterfeit products. The Bill will amend the Ordinance to empower the Registrar to act pursuant to court orders to direct a "shadow company" to change its name. The Registrar may substitute the company's name with its registration number if the company in question fails to comply with the Registrar's direction to change its name. We have consulted the public and the intellectual property practitioners on the proposals in the Bill. In general, they agree with the proposals in the Bill and believe that using company registration numbers to replace the names of "shadow companies" can effectively solve the problems posed by "shadow companies".

Deputy President, in view of the increasing popularity of electronic communications, the Bill will amend the Ordinance to enable Hong Kong companies to use electronic means, including the companies' websites, to communicate with their shareholders. The Companies Registry will formulate guidelines on electronic communication for companies to make reference to.

The Bill will also amend the provisions relating to statutory derivative actions (SDA). At present, the Ordinance allows a member of a specified corporation to bring an action or intervene in the proceedings on behalf of the

corporation in respect of misfeasance committed against the corporation. Upon the enactment of the Bill, a member of a related company of a specified corporation can bring an action or intervene in the proceedings on behalf of the corporation.

We have already explained in detail at the Bills Committee meetings the justifications for expanding the scope of SDA. Put simply, by making reference to the Court of Final Appeal's ruling in relation to the *Waddington* case and taking into account the fact that at present, the structures of companies, particularly holding companies, have become increasingly complex, the existing provisions on SDA may not be able to protect the interests of minority shareholders in a group of companies effectively. Other comparable jurisdictions, such as Australia, Singapore, New Zealand and Canada, have also introduced provisions to cover "multiple" SDA in their company laws in recent years.

For this reason, we propose to expand the scope of SDA procedure to cover "multiple" SDA and our proposed amendments are similar to the provisions in the legislation of Australia. Under the existing Ordinance, bringing the proceedings is subject to leave of the court. Therefore, we believe that the proposals will not lead to frivolous, trivial or vexatious derivative actions. The amendments can further enhance the protection of the interests of minority shareholders in a group of companies.

Deputy President, the Bill will also introduce technical amendments to the Ordinance to remove the limitations arising from the provisions in the Ordinance that compel the use of paper documents of title and paper instruments of transfer in relation to shares and debentures. This technical amendment is an important step in the legislative process to promote the development of a scripless market, and lays the foundation for the implementation of a scripless market in Hong Kong.

Lastly, the Bill will also make some minor technical amendments to the Ordinance, including an amendment to the Chinese version of section 57B(7) of the Ordinance to remove the discrepancy between the English and Chinese versions, so as to bring it in line with the policy intention and the prevailing market understanding of the legislation.

Deputy President, the Bills Committee also expressed many valuable views on the details of the Bill. I will follow up these views when moving amendments at the Committee Stage. I invite all Honourable Members to support the Bill and the amendments to be moved by me later at the Committee Stage.

Just now, Mr Paul CHAN also voiced his views on the rewrite exercise for the Companies Ordinance and on proposals relating to corporate rescue procedures. I am very grateful to Mr CHAN for voicing views on and giving support to the consultation exercises on these two important policies. The bill relating to the Companies Ordinance rewrite exercise will be introduced into the Legislative Council for scrutiny at the end of this year. We are also working on proposals relating to corporate rescue procedures and the proposals will be published for consultation later this month. A briefing will also be made to the relevant Panel.

Thank you, Deputy President.

DEPUTY PRESIDENT (in Cantonese): I now put the question to you and that is: That the Companies (Amendment) Bill 2010 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Companies (Amendment) Bill 2010.

Council went into Committee.

Committee Stage

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

COMPANIES (AMENDMENT) BILL 2010

DEPUTY CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Companies (Amendment) Bill 2010.

CLERK (in Cantonese): Clauses 1 to 4, 6 to 9, 12 to 23, 25, 26, 28, 29, 30 and 32 to 57.

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

(No Member indicated a wish to speak)

DEPUTY CHAIRMAN (in Cantonese): I now put the question to you and that is: That clauses 1 to 4, 6 to 9, 12 to 23, 25, 26, 28, 29, 30 and 32 to 57 stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 5, 10, 11, 24, 27 and 31.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Deputy Chairman, I move the amendments to the clauses read out just now, as printed on the paper circularized to Members. I will now briefly explain these amendments.

The relevant amendments to clause 5 of the Companies (Amendment) Bill 2010 (the Bill) seek to further simplify the procedures for electronic incorporation of companies. Currently, persons who wish to form a company are required under section 15 of the Companies Ordinance to deliver certified true copies of the companies' memorandum of association and articles of association (M&A), together with the incorporation form, to the Companies Registry for registration. Since sections 6 and 12 of the Companies Ordinance require the original copies of the M&A to be signed by all the founder members, it follows that the copies of the M&A to be delivered to the Companies Registry for registration will need to show the signatures of all founder members. To facilitate the delivery of such documents under electronic incorporation, I propose to amend clause 5 so that the founder members, in applying for incorporation of companies, would only need to include a statement in the incorporation form certifying that the M&A have been signed in accordance with sections 6 and 12 of the Companies Ordinance and the contents of the copies of the M&A delivered for registration are the same as the original M&A. To cope with such an amendment, I will later move CSAs to introduce new clauses 3A, 5A and 5B to repeal the provisions that require an applicant to deliver certified true copies of the M&A to the Companies Registry for registration.

The amendments to clauses 10 and 11 are made in response to the views expressed by members of the Bills Committee during the scrutiny of the Bill. According to clauses 10 and 11, if a company has been registered by a certain name and the Registrar is subsequently of the opinion that the name has breached sections 20(1)(c), 20(1)(d) or 20(2) of the Companies Ordinance, the Registrar may direct the company to change the name. Since it is already provided in the Companies Ordinance that whether or not a company's name is in breach of the requirements of sections 20(1)(c), 20(1)(d) or 20(2) is to be determined by the Chief Executive, we agree that it is not necessary to give the Registrar

discretion on whether a name has breached the requirement. Therefore, I move to amend clauses 10 and 11 of the Bill to delete the words "in the opinion of the Registrar".

I also move to amend clauses 24 and 27. The original clauses 24 and 27 set out the details for notices and certificates to be sent by the Registrar in the form of an electronic record. Since the Electronic Transactions Ordinance has detailed provisions on documents sent in the form of an electronic record and the specific arrangements for sending notices and certificates by the Registrar are technical descriptions, we consider that it is not necessary to specify the details in the Companies Ordinance. The amendments to clauses 24 and 27 seek to delete the provisions that set out those details.

Regarding the new section 168BAI proposed in clause 31 of the Bill, Members have expressed concern that if a member or debenture holder of the company, on receipt from the company a document or information in electronic form, wishes to obtain a hard copy of the document or information under that provision and he is required by the document or information to take certain actions before a deadline, he may only receive the hard copy after the deadline because it is stipulated in the provision that he is required to make a request for the hard copy 14 days in advance, otherwise the company may provide the hard copy within 21 days after receipt of the request. In view of this, I move to amend clause 31 to provide that if a member or a debenture holder wishes to obtain a hard copy of the document in the abovementioned circumstances, a company is required to send or supply to the member or debenture holder of the company a hard copy of the document or information within seven days after the date of receiving the request. Apart from that, we also propose to make minor textual amendments to the new section 168BAH under clause 31.

Deputy Chairman, all these amendments have the support of the Bills Committee. I urge Members to support these amendments.

Thank you, Deputy Chairman.

Proposed amendments

Clause 5 (see Annex I)

Clause 10 (see Annex I)

Clause 11 (see Annex I)

Clause 24 (see Annex I)

Clause 27 (see Annex I)

Clause 31 (see Annex I)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 5, 10, 11, 24, 27 and 31 as amended.

DEPUTY CHAIRMAN (in Cantonese): I now put the question to you and that is: That clauses 5, 10, 11, 24, 27 and 31 as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clause 3A	Articles prescribing regulations for companies
New clause 5A	Delivery and registration of incorporation form, memorandum and articles
New clause 5B	Effect of registration
New clause 22A	Certificates to be sent by private company with annual return.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Deputy Chairman, I move the Second Reading of new clauses 3A, 5A, 5B and 22A, as set out in the paper circularized to Members.

Just now, when moving amendments to clause 5, I have mentioned that new clauses 3A, 5A and 5B seek to remove the requirement that when applying to form a company under the Companies Ordinance, the applicant needs to deliver certified true copies of the companies' M&A to the Companies Registry

for registration. The foregoing new clauses seek to further simplify the procedures for electronic incorporation of companies.

New clause 22A seeks to amend section 110 of the Companies Ordinance. At present, private companies are required under section 110 of the Companies Ordinance to send together with their annual returns to the Companies Registry certificates signed by a director or the secretary of the company confirming that their companies comply with the conditions of private companies. In order to allow the certificates to be delivered together with the annual returns to the Companies Registry through electronic means, I move the addition of new clause 22A to amend the requirement on the signing of documents in section 110 of the Companies Ordinance to that effect.

Deputy Chairman, the foregoing amendments are technical amendments and are supported by the Bills Committee. I hope that Members will support the amendments.

Thank you, Deputy Chairman.

DEPUTY CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clauses 3A, 5A, 5B and 22A be read the Second time.

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

(No Member indicated a wish to speak)

DEPUTY CHAIRMAN (in Cantonese): I now put the question to you and that is: That new clauses 3A, 5A, 5B and 22A be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clauses 3A, 5A, 5B and 22A.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Deputy Chairman, I move that new clauses 3A, 5A, 5B and 22A be added to the Bill.

Proposed additions

New clause 3A (see Annex I)

New clause 5A (see Annex I)

New clause 5B (see Annex I)

New clause 22A (see Annex I)

DEPUTY CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clauses 3A, 5A, 5B and 22A be added to the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

DEPUTY CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bills

DEPUTY PRESIDENT (in Cantonese): Bill: Third Reading.

COMPANIES (AMENDMENT) BILL 2010

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

Companies (Amendment) Bill 2010

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

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Companies (Amendment) Bill 2010 be read the Third time and do pass.

Does any Member wish to speak?

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Companies (Amendment) Bill 2010.

Resumption of Second Reading Debate on Bills

DEPUTY PRESIDENT (in Cantonese): We now resume the Second Reading debate on the Business Registration (Amendment) Bill 2010.

BUSINESS REGISTRATION (AMENDMENT) BILL 2010

Resumption of debate on Second Reading which was moved on 3 February 2010

DEPUTY PRESIDENT (in Cantonese): Mr Paul CHAN, the Chairman of the Bills Committee on the above Bill, will address the Council on the Committee's Report.

MR PAUL CHAN (in Cantonese): Deputy President, in my capacity as the Chairman of the Bills Committee on Companies (Amendment) Bill 2010 and Business Registration (Amendment) Bill 2010 (the Bills Committee), I now

report to the Council the Bills Committee's deliberation of the Business Registration (Amendment) Bill 2010 (the Bill).

The Bill seeks to provide for simultaneous application for company registration and business registration. The Bills Committee generally supports the proposed amendments in the Bill.

The Bills Committee has sought explanation as to why the service of simultaneous application for company registration and business registration would not cover application for business registration of a company's branch office. The Administration has explained that if the simultaneous registration service covers the business registration of a company's branch office, it would significantly increase the capital and maintenance costs of the Integrated Companies Registry Information System (ICRIS) operated by the Companies Registry, and based on past experience, there should be extremely few companies that would wish to set up a branch at the time of company registration.

Section 4 of the existing Business Registration Ordinance provides for the preservation of secrecy with regard to matters that come to the notice of officers of the Inland Revenue Department in the performance of their duties under the Business Registration Ordinance. Under the proposed scheme for simultaneous application for company registration and business registration, officers of the Companies Registry will perform functions in relation to simultaneous business registration applications. To cater for this arrangement, the relevant provision of the Business Registration Ordinance is amended to extend the obligation of secrecy applicable to officers of the Companies Registry.

Members have expressed the concern that the proposed amendment may have the unintended effect of narrowing the scope of information for preservation of secrecy. The Bills Committee has requested the Administration to review all the provisions on the obligation of secrecy, so as to ensure that they can clearly define the obligation of secrecy applicable to officers of the Companies Registry and the Inland Revenue Department under the scheme for simultaneous application for company registration and business registration.

To address members' concern, the Administration has agreed to move Committee Stage Amendments to remove the word "solely" and the word "僅" respectively from the English and Chinese versions of the proposed

section 4(3)(a). The Administration will also move a Committee Stage Amendment to add new section 4(3B) to specify that the requirements on officers of the Companies registry to preserve secrecy of information do not apply to any particulars that are provided in an incorporation application or company registration application, because such particulars are information that should be made available to the public as stipulated in the Companies Ordinance.

The Bills Committee agrees to the amendments put forward by the Administration and supports the resumption of Second Reading debate on the Bill.

Thank you, Deputy President.

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

(No Member indicated a wish to speak)

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

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Deputy President, first of all, I wish to once again express my gratitude to the Chairman of the Bills Committee on Companies (Amendment) Bill 2010 and Business Registration (Amendment) Bill 2010 (the Bills Committee), Mr Paul CHAN, and other members of the Bills Committee, as well as colleagues of the Legislative Council Secretariat for their efforts which enabled the deliberations to be completed smoothly.

(THE PRESIDENT resumed the Chair)

The Business Registration (Amendment) Bill 2010 (the Bill) and the Companies (Amendment) Bill 2010, which has just been passed, were introduced

into the Legislative Council in February this year. The Bills Committee has held a total of eight meetings. Members of the sectors and relevant stakeholders have been invited to give their views.

Our purpose in introducing the Bill is to amend the Business Registration Ordinance (the Ordinance), in order to tie in with the implementation of Phase II of the Integrated Companies Registry Information System (ICRIS II) which will come on stream in phases from early 2011. The objective is to facilitate the provision of a one-stop service for company registration and business registration to the business sector and allow the delivery of business registration documents by electronic means, with a view to creating a more business-friendly environment in Hong Kong.

Upon the implementation of the Bill pursuant to its passage and the commissioning of ICRIS II, any person who submits an application for company registration and pays the business registration fee and levy will be deemed to have applied for business registration at the same time. The Companies Registry will issue both the certificate of incorporation and business registration certificate to the successful applicants. Such service will be made available for both paper and electronic applications.

Besides, the Bill proposes to add a provision in the Ordinance to the effect that the company's notification of changes in certain business particulars to the Companies Registry will be treated as a notification to the Inland Revenue Department, thereby saving the efforts of the company to notify two departments of the same change under the Companies Ordinance and the Ordinance.

The Bills Committee has agreed to most of the amendments. It has only put forward some proposals on the amendments relating to the scope of official secrecy and refund arrangement. In response to the proposals made by the Bills Committee, I will move the relevant amendments at the Committee stage later.

Moreover, I will also move an amendment to add a new clause in the Bill to amend the Revenue (Reduction of Business Registration Fee) Order 2010, so that simultaneous application for company registration and business registration through the new one-stop service can also benefit from the business registration fee waiver.

These amendments have obtained the support of the Bills Committee. I urge Members to support the Bill, as well as the amendments that I will move at the Committee stage later.

Thank you, President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Business Registration (Amendment) Bill 2010 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Business Registration (Amendment) Bill 2010.

Council went into Committee.

Committee Stage

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

BUSINESS REGISTRATION (AMENDMENT) BILL 2010

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Business Registration (Amendment) Bill 2010.

CLERK (in Cantonese): Clauses 1, 2, 3, 5 to 8, 10 to 13, 15 to 24 and 26 to 30.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clauses 1, 2, 3, 5 to 8, 10 to 13, 15 to 24 and 26 to 30 stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 4, 9, 14 and 25.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Chairman, I move the amendments to the clauses read out just now, as set out in the paper circularized to Members.

Clauses 4 and 25(9) of the Business Registration (Amendment) Bill 2010 (the Bill) are about amendments relating to official secrecy. The purpose of the amendments is to enable officers of the Companies Registry to, on the one hand, handle simultaneous application for company registration and business registration on behalf of officers of the Inland Revenue Department and on the other hand, perform their statutory function under the Companies Ordinance of making information on company registration available to the public, without being subject to the official secrecy provisions under the Business Registration Ordinance. As regards information and particulars not relating to company application in a simultaneous application, officers of the Companies Registry are required to comply with the obligation of secrecy in accordance with the official secrecy provisions in the Business Registration Ordinance.

In view of the concern expressed by the Bills Committee on Companies (Amendment) Bill 2010 and Business Registration (Amendment) Bill 2010 (the Bills Committee) that the original drafting may result in the narrowing of the scope of official secrecy, we agree to revise the drafting of clauses 4(1), 4(3) and 25(9) to specify that officers of the Companies Registry are exempted from the official secrecy requirements in the Business Registration Ordinance, while the application of the relevant requirements to officers of the Inland Revenue Department will remain unchanged.

Moreover, in response to the suggestions made by the Bills Committee, we will also propose technical amendments to clauses 9 and 14(3) to provide that the Commissioner of Inland Revenue should refund the business registration fee and levy as soon as practicable under the circumstances set out in the relevant provisions.

Chairman, these amendments have obtained the support of the Bills Committee. I hope Members will support these amendments.

Thank you, Chairman.

Proposed amendments

Clause 4 (see Annex II)

Clause 9 (see Annex II)

Clause 14 (see Annex II)

Clause 25 (see Annex II)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 4, 9, 14 and 25 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clauses 4, 9, 14 and 25 as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New heading before new clause 31	Revenue (Reduction of Business Registration Fees) Order 2010
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New clause 31	Amendments to Revenue (Reduction of Business Registration Fees) Order 2010
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New clause 32	Reduction of business registration fees.
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SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Chairman, I move the Second Reading of the new heading and new clauses read out just now, as set out in the paper circularized to Members.

In the 2010-2011 Budget, the Financial Secretary proposed to waive the business registration fee for one year from 1 August 2010 to 31 July 2011. To this end, the Revenue (Reduction of Business Registration Fees) Order 2010 (the Order) was made in February this year to give effect to this measure.

To ensure that simultaneous application for company registration and business registration under the new one-stop service can also benefit from this fee waiver, it is necessary for us to add clauses 31 and 32 to the Business Registration (Amendment) Bill 2010, in order to make appropriate amendments to the Order. Meanwhile, consequential technical amendments are also proposed to the Order.

Chairman, these amendments have obtained the support of the Bills Committee. I hope Members will support the amendments.

Thank you, Chairman.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the new heading before new clause 31, and new clauses 31 and 32 be read the Second time.

Does any Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the new heading before new clause 31, and new clauses 31 and 32 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New heading before new clause 31, and new clauses 31 and 32.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Chairman, I move that the new heading and new clauses read out just now be added to the Bill.

Proposed additions

New heading before new clause 31 (see Annex II)

New clause 31 (see Annex II)

New clause 32 (see Annex II)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the new heading before new clause 31, and new clauses 31 and 32 be added to the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bills

PRESIDENT (in Cantonese): Bills: Third Reading.

BUSINESS REGISTRATION (AMENDMENT) BILL 2010

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

Business Registration (Amendment) Bill 2010

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

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Business Registration (Amendment) Bill 2010 be read the Third time and do pass.

Does any Member wish to speak?

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Business Registration (Amendment) Bill 2010.

MOTIONS

PRESIDENT (in Cantonese): Motions. Proposed resolution under the Mutual Legal Assistance in Criminal Matters Ordinance to approve the Mutual Legal Assistance in Criminal Matters (South Africa) Order.

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

PROPOSED RESOLUTION UNDER THE MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS ORDINANCE

SECRETARY FOR SECURITY (in Cantonese): President, I move that the resolution to make the Mutual Legal Assistance in Criminal Matters (South Africa) Order (the Order) be passed.

Hong Kong has been actively co-operating with other jurisdictions in combating serious crime, and is committed to concluding bilateral agreements with partners who wish to have closer co-operation with us in mutual legal assistance in criminal matters. These bilateral agreements ensure reciprocal assistance between the contracting parties, and are conducive to enhancing international co-operation in the fight against cross-border crime.

The Mutual Legal Assistance in Criminal Matters Ordinance (the Ordinance) provides the statutory framework for implementing agreements on mutual legal assistance signed between Hong Kong and other jurisdictions, enabling assistance to be provided to or obtained from foreign jurisdictions in the investigation and prosecution of criminal offences. Such assistance includes the taking of evidence, search and seizure, production of material, transfer of persons to give evidence and confiscation of crime proceeds.

Pursuant to the Ordinance, the Chief Executive in Council has made the Order to implement the bilateral agreement on mutual legal assistance in criminal matters signed with South Africa. By applying the Ordinance to the co-operation between Hong Kong and South Africa, the Order allows Hong Kong to provide and obtain mutual legal assistance in accordance with the procedures set out in the Ordinance and the provisions under the agreement. As the legislation and the arrangements on mutual legal assistance in criminal matters vary from jurisdiction to jurisdiction, it is often necessary for the implementing order of a bilateral agreement to modify certain provisions of the Ordinance to a limited extent, in order to reflect the practices of individual jurisdictions. Such modifications are necessary to enable Hong Kong to discharge its obligations under the relevant bilateral agreement. The modifications made for the bilateral agreement between Hong Kong and South Africa are specified in Schedule 2 to the Order. These modifications do not affect the substantial conformity of the Order with the provisions of the Ordinance.

The Subcommittee set up by the Legislative Council has completed its scrutiny of the Order. I would like to thank the Subcommittee for giving support to the Administration in the submission of the Order to this Council for approval.

When scrutinizing the Order, the Subcommittee noted that the principle of double criminality is only applicable to a request made by South Africa to Hong Kong as specified in Article 3(1)(i) of the Agreement between Hong Kong and South Africa. The Administration explained to the Subcommittee that this provision was added at the request of South Africa. As there is no double criminality requirement in South Africa, South Africa should not refuse assistance even if Hong Kong made a request relating to an offence and the acts or omissions alleged to constitute the offence would not, if they had taken place within the jurisdiction of South Africa, have constituted an offence.

In accordance with Article 4(4) of the Agreement between Hong Kong and South Africa, the Requested Party shall use its best efforts to keep confidential a request and its contents. The Subcommittee enquired how the above requirement be implemented in practice given that the proceedings were normally held in open court in Hong Kong. The Administration explained to the Subcommittee that the request would not be submitted to the Court and its contents would not be disclosed unless the Court made an order for disclosure.

Further, proceedings relating to the taking of evidence or the production of thing for the purposes of a criminal matter would normally be held in open court except under certain circumstances as provided in section 10(3) of the Ordinance.

The making of the Order will implement the bilateral agreement signed between Hong Kong and South Africa on mutual legal assistance in criminal matters. This is important to the strengthening of Hong Kong's co-operation with foreign jurisdictions in mutual legal assistance in criminal matters.

I now invite Members to approve the making of the Order.

Thank you, President.

The Secretary for Security moved the following motion:

"RESOLVED that the Mutual Legal Assistance in Criminal Matters (South Africa) Order, made by the Chief Executive in Council on 20 April 2010, be approved."

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

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): Proposed resolution under the United Nations (Anti-Terrorism Measures) Ordinance.

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

**PROPOSED RESOLUTION UNDER THE UNITED NATIONS
(ANTI-TERRORISM MEASURES) ORDINANCE**

SECRETARY FOR SECURITY (in Cantonese): President, I move that the motion on the Code of Practice prepared under the United Nations (Anti-Terrorism Measures) Ordinance (the Ordinance) be passed.

The Legislative Council passed the Ordinance in 2002 and subsequently the United Nations (Anti-Terrorism Measures) (Amendment) Ordinance in 2004. The purpose of the amended Ordinance is to fulfill Hong Kong's international obligations under United Nations Security Council Resolution 1373 and the Special Recommendations of the Financial Action Task Force on Money Laundering.

Section 12A of the Ordinance provides that the Secretary for Justice may make an application to the Court of First Instance for an order to require the relevant persons to answer questions, furnish information or produce material relevant to the investigation of an offence under the Ordinance (a section 12A order). Section 12A(14) requires me to prepare a Code of Practice in connection with the exercise of the powers and the discharge of the duties under section 12A. This Code is required to be laid before the Legislative Council for approval before promulgation.

The Code of Practice regulates the manner in which the law enforcement agencies conduct its interviews with persons who are required to answer questions, furnish information or produce material under section 12A. It also sets out the rights of the persons who furnish information. The main provisions of the Code of Practice are to set out:

- (a) the procedures for the interviews of persons subject to a section 12A order who is required to answer questions or otherwise furnish information;
- (b) the guidelines for the production of material under section 12A of the Ordinance; and
- (c) the complaint procedures for persons subject to a section 12A order.

The Subcommittee set up by the Legislative Council on Proposed Resolution under section 12A of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) has completed scrutiny of the Code of Practice. I would like to take this opportunity to thank the Chairman of the Subcommittee, Mr IP Kwok-him, and other members of the Subcommittee for their efforts and valuable suggestions in the process as well as for giving support to the Administration in the submission of the revised Code of Practice to the Legislative Council for approval.

When scrutinizing the Code of Practice, the Subcommittee has provided valuable suggestions, which have enhanced further the procedures and manner for handling a person subject to a section 12A order under the Code of Practice; as well as the improvement in the textual presentation of the Code of Practice. We have already incorporated the suggestions of the Subcommittee by providing in the Code of Practice that the person subject to a section 12A order should be provided with a copy of Code of Practice and its Annexes at the same time when the Secretary for Justice's Notice issued pursuant to section 12A(5) or (6) of the Ordinance is served; and that a Braille copy of the Code of Practice be provided to visually impaired interviewees; or translated copies of the Code of Practice in languages other than Chinese and English be provided to interviewees who do not understand Chinese and English.

When scrutinizing the Code of Practice, the Subcommittee has asked the Administration to explain the privileges and responsibilities of a person under a section 12A order and to set them out in laymen's terms in the Code of Practice. In response to the Subcommittee's comments, we revise paragraph 4 of the Code of Practice to clearly set out the responsibilities and privileges of a person under a section 12A order as follows:

- (a) he or she has an obligation to comply with the requirements to furnish information or produce material under a section 12A order and if he or she fails to comply without reasonable excuse he or she will be guilty of an offence;
- (b) an obligation of secrecy or restriction from furnishing information or material is not an excuse for refusing to comply with a section 12A order;
- (c) legal professional privilege and the privilege against self-incrimination are overriding; in other words, nothing in the Ordinance would require the interviewee to disclose anything that is subject to legal professional privilege, or anything that is self-incriminating; and
- (d) if an interviewee does voluntarily furnish information or produce material under a section 12A order, the information or material cannot be used against him in criminal proceedings except in proceedings under section 14(7F) of the Ordinance or under section 36 of the Crimes Ordinance concerning the making of false statements, and so on.

In parallel, for the avoidance of any doubt, we have provided in paragraph 1 of the Code of Practice that in the case there is any discrepancy between the Code of Practice and the Ordinance, the provisions of the Ordinance shall prevail.

The Subcommittee has also provided specific comments on the detailed arrangement for the conduct of interviews pursuant to a section 12A order. Having considered the views of the Subcommittee, we agree that:

- (a) more flexibility in considering the request of an interviewee in making phone calls during an interview pursuant to a section 12A

order is allowed. In this regard, we have amended the content of paragraph 9 of the Code of Practice by removing the restriction on making one telephone call for a reasonable time while allowing the interviewee to make at least one telephone call for a reasonable time. If the interviewee can provide reasonable justification, he or she may make further telephone calls. The interviewee may also consult his or her barrister or solicitor over the telephone in the presence, but out of the hearing, of an authorized officer. For other telephone calls, they will be made under supervision;

- (b) paragraph 10 of the Code of Practice should provide that the interviewee will be provided with interpretation service by a language interpreter qualified for court purposes if he or she does not understand Chinese and English;
- (c) paragraph 17 of the Code of Practice should provide that authorized officers should record any special requests made by the interviewees and action taken in the course of interview; and
- (d) paragraph 22 of the Code of Practice should provide that the interviewee is entitled, as soon as reasonably practicable, to receive a copy of the interview record there and then. Where the interview is video or audio recorded by the investigating authority, the interviewee is entitled, as soon as reasonably practicable, to receive a copy of the tape there and then. Paragraph 29 of the Code also specifies that a copy of the complaint record should, as soon as reasonably practicable, be provided to the person making the complaint there and then.

When scrutinizing the Code of Practice, the Subcommittee, in particular, has expressed concern about the criminal liability of those under the age of criminal responsibility but under a section 12A order to answer questions or otherwise furnish information. We have explained to the Subcommittee that section 3 of the Juvenile Offenders Ordinance (Cap. 226) provides that "(i)t shall be conclusively presumed that no child under the age of 10 years can be guilty of an offence". Accordingly, a child under the age of 10 has no legal responsibility under the Ordinance or any other local legislation. It follows that an interviewee under the age of 10 will not be held liable for a criminal offence if the interviewee

fails to comply with the requirements to furnish information or produce material under section 12A of the Ordinance. The interviewee's parent, guardian or accompanying adult will also not be held liable for an offence. For the sake of clarity, we provide in paragraph 3 of the Code of Practice that an authorized officer shall also explain that where the person subject to a section 12A order is under the age of 10, such person and his or her parent, guardian or accompanying adult will not be held liable for an offence if such person fails to comply with the section 12A order.

As for children between 10 and under the age of 16, they may be guilty of an offence under section 14(7E) of the Ordinance if he or she fails to comply with the section 12A order, or if he or she fails to comply with other local legislation to furnish information, he or she will commit the relevant offences under such local legislation. However, special arrangements are provided under the Code of Practice to safeguard the rights of persons under the age of 16. Such protection includes the presence of a parent, guardian or other person responsible for the care of an interviewee under the age of 16 during an interview. If such a person is unavailable, in the presence of an adult who is independent of the investigating authority and, where reasonably practicable, knows the interviewee. An interviewee who is under the age of 16 and the accompanying adult, if he or she so wishes, is allowed to have a barrister or a solicitor to be present during the interview and to consult privately with the barrister or solicitor. Further, paragraph 12 of the "Statement of Prosecution Policy and Practice — Code for Prosecutors" of the Department of Justice deals with juvenile offenders. In the case of juvenile offenders under the age of 16, the prosecution policy should be to divert juveniles from court wherever possible, the Department of Justice will therefore in general favour the methods of disposal which fall short of prosecution.

When scrutinizing the Code of Practice, the Subcommittee has also expressed concern about the availability of legal assistance for interviewees. We have explained to the Subcommittee that an interview arranged for the purpose of an order, for which the Secretary for Justice applied under section 12A(1) of the Ordinance, does not involve the court proceedings and thus legal aid under the Legal Aid Ordinance is not applicable. That notwithstanding, the interviewee may apply to the Court of First Instance with justifications under section 12A(13) of the Ordinance for the revocation or variation of the order. As such application is required to be examined at the Court of First Instance and legal aid is applicable to proceedings in the Court of

First Instance, legal aid will be granted if the interviewee is able to satisfy the statutory criteria as to the financial eligibility and the merits for taking or defending the legal proceedings.

Further, a person subject to a section 12A order under the Ordinance may also seek free preliminary legal advice from volunteer lawyers under the Free Legal Advice Scheme (the Scheme) operated by Duty Lawyer Service to understand his or her rights and responsibilities under the Ordinance. There is no means test under the Scheme. For those who wish to use the service of the Scheme, they may seek assistance through the Legal Advice Centres located in nine district offices. As a person subject to a section 12A order will be informed of the interview details in advance, he or she may choose to seek free legal advice under the Scheme prior to the interview.

I hope Members will understand that Hong Kong needs to make the Code of Practice the soonest possible to bring the remaining provisions of the Ordinance into operation so that we can fulfill our international obligations under the United Nations Security Council Resolution 1373 and the Special Recommendations of the Financial Action Task Force on Money Laundering.

President, the Code of Practice has struck an appropriate balance between protecting the rights of persons subject to a section 12A order and ensuring the smooth conduct of investigations into terrorism offences. The Code of Practice will come into operation on the day appointed for the commencement of section 12A of the Ordinance. I invite Members to approve the Code of Practice so that the Administration can exercise the investigation powers conferred under section 12A of the Ordinance in accordance with the Code.

The Secretary for Security moved the following motion:

"That the Code of Practice for requiring persons to furnish information or produce material under the new Section 12A of the United Nations (Anti-Terrorism Measures) Ordinance added by Section 12 of the United Nations (Anti-terrorism Measures) (Amendment) Ordinance 2004, be approved."

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

MR IP KWOK-HIM (in Cantonese): President, in my capacity as Chairman of the Subcommittee on Proposed Resolution under section 12A of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) (the Ordinance), I report on the deliberations of the Subcommittee.

Section 12A of the Ordinance provides that the Secretary for Justice may make an application to the Court of First Instance for an order to require the relevant persons (the interviewees) to answer questions, furnish information or produce material relevant to the investigation of an offence under Cap. 575. Section 12A also requires the Secretary for Security to draw up a Code of Practice in connection with the exercise of the powers and the discharge of the duties under section 12A.

In the course of deliberations, the Government has, in the light of members' requests, agreed to introduce certain amendments to the Code of Practice to cover, as mentioned by the Secretary just now, among others, the offer of assistance in relation to the provision of the Code in other languages and versions. At the same time, interpretation services will be provided to persons seeking assistance. Moreover, such persons will be allowed to make at least one telephone call for a reasonable time and, where reasonably practicable, have private contact with their solicitors when exchanging views. Furthermore, the Administration will make arrangements to provide a written or audio copy of the interview record.

In fact, as mentioned by the Secretary just now, in the course of deliberations, members expressed particular concern about the relevant rights of interviewees under the age of 10, that is, how such interviewees can be protected. Members were also concerned about how assistance and support could be given to interviewees between 10 and under the age of 16. Some members were also concerned about how legal assistance could be provided during the process to persons subject to a section 12A order. In this regard, the Administration has given explanations and expressed its concern. The Secretary has also mentioned this a while ago.

The efficiency of the Subcommittee was extremely high throughout the scrutiny process, for all deliberations were basically completed after three

meetings. The Administration has also been able to give members fairly satisfactory answers to the relevant questions. Therefore, the resolution has gained the support of Members of this Council and members of the Subcommittee.

The followings are my opinions on this Resolution on behalf of the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB):

In fact, Resolution 1373 was passed by the United Nations Security Council on 28 September 2001 with the objective of combating global acts of terrorism. It can be said that the order of the present-day international community has been plagued by terrorism since the occurrence of the September 11 incident in the United States. Of course, China cannot escape and it is, likewise, under the serious threat of terrorism. The string of attacks initiated by advocates of Tibetan and Xinjiang independence in recent years has resulted in serious civilian casualties. Therefore, the international community has to work in close collaboration in order to stamp out terrorism. Through enhancing intelligence exchange, anti-terrorism drills, and so on, the international community can further enhance collaboration in combating terrorism and jointly raise the strength of our fight against terrorism.

As a permanent member of the United Nations Security Council, China certainly has the responsibility and obligation to enforce the anti-terrorism resolutions passed by the United Nations. As one of the Special Administrative Regions of China, Hong Kong is also required to follow China in enforcing these resolutions. In order to combat global acts of terrorism and acts of subsidizing terrorists, the Hong Kong Special Administration Region carried out a two-phase legislative procedure by formulating relevant anti-terrorism legislation in 2002 and 2004 separately. Now, years after the enactment of the principal legislation, the Administration must draw up regulations and Codes of Practice in order to implement certain provisions in the legislation. The Resolution laid before this Council today is precisely a key component of the relevant Code of Practice. In the opinion of the DAB, consideration should be given to enforcing the legislation expeditiously. We also agree that the Code should be endorsed and put into practice.

As regards how to ensure that the Code, particularly the part concerning the interviewees, is implemented effectively, I think that even though the age of an interviewee is relatively small, if he or she can really provide information on

combating terrorism, then age should not be regarded as the sole factor for consideration. Instead, consideration should be given to civil obligations and responsibilities. I believe the Administration has already considered the striking of a reasonable balance between protecting individuals' rights and human rights and ensuring public safety when formulating the Code. Provided that the steps and procedures are appropriate, the interviewees, regardless of age, can enjoy full protection. As for other issues regarding the provision of legal assistance and the procedures of answering questions and furnishing information, and so on, I think it is appropriate for the Administration to introduce this amendment after listening to Members' views.

With these remarks, I support the relevant Resolution. Thank you, President.

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

MS CYD HO (in Cantonese): The Code of Practice is made under the anti-terrorism legislation enacted for the purpose of fulfilling Hong Kong's international obligations under United Nations Security Council Resolution 1373 so as to implement the United Nations (Anti-Terrorism Measures) Ordinance (the Principal Ordinance). This is not the first piece of subsidiary legislation laid before this Council in recent months. Some Rules concerning the court had also been passed earlier. We can see that the Principal Ordinance will be implemented slowly, and so we are very concerned about this subsidiary legislation, too.

Although we know that it is very difficult to overturn the Principal Ordinance — because, for constitutional reasons, it is very difficult for the Legislative Council to introduce amendments — but still, we hope to be careful as far as possible in the making of the subsidiary legislation to prevent law enforcement agencies from possessing powers beyond those conferred on them by the Principal Ordinance.

It can be said that the consultation process of the Code is acceptable because many organizations, such as Hong Kong Human Rights Monitor, have expressed a lot of views, and the views have been accepted. We also welcome

the Government's move to accede to the matters raised during the first and second rounds of consultation. These views concern, among others, the communication difficulties encountered by ethnic minorities speaking different languages, or even interviewees with hearing or visually impairment. The Administration has agreed to provide appropriate assistance to these people, so that the entire interviews can proceed more smoothly. Most importantly, the legal rights of these interviewees will be protected.

However, these amendments are still inadequate. I am personally most concerned about the age of criminal responsibility. During our deliberation of the Code, the attending officials at the outset were totally unaware of any upper or lower ceiling on age. He was perplexed when we asked him whether an order could be made to the court under section 12A to invite a very young child — a child who is aged four or five and knows how to express himself verbally — to a police station for an interview or meeting. He gave us the impression that he simply did not think that a four or five-year-old child should not be invited to attend an interview at a police station. It was only at the second meeting that we were told by the Administration that they actually knew that there were problems with the age of criminal responsibility.

As we all know, the age of criminal responsibility was previously very small, and persons over the age of seven had to bear criminal liability. Fortunately, subsequent to amendments made by the 2000-2004 Legislative Council, the age of criminal responsibility was raised to 10. Members should remember that there was great controversy at that time because different political parties/groupings of the Legislative Council hoped to raise the age of criminal responsibility to more than 10. I also remember that Ms Miriam LAU of the Liberal Party even expressed the hope of raising the age of criminal responsibility to 12 out of protection for children.

Unfortunately, the age of criminal responsibility cannot be amended. Therefore, when this procedure is put into implementation, the Administration can still issue a court order against a child aged above 10 to invite him for an interview. Although it is said that the child will be treated as friendly as possible, with tea breaks and rest periods provided, as if he is being treated in a kindergarten, he will still be subject to enormous pressure. As Members are all aware, the reason behind the invitation of some people to a police station for an interview under section 12A is actually very simple — the person is suspected of

having committed a crime, though there is inadequate evidence to prosecute him. Therefore, the Administration cannot invite him to attend an interview according to normal procedures. Instead, an application has to be made for the issue of a court order under section 12A so that the person concerned can be invited to attend an interview. These children may even be the children of a suspect. The fact that the Administration can invite these children to a police station for a meeting through the procedure under section 12A is very unfair to them, and they will also suffer harm as a result.

Just now, the Secretary explained that as children in breach of section 12A are not considered general juvenile offenders, methods of disposal which fall short of prosecution will be considered to deal with these children. I would like to ask: What methods will be adopted? Will the Police Superintendent's Discretionary Scheme be used again? What else can be used? During our previous discussions on juvenile crimes, it was very often commented that the existing criminal procedures were not very effective in helping juvenile offenders to rehabilitate. We had conducted reviews previously and made reference to overseas practices in the hope of improving the rehabilitation and prosecution procedures of juvenile offenders to avoid pushing first-time juvenile offenders to the brink, not to mention that the crimes we are talking about are not theft, fighting, shoplifting, sexual harassment, and so forth. We are only talking about children who do not wish to go to a police station in response to a court order to testify against someone they know, or even their own parents. Therefore, procedure-wise, I consider it inappropriate to impose legal liability of contempt of court on young persons aged between 10 and 16.

President, the second point I wish to raise concerns legal assistance, an issue raised during the last meeting. Although it is said that the relevant information will not be used to prosecute an interviewee in the process, there is grave concern about whether the person being invited to attend an interview knows how to tell whether the questions asked by the police are appropriate. Will the legal rights of the interviewee be protected? Although the Secretary said that a person invited by a court order to go to a police station for an interview can seek legal advice from Duty Lawyer Service, he might not know what questions will be raised by the police prior to the interview, if his legal knowledge is not so good. Even if he does have the opportunity to discuss with a duty lawyer beforehand, he might not know how to protect himself when actually being interviewed at the police station. He would not know how to differentiate whether or not the questions raised by the police are within the scope

of questions the police are empowered to ask. Therefore, it is unsatisfactory if legal assistance is not provided to people being invited to attend an interview at a police station.

President, generally speaking, this Principal Ordinance was enacted very quickly in the light of the September 11 terrorist attack and the United Nations Security Council Resolution 1373. Some draconian provisions were also enacted at that time by many governments around the world. However, reviews would be conducted and the provisions relaxed progressively. Therefore, generally speaking, I hope the Administration can, in the light of the latest situation in overseas jurisdictions, conduct an overall review of this piece of anti-terrorism legislation, to prevent these unexpected terrorist attacks or needs from giving the administrative organ constant chances to expand its power in an unrestrained manner. This is unsatisfactory to society as a whole. Thank you, President.

DR MARGARET NG (in Cantonese): President, the motion today is actually not very controversial because it merely serves to fulfill our obligation of preparing a Code of Practice under section 12A of the Ordinance. Moreover, the Code itself is made for the purpose of implementing the law more smoothly. Therefore, it should be regarded as a sort of protection. There will be no enhanced regulation, nor will certain rights be denied. Therefore, the most important task during the deliberation process is to examine ways to make the Code more user-friendly and enable the SAR to reduce confrontation and tensions during these interrogations and interviews. In fact, there is something which is very amusing. President, although the Administration is trying to be co-operative and do its best, there are, after all, some bad stubborn practices. For instance, the choice of words is something of officialese and stereotype. Therefore, if the Code is intended to make an interviewee understand his own rights after reading it, it will be impossible for this objective to be achieved. On the contrary, the Code might be treated by him as legal provisions. This is why we have strived to put forward our opinions during the process in the hope that the Administration can make the choice of words more user-friendly.

Secondly, I find the acts of the SAR Government mind-boggling when it comes to the use of language. In fact, it is clear from the Race Discrimination Ordinance that Hong Kong is a multi-racial community, with its population comprising people from many different races and cultural backgrounds, as well as

speaking different languages. Given that Hong Kong is a metropolitan city, many foreigners come to Hong Kong. Therefore, it seems to be perfectly natural for versions in different languages to be provided here. However, whenever a Code of Practice or documents explaining legal provisions have to be prepared for reference by the public at large — what is wrong with preparing versions in different languages should the Administration wish to obtain more anti-terrorist information and intelligence and yet not everyone speaks fluent Cantonese or knows how to read English? However, the Administration has not taken the initiative to do so. Instead, Members have to remind the Administration that versions in different languages are required. This is because the translation cost incurred for the preparation of a version of a specific language is very limited, and yet this can give people a better impression. For instance, if some people do not know English and Chinese, but they know French and German, versions in different languages are available for them to choose. However, it seems that it is quite difficult to do so. Eventually, it was decided that versions in certain commonly-used languages, such as German and French versions, would be provided. However, regarding versions in other languages, the Government is still worried and nervous about being "queried" if there is any discrepancy between different versions. Such a mentality is indeed unwarranted.

In brief, President, we have fulfilled our responsibility regarding the Code by expressing our views on the problems we have spotted and introducing improvements. We are confident that the revised version is more user-friendly than the original version laid before this Council. President, why do so many Members treat the Resolution today so seriously? President, it is because if you take a closer look at the Resolution, you will find that it is neither very friendly nor simple, for there are some very exceptional practices under the anti-terrorism Ordinance, and that is, someone can be compelled to disclose information. We simply cannot find anything like this in other legal provisions. Only a very small number of provisions spell out clearly that someone will be compelled to give up his right to remain silent. For the sake of combating terrorism, it is of course very difficult for us to disallow anyone from enjoying such rights. Therefore, what is worrying us is the origin of the Code.

Many Members are still cautious about the content of the Resolution today because of the anti-terrorism Ordinance. President, I believe you still remember that the anti-terrorism Ordinance was not only passed under a tight timeframe, there were also a number of serious and heated disputes between Members and

the Administration. Despite certain concessions made by the Administration when the passage of the legislation proceeded at full speed, the Administration was still reluctant to make concessions in certain areas. As a result, a number of places were found to be unsatisfactory when the legislation was passed forcibly. Although the Administration indicated at that time that reviews would be conducted, many highly dubious and unsatisfactory provisions still remain. President, I have always believed that no matter how dissatisfied we are with the original legislation, we should not make it difficult for the Administration to give effect to the original legislation under the pretext of some minor problems. We can only strive to continue with our fight.

Frankly speaking, President, I am quite disappointed with the Security Bureau because we had already spotted many serious problems with the Interception of Communications and Surveillance Ordinance and the anti-terrorism Ordinance when they were passed, and so amendments ought to be introduced one by one after the passage of the Ordinances. However, nothing was done on every occasion. The Ordinances would not be brought back to this Council for revision. Therefore, Members always feel anxious and uneasy when studying the relevant subsidiary legislation, and even the relevant Code of Practice, because they are the last barriers. After going through this barrier, the legislation could take effect. However, I have no idea how things will proceed, and this is also the cause of our worry. As a result, when collaborating with the Administration, we will find something which is not at all controversial appear to be highly controversial. This is something regrettable in the collaboration between the executive and the legislature.

President, the last point I wish to raise is the origin of the anti-terrorism Ordinance. The Ordinance was originated from a United Nations Security Council Resolution seeking to impose sanctions on and fighting against terrorism. Fighting against terrorism actually falls under national defence and diplomatic affairs. The SAR Government is empowered by the Central Authorities to handle anti-terrorism issues. We can see that there are a lot of ways to deal with sanction resolutions of this sort. President, I will talk about the implementation of sanctions resolved by the Security Council of the United Nations at the adjournment debate to be held later. However, I would like to take this opportunity to remind Members that there are many methods to implement sanctions. Even if the Chief Executive is obligated to impose sanctions under Security Council Resolutions, he can still do it by legislative means. This would

mean that the Legislative Council can examine, regulate, and strive to protect human rights and the rule of law to avoid the occurrence of irresolvable conflicts between the imposition of sanctions and the protection of human rights and the rule of law. Therefore, this is an excellent example. But unfortunately, I do not think the Administration has done a good job in dealing with the anti-terrorism Ordinance.

President, after the passage of the motion today, the anti-terrorism Ordinance will inevitably take full effect and be put into implementation. I hope the Administration will not give up amending and plugging the existing loopholes to prevent Members from developing a habit of transferring their dissatisfaction with the original Ordinance to its subsidiary legislation by striving to delay the implementation of an unsatisfactory piece of legislation. Thank you, 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 Security to reply.

SECRETARY FOR SECURITY (in Cantonese): President, as mentioned by me during the speech delivered earlier, I have prepared a Code of Practice under section 12A(14) of the United Nations (Anti-Terrorism Measures) Ordinance (the Ordinance) in connection with the exercise of the powers and the discharge of the duties under section 12A. The relevant Subcommittee set up by the Legislative Council has already completed the scrutiny of the Code. It also supports the submission of the revised Code by the Bureau to the Legislative Council for approval.

President, I would like to reiterate here that the Code of Practice for the Ordinance must be made the soonest possible to bring the remaining provisions of the Ordinance into operation so as to fulfill Hong Kong's international obligations under United Nations Security Council Resolution 1373 and the Special Recommendations of the Financial Action Task Force on Money Laundering. In fact, the provisions of the Ordinance are based on international standards

having regard to Hong Kong's international obligations and after making reference to the anti-terrorism legislation enacted in some major countries practising common law. The Ordinance was passed by the Legislative Council following deliberation by the relevant Bills Committee.

We consider that the Code of Practice has struck an appropriate balance between protecting the rights of persons subject to a section 12A order and ensuring the smooth conduct of investigations into terrorism offences. Therefore, I invite Members to approve the Resolution proposed for the Code prepared under the Ordinance so that the Administration can exercise the investigation powers conferred under section 12A of the Ordinance in accordance with the Code.

After the Code is approved by the Legislative Council, we will bring the remaining provisions of the Ordinance into operation by way of Commencement notice. At present, we plan to bring all the provisions of the Ordinance into operation by early 2011.

Thank you, President.

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

(Members raised their hands)

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

(No hands raised)

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

MEMBERS' MOTIONS

PRESIDENT (in Cantonese): Members' motions. Three motions with no legislative effect. I have accepted the recommendations of the House Committee: that is, the movers of these motions each may speak, including reply, for up to 15 minutes; the movers of the second and third motions have another five minutes to speak on the amendment(s); the movers of amendments each may speak for up to 10 minutes; and other Members each may speak for up to seven minutes. I am obliged to direct any Member speaking in excess of the specified time to discontinue.

PRESIDENT (in Cantonese): First motion: Report of the Subcommittee on Poverty Alleviation.

Members who wish to speak in the debate on the motion will please press the "Request to speak" button.

I now call upon Mr Frederick FUNG to speak and move his motion.

REPORT OF THE SUBCOMMITTEE ON POVERTY ALLEVIATION

MR FREDERICK FUNG (in Cantonese): President, I move the motion on the Report of the Subcommittee on Poverty Alleviation (the Report).

I will first speak in my capacity as Chairman of the Subcommittee on Poverty Alleviation (the Subcommittee) under the Panel on Welfare Services (the Panel).

According to the Human Development Report 2009 published under the United Nations Development Programme, the Gini Coefficient of Hong Kong ranks the highest in the very human development economies, indicating that the situation of disparity between the rich and the poor is very serious in Hong Kong. Taking the poverty line as half of the median household income in Hong Kong, an earlier survey by the Hong Kong Council of Social Service (HKCSS) estimated that the poverty population in Hong Kong reached 1.23 million people. The Panel decided to appoint a Subcommittee to study policies and measures relating to poverty alleviation.

Since its establishment last year, the Subcommittee has held 12 meetings. The Administration has repeatedly emphasized that it attaches great importance on poverty alleviation, and adopts the 24 multi-dimensional indicators to monitor the overall poverty situation in Hong Kong. The Administration has also adopted a multi-pronged approach to tackle poverty. In tandem with the centrally-driven poverty alleviation measures to promote economic growth, the provision of training and retraining programmes, education and child development programmes across the territory also help raise the competitiveness and skills of the workforce, enhance social mobility and reduce inter-generational poverty. On the other hand, the Administration has also implemented targeted measures to meet the specific needs of individual districts. However, members are of the view that the relevant bureaux and departments should have regard to the unique situation and population profile of each district in devising concrete measures to meet the specific needs of local residents. Taking into account the relatively poor performance of the six community-based poverty indicators for some less well-off districts, the Subcommittee has identified four less well-off districts, *viz* Yuen Long, North District, Kwai Tsing and Sham Shui Po, and examined in-depth the specific poverty alleviation work in these districts.

In summing up and analysing the effectiveness of district-based poverty alleviation measures, members are of the view that the Administration should ensure that the targeted measures meet the specific needs of various disadvantaged groups in different districts so as to further strengthen the poverty alleviation measures. To this end, the District Officers (DOs) concerned should take a more proactive role in identifying the district needs and collaborating cross-sectoral efforts, including District Councils (DCs), district organizations and government departments, to carry out specific initiatives to promote local economy and create job opportunities for local residents, as well as monitor the progress and performance of these initiatives in assisting the disadvantaged. Some members consider that it is of paramount importance for the HKSAR Government to devise an overall policy and measures to tackle poverty from the policy perspectives. To demonstrate its commitment, these members take the view that the Administration should re-establish the Commission on Poverty (CoP) to actively study and formulate long-term policies to solve the problem.

As the Administration has stressed that the Comprehensive Social Security Assistance (CSSA) Scheme aims to provide a safety net for those in need, the Subcommittee has examined all existing arrangements under the CSSA from various aspects. During the course of discussions, members are particularly concerned with the needs of children from CSSA families for Internet access.

Members are generally of the view that access to computer facilities and the Internet is the basic needs of students. As such, the Administration should include the relevant expenses in the items of services covered under the CSSA Scheme.

The Subcommittee is also concerned with the difficulties encountered by applicants in applying for CSSA, for example, the requirement for elders living with their family members to apply for CSSA on a household basis. The Subcommittee opines that this policy has made many elders ineligible for applying CSSA as their family members are not willing to apply or refuse to sign a statement, claiming that they will not provide financial support to their elders (commonly known as the "bad son statement"), so that the elders in poverty are plunged into unnecessary financial hardship. Moreover, the seven-year residence requirement has also made the new arrivals ineligible for CSSA. Many new-arrived mothers have to rely on their children's CSSA for a living. Although the Administration said that the Director of Social Welfare may take into account of each case to establish whether there is a genuine hardship for exercising his discretion to waive the application requirements, the Subcommittee is of the view that there is still a lot of room for improvement as regards the existing waiver mechanism.

Furthermore, members have expressed concern about the development of social enterprises (SEs) in helping the unemployed and disadvantaged. They take the view that the Administration should create an enabling environment for the development of SEs. In this connection, some members have made some suggestions for the Administration's consideration, including offering tax concession to SEs. The Administration should also identify and reserve government service contracts for priority bidding by specific SEs in accordance with their size and nature of business. In addition to cleansing service contracts and gardening service contracts, the Administration may consider identifying some minor maintenance works and repairs in the Housing Department and relax the tender requirements for priority bidding by SEs. Furthermore, the Administration may consider specifying in the contracts the need to employ a certain percentage of socially disadvantaged and local residents as well as to offer the minimum wage level.

In the Report, the Subcommittee has made 15 recommendations for the Administration's consideration. As the Report has already listed these recommendations in detail, I am not going to repeat them here. I would urge the

Government again to consider and accept the recommendations set out in Report and respond to them proactively.

President, next I will speak in my personal capacity.

President, I sigh with regret today because the Subcommittee will be dissolved after the debate on this motion. In fact, the Subcommittee to Study the Subject of Combating Poverty was established in 2004 to urge the Government to carry out poverty alleviation work. I remember the former Chief Executive, Mr TUNG announced, on the night of 24 December 2004, the establishment of the Commission on Poverty (CoP) in 2005. Unfortunately, the CoP was dissolved in 2007, and the implementation of the 53 recommendations on poverty alleviation was to be monitored by the Secretary for Labour and Welfare.

President, what makes me sigh is that after the Government has handed the work for poverty alleviation to the Secretary for Labour and Welfare, the Subcommittee, originally under the House Committee back in 2004, has been structured as it is today. Instead of being under the House Committee, the Subcommittee is now under the Welfare Panel, implying that its status has actually been downgraded. Disregarding whether members of the Subcommittee are diligent in their deliberation, the Subcommittee has, over the years, submitted a report every year, in which more than 300 to 400 recommendations have been proposed to the Government. Each recommendation is proposed after we have made an objective analysis of the figures collected from the Government, the HKCSS and members of the public. What makes me sigh is that it is very clear to us that the Government has only accepted two out of these 200 to 300 recommendations. One is the Transport Support Scheme put forward by us some years ago, but its scope has been narrowed. Only four DCs in the New Territories receive transport support, while the other 14 DCs have not been given transport subsidy. The other recommendation accepted by the Government is the inclusion of the Internet access expenses into the CSSA, a recommendation made by the current Subcommittee. Actually, are the conclusions put forth by members who have spent so much time to consider and discuss really not worthy of consideration by the Government? Or is it that the Government neither thinks highly of these recommendations nor considers them necessary? Regarding the recommendations raised by the Council after discussion with the executive authorities, it is disappointing to learn that the Government, though once indicated that it would take them into consideration, has eventually refused to accept these recommendations.

President, the reason for the continuous establishment of the Subcommittee term after term — the 6th term for this year — is that there is really a wide disparity between the rich and the poor in Hong Kong. Let us look at some figures: in 1996, our GDP was \$1 million and 621,000 Sorry, I am not very clear about these figures in millions, it was \$166 billion \$106 billion, and in 2009, our GDP was \$160.6 billion Sorry, I have to say it again. In 1996, it was \$1,006 billion, and in 2009, it was \$1,600.6 billion. That is to say our GDP has increased at a very fast pace. As for the per capita GDP, it has increased from \$164,000 in 1996 to \$229,000 or approximately \$230,000 in 2009. In other words, we have a per capita GDP of about \$20,000 per month. But what is our current median income? It is about \$9,000 for each person, and with regard to the \$20,000, where has the money gone? A four-person household should have \$80,000. But the average median income for a four-person household is approximately \$18,000. We can see that Hong Kong is rich, but the people are poor.

The Gini Coefficient rose from 0.518 in 1996 to 0.533 in 2006, indicating the disparity between the rich and the poor is getting worse, whereas the Gini Coefficient post tax and social transfer rose from 0.466 in 1996 to 0.475 in 2006. It is considered dangerous if the Gini Coefficient exceeds 0.5 pre-social transfer or 0.4 post-social transfer. Irrespective of figure before or after the transfer, Hong Kong is at the dangerous level. Is the Government blind and deaf, or does it just ignore the fact? Although the Government keeps saying that thousands of projects have been implemented, why does the problem still exist? If the Government has done so much, why so many people still think that the Government favours the business sector, and tilts its policy towards the business sector without giving them any help? This remark is not spoken carelessly, it is not based on our feeling but backed by the evidence that 1.23 million people are living in poverty. The so-called poverty line means that a person earns less than half of the median income, which is less than \$5,000 for an individual or less than \$9,000 for a household in Hong Kong.

President, why are there so many conflicts in our society? Why can someone earn applause from the crowd just by condemning the Government, be it in a civil or vulgar manner? Actually, it boils down to whether the Government really treats itself as a government, whether it treats its people as people, and whether it really cares for its people? The people can feel and see that the

government is not the one which they think is for them. Of course, if the Government is not elected by the people, naturally it needs not represent the people and work for the people. That may not be true. However, as a government ruling Hong Kong, it cannot avoid the issue when we are heading towards dual universal suffrage. If the Government does not build a good foundation for people's livelihood, there will be greater changes in the livelihood policies of the future government to be returned by universal suffrage.

President, the Chinese University of Hong Kong (CUHK) has recently conducted a continuous survey on "Public Attitudes towards the Harmonious Society in Hong Kong", which reveals that 26.5% of the respondents think Hong Kong is a harmonious society, a significant decline from 37.5% in 2008 and 37.8% in 2006. The survey also finds that 64.4% of the respondents consider the problem of wealth disparity "serious" and "very serious". Regarding the seven indicators that affect the community, taking a score of 5 as "very serious", it is most worrying that the problem of wealth disparity scores an average of 3.84. Even more worrying is that 25.9% of the respondents support the use of radical means to urge the Government to respond to their aspirations, a rise of 4.5 percentage points from 21.4% in 2008, or a 20% increase in two years, indicating the dissatisfaction and helplessness of members of the public towards the *status quo*. According to the estimates of the Institute of Asia-Pacific Studies of CUHK taking the adult population as 5.9 million people, it means that there are 1.53 million people agreeing to use a confrontational approach to protest, which is a serious warning signal. President, if the Government continues to neglect the issue of poverty and poverty alleviation, the figures just quoted will continue to rise. We hope the Government can immediately establish a CoP headed by a Secretary of Departments to tackle the poverty problem in Hong Kong.

Mr Frederick FUNG moved the following motion: (Translation)

"That this Council notes the Report of the Subcommittee on Poverty Alleviation."

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

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, first of all, I would like to thank Mr Frederick FUNG for proposing this motion debate. Mr FUNG has always been very concerned about the issue of poverty alleviation. I would also like to express my heartfelt thanks to all members of the Subcommittee on Poverty Alleviation (the Subcommittee) under the Legislative Council for their thorough examination on the issue of poverty alleviation and for putting forward 15 specific recommendations in the Subcommittee's report.

Like Members, the Government is also very concerned about the needs of the low-income group and the disadvantaged. Poverty alleviation and prevention is in fact one of the major tasks of the Government. All along, we have tackled poverty through a people-oriented and pragmatic attitude. Under our all-rounded and multi-pronged strategies, support and help is given to the grass-roots and the disadvantaged.

The overall poverty alleviation strategy of the Government is to strive to promote economic growth to create more job opportunities. In tandem, we invest heavily in education and child development, and provide training and retraining opportunities to raise the competitiveness and skills of our workforce so as to enhance social mobility and reduce inter-generational poverty. Moreover, different bureaux and departments will implement various district-based measures to respond to the different needs of individual districts and help the disadvantaged and needy residents in the area.

Moreover, the Government provides a social safety net and a wide range of free or highly subsidized services in the areas of social welfare, education, health care, housing, and so on, to ensure that the low-income group and the disadvantaged can meet their basic needs. In 2010-2011, the Government's recurrent public expenditure in these four major policy areas is as much as \$139.2 billion, representing as much as 57.2% of the total recurrent public expenditure of the SAR Government.

Faced with the economic recession triggered off by the financial tsunami in the past two years, Hong Kong people, especially the grass-roots, have been living through very difficult times. As such, the SAR Government has, over

time, rolled out a series of relief measures to "stabilize the financial market, give support to the enterprises and maintain employment" with the aim of stimulating economic development, improving livelihood and promoting employment. So far, the Government has put in up to \$110 billion for such purpose. These measures have brought about certain positive impacts in terms of stabilizing the economy, helping people tide over the economic adversities and alleviating their livelihood pressures.

The recommendations covered in the Subcommittee's report span across different areas and target groups. After listening to Members' speeches, I will briefly respond to their views.

President, I so submit.

MR WONG KWOK-HING (in Cantonese): President, I would like to speak in support of Mr Frederick FUNG's motion. I would like to talk about a number of poverty problems but as I only have a few minutes, I will talk about two problems. I would like to say that these two fundamental problems reflect the inadequacies of the Government's administration which need to be improved. Originally, the disparity between the rich and the poor is the product of a capitalist society. However, if the Government can make good use of public property in implementing policies and make reasonable reallocation, the wealth disparity can be alleviated. Regrettably, the Government's administration is not heading towards that direction and it has made various blunders.

I am now going to talk about two blunders made by the Government. First, imbalanced district planning, causing some districts to become impoverished. The most obvious examples of imbalanced district planning are Tin Shui Wai and Tung Chung, which are frequently mentioned by Honourable colleagues. These two districts, located in the New Territories West, are typical examples to illustrate the Government's imbalanced planning, giving rise to social and poverty problems. For example, the Government originally projected that Tung Chung would have a population of around 200 000, but the development of the district came to a halt because the Government had to tackle the financial tsunami and other problems. Therefore, the development of the Yat Tung Estate and Fu Tung Estate in Tung Chung stopped after several years. As a result, the

residents who have moved into these districts have to pay high travelling expenses and they lack job opportunities, thus, the district has become an isolated island.

The Yat Tung Estate in Tung Chung is farthest away from the city centre among all housing estates in Hong Kong. There are tens of thousands of people living there, and one fourth of its population receives Comprehensive Social Security Assistance (CSSA). What are the reasons for concentrating the poor population in that district? The Government frequently tells the residents of remote new towns that many community and social facilities cannot be provided on grounds of inadequate population, making life even more difficult for the residents. Various problems are created due to imbalanced district planning, and it is essential for the Government to re-establish the Commission on Poverty to remedy the situation and respond to the residents' appeals. This is the first point that I would like to make.

Secondly, being the biggest employer in Hong Kong, the Government should play an exemplary role by being a good boss and employer. That is the right thing to do. Nevertheless, that is not the case for the past 10 odd years. According to the statistics of the Census and Statistics Department (C&SD), the size of the poor population has grown, and the number of people earning \$4,000 a month has doubled as compared to that in 1997. We cannot make any comments if private enterprises are concerned. Yet, do people who work for the Government have a sense of belonging and job security, so that they can live and work in peace and contentment? No, they do not.

In the past decade or so, especially after the abolition of the two Municipal Councils, the Government has contracted out many of the work originally undertaken by front-line grass-root workers, and intermediary organizations are engaged to provide these services. It rewards the upper-ranked staff generously but gives the lower-ranked staff a niggardly pay. The salaries of the upper-ranked staff have increased constantly. That is not a problem for salaries should be increased when appropriate. The problem is that the salaries of the grass-root workers and front-line employees have always been adjusted downwards. There was a TVB television drama in the past and one of the characters was "Ah Mao, the street sweeper". As far as I recall, Ah Mao played by LEE Tim-sing was very happy and he had a strong sense of belonging, and I

believed that he could live and work in peace and contentment. "Ah Mao, the street sweeper" can no longer be found today because all such services have been contracted out.

Moreover, why has the Government failed to handle the rodent problem? Why have trees fallen down despite inspections? Recently, a more ridiculous incident happened at a park managed by the Leisure and Cultural Services Department (LCSD). The security guard saw someone fall into a one foot deep pool but he did not pull the person up from the pool. We are not criticizing any individuals; we just want to highlight the situation that causes front-line employees in predicaments: they lack employment protection and their salaries are low.

Over the past 10 years, the employment of Civil Service has been changed from permanent terms to contract terms, and even for civil servants on permanent terms, their probation period is as long as six years. Although the Government has recently decided to shorten the probation period to three years starting from 1 July, workers employed by government service contractors, employees on contract terms, and employees employed by intermediary organizations have still taken up the majority. President, I have compiled the following latest statistics on the LCSD: the LCSD has more than 8 000 employees on permanent terms, and there are more than 12 000 workers employed by government service contractors, employees on contract terms and employees employed by intermediary organizations. How can the LCSD staff have a high morale? As they only get a few thousand dollars a month, they just close their eyes and allow trees to fall down, rodents to breed and bite people. Secretary Denise YUE has written me a letter but I do not have time to read it out now. According to the Secretary, the employees' wages are determined on the basis of the latest Quarterly Report of Wage and Payroll Statistics published by the C&SD. In other words, their salaries will never be increased and they will remain at the level of \$5,000 to \$6,000 a month. How can they live and work in peace and contentment? How can the quality of government services be enhanced? How can employees have the incentive to work harder, enjoy their work and earn more money to solve their livelihood problems? Hence, the Government has taken the lead to create poverty, and one of the sources of the problem is its employment system.

MR TAM YIU-CHUNG (in Cantonese): The Report submitted by the Legislative Council Subcommittee on Poverty Alleviation (the Subcommittee) today sums up the Subcommittee's study on the policies relating to poverty alleviation in Hong Kong in the past one and a half years, and proposes a series of recommendations. The Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) identifies with the direction of the Report and supports most of the recommendations. We only have reservation about whether or not the former Commission on Poverty (CoP) should be re-established. The Government has pledged to alleviate poverty and the then CoP had raised a whole range of policy recommendations in this connection. Since the crucial task at present is to follow up and implement these recommendations, it is not a pressing task to re-establish the former CoP so as to conduct reviews and studies.

In order to follow the direction proposed in the Report, we think the Government must proactively adopt complementary financial measures. In recent years, the Government has frequently refused to implement welfare policies that require long-term implementation on the grounds that continuing financial burdens must be taken into consideration. Instead, it has only introduced some interim giveaway initiatives in the policy address or the budget. It is definitely essential for the Government give handouts when it is financially sound, but as it must be forward-looking, the Government should make more effective use of financial resources, and implement various long-term measures that can alleviate social contradictions, especially the measures for alleviating the disparity between the rich and the poor.

Poverty alleviation is an important task involving many aspects, and the Subcommittee has put forward 15 recommendations this time. To state succinctly, I think it is most important to strengthen the relevant work in three areas. The first area is promoting employment. It has been proven through actual practice that, the Transport Support Scheme implemented in four remote districts, namely Yuen Long, Tuen Mun, North District and the outlying islands in the past few years can really help low-income workers find jobs in other districts. Therefore, we hope the Government could expeditiously extend the Transport Support Scheme to all districts in the territory in order to benefit all low-income workers. As regards the difficulties of young people to get employed, the Government should create more jobs that are suitable for them and

provide enhanced training programmes to upgrade their vocational skills. The Government should also provide more subsidized training courses for young people so as to help them master new job-specific skills. In particular, the Government should assist them in participating in economic areas where Hong Kong enjoys clear advantages, including creative, information technology and green industries. Moreover, with the imminent implementation of the minimum wage system over the territory, will the new system create a new unemployment situation if the relevant bill is passed? I think the Government should make preparation to handle this problem.

The second main point in poverty alleviation is that the Government should introduce timely and specific financial assistance measures. For instance, the Government cannot rely only on the Comprehensive Social Security Assistance (CSSA) Scheme to solve the problems of the poor elderly. The problems with the current Old Age Allowance and CSSA schemes are that a recipient cannot just rely on Old Age Allowance payments to make ends meet and the elderly have to meet excessively stringent requirements when they apply for CSSA. So, if the Government wants to help the poor elderly, it should consider implementing an "elderly maintenance grant scheme" — as suggested by the DAB throughout the years — to provide essential financial assistance to those poor elderly who are not eligible for CSSA. Furthermore, to assist people with disabilities and patients suffering from chronic diseases, the Government should introduce a new "allowance for carers of people with disabilities". A monthly allowance of \$1,000 should be given to carers of the 120 000 disability allowance recipients, so as to alleviate their financial burden.

Third, the Government must enhance complementary measures in local districts with a view to achieving the objective of the district-oriented poverty alleviation policy. Although the Government has all along emphasized that poverty alleviation work should be district-oriented, quite a number of districts have to face the difficulties of inadequate complementary measures. The District Offices face a shortage of manpower, and they lack additional project-specific funding for local poverty alleviation work. Also, as District Officers do not enjoy adequate authorization, they have to put in extra efforts to promote inter-departmental co-operation and the result is not satisfactory. Furthermore, the Regional Social Welfare Officers are not allocated with

project-specific funding for poverty alleviation, and they frequently have to use the resources for daily work to handle the special problems in the districts.

The Report of the Subcommittee has no doubt recommended to the Government a range of poverty alleviation measures, but it has not answered one question. The Government has always stressed that it has already implemented a lot of new measures for poverty alleviation — the Secretary may elaborate this point in detail later — however, why do the public still have the impression that the phenomenon of wealth disparity has become increasingly serious in Hong Kong? This social phenomenon may be interpreted in two ways: firstly, the public think that the wealth disparity has become increasingly serious; not because the grassroots have not made enough efforts but because the social system has become more and more unfair. The efforts made by the grassroots are not proportionate to their incomes. On the contrary, rich people can easily acquire wealth that they do not deserve to have. In the past few years, in the wake of SARS or the financial tsunami, rich people were not adversely affected in any way and their wealth have increased substantially. Yet, the grassroots suffer from wage reductions or layoffs. Secondly, the Government policy is tilted towards rich people with the most typical example being the suspension of the construction of Home Ownership Scheme flats. Hence, people have the impression that the Government seems to accord priority to protecting the interests of rich people. The Government must look squarely at these points; otherwise, it will not be able to alleviate people's dissatisfaction regardless how many poverty alleviation measures have been implemented.

I so submit. Thank you, President.

MR CHEUNG KWOK-CHE (in Cantonese): The Legislative Council Subcommittee on Poverty Alleviation has met for 12 times during the current Legislative Council session. Over the past one and a half years, we have invited many district organizations and community groups to our meetings, with the hope of reflecting to the Government the true and uncensored picture of society. Regrettably, all efforts are in vain. The Government only listens to views but makes no effort to change the situation, which is disappointing.

"Meat is allowed to spoil in rich man's homes while at the roadside, people freeze to death". In a rich society such as Hong Kong, such an extreme scenario has not arisen, but should the Government wait until there are public outcry of grievances or that there are "people freeze to death" before it tackles seriously the problem of poverty in Hong Kong, and narrow the aggravating gap between the rich and the poor?

Please allow me to quote some data again. Figures from the United Nations show that the Gini Coefficient of Hong Kong has reached 0.533, ranking 18th from the bottom in the world. Our situation is worse than that of such developing countries as Vietnam or Egypt, not to mention other developed countries.

How has the Government responded to these figures? Let me quote the response of the Labour and Welfare Bureau to our Legislative Council, "Income disparity and poverty are two distinct concepts People may have low income and living standards despite a small Gini Coefficient, provided that their income levels do not vary significantly." Apart from this, the Government has also pointed out that, "Hong Kong is an open cosmopolitan economy, offering mature, diversified and international services. As our workforce comprises various employees with different skill levels, it is inevitable that the income disparity among individuals is wide."

From an academic point of view, the response of the Government is 100% accurate. However, this does not mean that we have to use such an indifferent mindset to cope with the current poverty problem of Hong Kong. Moreover, the Government has admitted that the economic system of Hong Kong will aggravate the gap between the rich and the poor. This means that the Government admits and sees the problem, but takes no action to rectify the situation.

We are not saying that the economic system of Hong Kong should be changed. We only hope that the Government can redistribute resources in a fair and reasonable manner to bridge the wealth gap, such that the lower strata of society can share the economic success of Hong Kong.

If the Government thinks that the Gini Coefficient fails to reflect the true picture of society, let us use the data from the Government to do some analysis.

The Hong Kong Council of Social Services has earlier used the data on household income provided by the Census and Statistics Department to do some analysis. It is found that in the first half of 2009, the number of Hong Kong people whose income was less than or equal to the local median household income of \$5,000 amounted to 1 236 000, an all-time high. Compared with the poor population of 1.21 million in 2008, our poor population has increased by 20 000 or so in just half a year.

Ironically, while the poor population is soaring, Hong Kong still appears to be a land of prosperity. Luxury flats has mushroomed in various districts of Hong Kong, which seems to be a declaration to the world that Hong Kong outruns other places in the world in terms of the number of tycoons.

This inevitably makes me think of the incident concerning 39 Conduit Road, which is still under heated debate of late. Among the 24 sold units at the above site, only four units have had the transactions completed by the postponed dates of transaction, while buyers of the remaining 20 units have all opted out of their agreements, and the deposit of about \$130 million, which is equal to 5% of the purchase prices, has been forfeited. I do not know whether some people have provided fabricated figures to cook up hot sales with a view to pushing up property prices. But if this is viewed as a fact, it can offer us a glimpse of how lavishly the tycoons in Hong Kong spend their money.

Do you have any idea how much \$130 million is worth? This sum of money is enough to support 20 four-person CSSA families for 60 years. Given that the construction cost of a public housing unit is about \$300,000, this sum of money is also enough to build 400 public housing units. If the Government thinks that those Hong Kong tycoons who just throw away \$130 million without raising an eyebrow are not wealthy, I really have nothing to say.

To bridge the wealth gap and improve the living quality of the poor population, we Subcommittee members have raised many concrete proposals, which I believe do not require further elaboration in this Chamber. What the Government needs to do at present is to change its existing mindset, take a close look at the fact, and revise its policy objectives. Only through this can the livelihood of the lower strata in Hong Kong be essentially improved. Therefore, we demand the Government set up immediately a Commission on Poverty

comprising different stakeholders from society, with a view to improving the livelihood of members of the public.

President, I so submit.

MS LI FUNG-YING (in Cantonese): President, the Commission on Poverty (CoP), established in May 2005 by the Government, was dissolved in June 2007 upon completion of its report. The follow-up work of poverty alleviation has rested with the Subcommittee on Poverty Alleviation (the Subcommittee). Members may refer to Appendix IV of the Report of the Subcommittee for the latest progress of implementing the recommendations of the then CoP. A table covering as many as 20 pages is contained therein and it has set out 53 recommendations. A certain degree of progress has been achieved with respect to each recommendation.

For example, regarding the progress on supporting the unemployed and the working poor, as well as promoting economic development and creating job opportunities for low-skilled workers, the Government will carry out 10 major infrastructure projects and build a new cruise terminal at Kai Tak to create a large number of jobs, including low-skilled jobs. This appears to be pretty good progress. However, in a nutshell, such measures have simplified the policies on poverty alleviation in that certain policies devised in the Policy Agenda are packaged as poverty-alleviating policies, so as to justify the Government's work on poverty alleviation. Another example can be found in the area of encouraging local employment. The only measure taken is the award of four security and cleansing services contracts by the Housing Department (HD) for the in Tin Shui Wai for the employment of local residents. If the Government had indicated that changes would be made to the arrangements for outsourcing the services provided by public organizations by stipulating in the security and cleansing services contracts that priority would be given to employing local residents, this would be a genuine move to encourage local employment. Regarding the present arrangement for awarding the relevant contracts of the HD only in Tin Shui Wai, which serves as a response to the request for encouraging local employment, I do not think there will be any practical result.

In fact, the measures contained in the summary of progress in implementation of the recommendations of the then CoP are mostly superficial and piecemeal in nature. They are meant to account for the Government's work on poverty alleviation. It will not be difficult for us to foresee the effectiveness of such superficial and piecemeal measures. President, at the end of last year, the United Nations Development Programme published a report on income inequality worldwide. Among the 11 poor and rich countries in the world with the greatest wealth disparity, this problem was the most serious in Hong Kong. The poorest 10% of the population only shared 2% of the economic success of society as a whole, while the richest 10% shared 34.9% of the fruit of labour in society. According to the latest General Household Survey published by the Census and Statistics Department, the number of low-income families earning a family income of less than \$6,000 increased from some 320 000 in 2006 to over 340 000 this year. These are the "fruits" of our policies on poverty alleviation.

President, why was the CoP dissolved in just two years since its establishment? Why has our poverty alleviation work turned out to be aggravating the problem? What kind of attitude has been adopted by the SAR Government towards this problem in society? Facts speak louder than words. The most crucial question in dealing with poverty problem in Hong Kong is how to allocate this cake properly. I have raised this question a number of times in this Council and some time later, the motion debate on enhancing the administration of tax policy in Hong Kong will also touch on this question. I reiterate here that if the Government fails to tackle this problem at root and alleviate poverty at source, even if it launches more superficial and piecemeal measures for poverty alleviation under whatever pretexts it has invented, it will still fail to alleviate poverty in Hong Kong and relieve the animosity between the rich and the poor.

Thank you, President.

MR TOMMY CHEUNG (in Cantonese): President, having gone through many years' of development, Hong Kong can now be called a fairly well-off society. Having braced the impact of the global financial tsunami in 2008, Hong Kong's per capita GDP as at the end of last year has already gone up to some \$233,000.

But unfortunately, according to Government statistics from January to September last year, there were almost 646,000 persons living in households with incomes lower than the average CSSA, representing a sharp increase of 25% over the figure in 2008. If the poor elderly were also included, the total number would be almost 850,000. Hence, it seems that measures to narrow the gap between the rich and the poor have not been working effectively and the situation is indeed worrying.

The Liberal Party is equally concerned about the poverty problem as other Members. We also hope that we can make concerted efforts to urge the authorities to do more in respect of poverty alleviation so that the narrow the wealth gap to promote social harmony.

Nonetheless, I think we have to track down the root causes of the problem before a solution can be identified. Otherwise, the measures taken will just fail to achieve the desired results. We have to identify the real causes of our poverty, that is, whether it is because of the demographic policy of One-way Permits which leads to the continuous inflow of low-skilled and low-qualification workers from the Mainland, or whether it is because of problems in the socio-economic structure which hinder upward social mobility? Or are there any other reasons? The authorities must conduct thorough research on the causes of the poverty problems in Hong Kong so that targeted measures can be identified to ease social conflicts.

The Liberal party considers that a sustainable solution to the problem of poverty is to teach those in need how to fish, so that they can catch the fish themselves. By empowering the grassroots, they can rise out of poverty and no longer need to rely on prolonged assistance from others. Therefore, the Liberal Party has all along called on the authorities to provide in-service training programmes with subsidies for middle-aged employees to help them achieve self-improvement and enhance their competitiveness so that they can have better pay.

On the other hand, a knowledge-based society does not only affect the middle-aged. The mode of learning for children has extended beyond traditional textbooks to the boundless Internet. As pointed out in the Report of the

Subcommittee on Poverty Alleviation (Subcommittee), the lack of Internet access will impede the learning and development of children from CSSA families, and will result in inter-generational poverty. As such, the Liberal Party has all along worked together with different groups to call on the Government to provide subsidies for Internet access charges to the children of CSSA families. Fortunately, the Government has finally responded to this demand in the Budget announced earlier this year.

Moreover, the Government has also promised to increase the financial provisions to schools and non-governmental organizations to organize more extra-curricular activities. This is of course an improvement. However, some children of grass-root families may not even have the money to pay for the travelling expenses to join extra-curricular activities. As such, the Liberal Party also calls on the Government to consider providing children of grass-root families with an allowance to pay for extra-curricular activities as well as travelling expenses. In this way, these children can have the opportunity to learn outside the classroom and achieve holistic development for both their minds and bodies.

Regarding the disregarded earnings arrangements (DE) mentioned in the Subcommittee's Report, the Liberal Party also supports the need for its review because under the present arrangement, although CSSA recipients can theoretically retain up to \$2,500 of their earnings, the real additional earnings for them might only be less than a thousand dollars after deducting the necessary transport and meal expenses. This might not have any positive effect in terms of encouraging CSSA recipients to find employment actively.

On the other hand, we call on the Government to take welfare-to-work initiatives, so that adequate job opportunities are created for the grassroots. In addition to driving forward the development of our traditional Four Pillar Industries, the Government should also systematically develop the six industries in which Hong Kong has clear advantages and explore the opportunities for district-based economic activities so as to create more employment opportunities. Of course, this would necessarily involve continuous efforts by the Government to remove restrictions and barriers so as to further improve business environment.

President, the Liberal Party supports enhancing the support provided for the disadvantaged groups who cannot earn a living themselves. In this respect,

the absence limits for "fruit grant" and CSSA of the elderly should be relaxed as much as possible so that the elders are free to choose if they want to live in the Mainland after retirement.

By coincidence, the High Court has earlier on ruled that the absence limit of 56 days per year prior to the application of CSSA has impeded the right of Hong Kong people to travel and to leave Hong Kong. We hope that the Government can conduct its review as soon as possible so that the restriction can be lifted to the fullest extent allowing better treatment for the elderly.

Nonetheless, the Liberal Party has certain reservations about the recommendation made by the Subcommittee in its report about removing the seven-year residence requirement under the CSSA Scheme and relaxing the requirement for the elderly to apply for CSSA on a household basis. This is because these measures would create a heavy burden on public expenditure and are prone to abuses. More importantly, these recommendations might give out wrong messages. For example, new immigrants might think that once they settle in Hong Kong, they can rely on CSSA over a long period of time. Moreover, it might result in an undesirable situation where children do not take care of their parents. But of course, the authorities must exercise its discretion to provide timely assistance to those who face financial difficulties for a period of time.

As regards the provision of tax credit to strengthen support for low-income households, while the intention is good, it should be adopted carefully to supplement the existing CSSA system so as to avoid abuse and incur unnecessary public expenditure.

President, I so submit.

MR LEE CHEUK-YAN (in Cantonese): President, I remember Donald TSANG once said "it is difficult for Hong Kong to be poor". That was said when we were discussing matters relating to integration with the Mainland. But what is the reality? The reality is that with the Donald TSANG's government, it is difficult for Hong Kong not to be poor. Why is that so? In fact, the problem is not with Donald TSANG himself, it is more so with the current thinking of the

Hong Kong Government. It absolutely sees no need to resolve the poverty problem because it considers poverty something unavoidable in a capitalist society. Every time we argue with Donald TSANG, he would invariably say that there is disparity between the rich and the poor all around the world and Hong Kong is no exception. However, I do not know whether it dawns on the Government that although the disparity between the rich and the poor exists in every capitalist society in the world, Hong Kong's problem is especially serious. And that is because the Government has not intervened suitably from a policy perspective to resolve the existing wealth disparity and the increasing inequalities in the society.

What has the whole system created in society now? At times of economic downturn, the workers and the poor are made to shoulder the burden of the crisis in the form of salary reductions and job cuts. It happens every time. But when the economy picks up, their salary will not increase. The workers are already very poor and it is very difficult for them to get salary increases. As a result, their salaries are getting lower and lower. In the past 10 years, Hong Kong has suffered the impact of a financial turmoil, a SARS pandemic and then, another financial tsunami. As a result, the salaries of workers, especially the front-line workers in general, have been dragged down. Those who originally earned more than \$10,000 per month only have less than \$10,000 now. Those who originally earned \$10,000 per month only have some \$7,000 to \$8,000 or even some \$5,000 to \$6,000 now. In view of this decreasing trend of salaries, how can Hong Kong not be poor? If a hard-working employee cannot support his family with his salary, how can he not be poor?

However, the problem is that the Government has not intervened from a policy perspective causing the problem to aggravate. As you all know, the kind of intervention I am proposing is of course the setting of a minimum wage which this Council will debate on next week. But the present problem is that notwithstanding the debate on the minimum wage legislation, the exact level of the minimum wage still remains uncertain. The Hong Kong Confederation of Trade Unions asks for \$33 per hour, but can this be achieved? We do not know yet. However, when we ask for \$33 per hour, there is a big corporation — Cafe de Coral, President, do you know what it says? It says if the minimum wage is set at \$33 per hour, it will issue a profit warning.

Let us look at the situation of Cafe de Coral. Its annual turnover is almost \$5 billion while its net profit is \$480 million. How can a corporation so successful — successful in the sense that it nets a \$480 million profit — say that if its workers' salary is \$33 per hour, it will issue a profit warning? How much is Mr Michael CHAN's salary? We can see from the figures what kind of disparity between the rich and the poor is. The remuneration of Mr Michael CHAN is more than \$9 million annually while a worker in Cafe de Coral earns about \$5,000 per month or \$60,000 annually. He has to work 160 years to get what CHAN earns in one year. This is what disparity between the rich and the poor is about in Hong Kong with those in senior management sucking up all the financial resources. In fact, the results of Hong Kong's prosperity and economic development of Hong Kong are sucked up by the most senior management, big corporations and CEOs who are not even willing to let the workers live off the crumbs on their table. As a result, Hong Kong becomes what it is now. Hence, the establishment of a minimum wage can at least act as a cushion to avoid the further escalation of the poverty situation.

Nonetheless, the impact of minimum wage on resolving the disparity between the rich and the poor is minimal because Hong Kong does not have a policy of collective bargaining. As a result, the salaries of workers have always been kept low artificially and there is no way they can fight for relatively reasonable pay packages. Salaries that have been reduced will never be topped up and the workers are left to struggle with low wages. The Secretary also knows that as Hong Kong has abolished the legislation on collective bargaining, trade unions still do not have the right to collective bargaining today causing the worsening disparity between the rich and the poor.

The third area which the Government has failed in terms of policy is the provision of transport subsidies to low-income workers, which is also a demand I have made time and time again. The Secretary will no doubt state in his reply later on that a proposal on the way forward will be made upon completion of the ongoing review by the end of the year. When we discussed the matter with the Financial Secretary, he said the funding provisions were ready pending the Secretary's proposal. When I talked to the Secretary, he however said that further study was required. Can the matter be expedited? Notwithstanding the financial provisions earmarked by the Financial Secretary, the Secretary however

is unwilling to use them. This was in fact the Secretary's undertaking last year and the matter has been delayed until the end of this year before a proposal will be made. We have no idea what the details of the proposal will be and whether it is feasible. For the low-income workers, the provision of transport subsidies is critical.

President, I also want to talk about the elderly. We all know that the poorest people in Hong Kong are the elderlies. Why? Because every place in the world has established old age pension schemes but not Hong Kong. Around the world, elderly persons beyond the age of 60 or 65 can receive old age pensions from the Government in recognition of their contribution to the society. However, elderly persons in Hong Kong only have the \$1,000 "fruit grant". How can the elderly live on this \$1,000? As a result, some elderly persons have to make a living out of collecting cardboard boxes. This is what Hong Kong is like without an old age pension scheme. Is that not very shameful? Hong Kong does not even provide the elderly with basic benefits. Why people in other parts of the world can live a happy retirement life while the elderly in Hong Kong cannot? This is also a matter of government policy but the Government has never done anything in this respect.

President, finally, I have to spend a little time on the Commission on Poverty (CoP). While I do not usually agree to the over-establishment of committees by the Government, our Government is very weird for it can only come up with new policies with the establishment of committees. Therefore, I have no choice but to support the establishment of CoP. The fact is if the Government is willing to do its part, we do not have to establish CoP. The truth is it is a waste of time. But if CoP is established, the Government will at least implement some policies for the sake of doing something. That is why I reluctantly support the establishment of CoP. President, I hope to see some genuine improvement to the problem of poverty. Thank you.

MR IP WAI-MING (in Cantonese): President, today we are here to discuss matters concerning the Subcommittee on Poverty Alleviation (the Subcommittee) again. Since joining the Subcommittee last October, we have had long discussions on the issue of poverty and poverty alleviation, and we have also

discussed it for a number of times in the Legislative Council. However, I notice that every time we discuss the issue, the views of many colleagues (including me) are basically more or less the same. Secretary, please allow me to put it bluntly, the question has been discussed to the extent that we are tired out. Apart from conducting some proactive surveys, it appears to us that the Secretary does not have any specific policies to deal with the problem, thus making us somewhat disappointed after all these repetitious discussions.

Is the disparity between the rich and the poor really a serious social problem in Hong Kong? President, I think there is a huge and serious difference in views between that of most colleagues in the Legislative Council and members of the public and that of the Government. It seems to me that the Government has all along maintained that the problem of wealth disparity may not really exist in Hong Kong. If we measure the poverty situation in Hong Kong by either the Gini Coefficient or the 24 indicators of poverty (including 6 community-based indicators and 18 others in the light of various stages of life) put forth by the Government, we have the conclusion that the problem of wealth gap is serious in Hong Kong. However, it appears to us that the Government does not admit or wish to understand the problem. As the person responsible for this task, the Secretary, of course, hopes to conduct as many surveys as possible. However, the Chief Executive and the Financial Secretary seem to think that it is not a big problem. Precisely because of the difference in thinking, there is always a discrepancy between the Government's policy and our expectation, or the Government has failed to respond to the views of the public on this problem.

I remember at a banquet with some organizations last week, a senior management staff of a big company sitting next to me opined that the Government was not doing enough in this regard, and that the problem of disparity between the rich and the poor existed in Hong Kong. Regarding such problem, although the Government has presented to us a lot of data and information, why do members of the public still think that the problem actually exists? I think the most important reason is that members of the public consider the existing system not fair, particularly the system of distribution. No matter how hard they try to earn money and wish to improve their living, they are still unable to do it eventually.

I have come into contact with a mother of a single-parent family, who has to work 14 to 15 hours every day. She feels remorseful towards her daughter for not spending enough time with her. But the question is: how can her and her daughter's living expenses be met if she does not go to work? Moreover, many young people, not those lazy ones whom we always talk of, can still not improve their living even though they work hard for many years after graduation.

Another problem is the tilting of policy. Members of the public are of the view that the Government tilts its policy to protect the interests of large corporations, especially large property developers. A case in point is the resumption of the construction of Home Ownership Scheme (HOS) flats mentioned by some colleagues earlier, the Government is simply doing nothing to tackle the problem.

Moreover, regarding the tax system — there will later be a motion debate on it — we are of the view that the Government can relatively narrow the wealth disparity by resource redistribution through taxation, but why does the Government take no action? All along, the Government has not taken any active measures. In regard to such situation, what are the problems reflected in the policies of the Government?

President, different departments are recently conducting consultations. The Transport and Housing Bureau is conducting a consultation on the issue of subsidizing home ownership to address the public demand for resumption of construction of HOS flats. The consultation will take four months, and the findings will probably be available in September or October. Another consultation is being undertaken by the Social Welfare Advisory Committee on the long-term social welfare planning in Hong Kong. President, very unfortunately, it is disappointing that these two consultations have given us an impression that they lack substance and have not really responded to the aspirations of members of the public.

Concerning the issue of subsidizing home ownership, the Government always says it has taken no stance. However, if the Government is taking no stance, how can members of the public give their comments or put forth their views? As such, it is reflected in these two consultations that the Government is not doing enough and has separated itself from the public. It is very dangerous

for a government to separate itself from the public. We hope the Government will face the problem squarely. Most importantly, it has to face the existence of the wealth disparity problem squarely, this problem is not non-existent as thought by the Government.

Thank you, President.

MR LEUNG YIU-CHUNG (in Cantonese): President, Mr Frederick FUNG was very emotional when he addressed the Council just now. He said he was very unhappy because the Subcommittee on Poverty Alleviation (the Subcommittee) has been established for six years and he did not know whether it will still be established next year. Therefore, he considered it regrettable.

He also mentioned another point. Over the years, more than 200 different recommendations have been made by the Subcommittee. However, he has, to date, yet to see any concrete response from the Government on these 200-odd recommendations. He found that the six years spent on the matter was in vain. That is why he was very sentimental.

I want to tell Mr Frederick FUNG that firstly, if we no longer need to set up the Subcommittee, it should be a good thing. Why? Because the Subcommittee's work will no longer be done by us. Then who should be taking charge? It should be the Government. It should be the Government which proposes more than 200 recommendations on how to narrow the gap between the rich and the poor and for us to evaluate what should be done and what should not. The roles should be reversed. The situation arises because the Government has done nothing to deal with the problem in the past and we have taken its role instead. That is what I meant.

Therefore, if the Secretary says, "This will be the last meeting of the Subcommittee, but it does not matter because the Government will form its own Commission on Poverty and play its role in the matter." That will make us all very happy. Is that right, Frederick? That should be better. If the Government can put forward 200 recommendations for us to evaluate on, that should be even better.

President, I think that is what we want to achieve with today's motion debate. I hope the Secretary can respond in such a way later on. However, I honestly do not think he will do so today because if the Government really wants to play its role, it should do so six years ago instead of today. But unfortunately, the Government just keeps on handing in "blank answer sheets" for the past six years.

Frederick FUNG also mentioned that it was most regrettable that though we have at least made 10-odd or even 30-odd recommendations to the Government in each of the past six years, the Government has never given a positive response to any of these recommendations, which span across a wide spectrum including elderly persons, women and social enterprises, and from different angles. Does the Government really have the heart to alleviate poverty? The answer is plain to see. Has the Government really made any efforts to alleviate poverty? The answer is also plain to see.

Summing up our experience in the past six years, I would say it is a case of the Government having neither the heart nor the resources to alleviate and eliminate poverty. That is my conclusion. But, President, I will of course not settle on this conclusion. Why? Because the disparity between the rich and the poor in Hong Kong society is still very serious. If that is the end of the whole thing, we would have erred also because we have the responsibility to put the Government to task by facing and resolving the problem.

I am also concerned about one thing. The Government always gives us the impression that no policy is required to resolve the poverty problem. Its stance is that once the economy has recovered, the problem will simply go away. I remember in paragraph 166 of this year's Budget speech, the Financial Secretary said, "As Hong Kong is a small and open economy subject to external constraints, it is inappropriate for us to solve the unemployment and poverty problems through large-scale redistribution of wealth. If we adopt this approach, which focuses on providing high levels of welfare, we will have to overhaul our tax regime and tax rates, weaken wage elasticity and adjustment function of the market, and fundamentally change our well-established mode of economic operation. I don't believe this will be acceptable to our society at large. I believe that in the long run, the fundamental solution to the problems of unemployment and poverty is to promote overall economic growth so as to provide opportunities for wealth creation in the community."

What is meant by "fundamental solution"? That means those in poverty are just left to swim or sink. Why? Because the Government will not put in efforts or implement policies to deal with the problem. It just sits there waiting for windfalls, waiting for economic recovery and wealth creation by the society, then the poverty problem will simply be resolved. That is the logic and the direction of the Government.

President, is this the way to solve our problem? Let us not talk about the situation before Hong Kong's reunification. It has been 13 years since our reunification and the economy has seen both good and bad times. However, during these ups and downs, we never see our poverty problem resolved. Not even once. Our poverty problem is still extremely serious. In the international community, it is quite unthinkable that Hong Kong performs worst among developing regions of the world in terms of the gap between the rich and the poor. This is a regression. Therefore, we cannot tackle the problem with this mindset. No matter what the Secretary says, it is meaningless. The SAR Government should stop waiting for natural wealth creation as a result of economic development and claims that the poverty problem can be resolved in this way. This logic is just rubbish. If this situation continues, we will never resolve the problem.

Why do I sum up the Government's work as having neither the heart nor the resources to alleviate and eliminate poverty? That is because the Government is unwilling to allocate resources and it lacks the determination to alleviate and eliminate poverty. This can never solve the problem. But, President, the Government indeed has the resources to do so. Why do I say so? Because we have a hefty \$500 billion of fiscal reserves. This is an enormous sum. Not many societies have such a large fiscal reserve. Moreover, our Government has also said that it is sufficient to maintain fiscal reserves at a level equivalent to 12 months of government expenditure. But what is the current level? Our fiscal reserves now are equivalent to 21 months of government expenditure, that is, almost double the minimum requirement. Therefore, do we not have the resources? Yes, we do have the resources, but the problem lies with whether the Government is willing to use these resources? Whether it has the heart to do so? If it really has the heart to do so, then it should let us see its determination.

Hence, I think if we want to resolve the poverty problem, we must take the right path and change the direction. The Legislative Council should not set up any committee now. Instead, the Government should set up its own commission to formulate the policies and invite the Legislative Council to examine and evaluate its proposals. This is the meaningful and useful way forward. After today's discussion, I hope the Secretary can embark on the right track by establishing the Government's Commission on Poverty to alleviate the disparity between the rich and the poor.

President, I so submit.

MR ALAN LEONG (in Cantonese): President, according to the Human Development Report published by the United Nations in 2009, among the 27 regions with very high human development, Hong Kong has the biggest gap between the rich and the poor as indicated by a Gini coefficient of 0.533 which is the highest in the world. In 2009, Hong Kong had a poverty population of 1.23 million, whose income was less than half of the median monthly household income. This represented an increase of more than 20 000 people from the end of 2008. The number of people possessing more than US\$1 million was 75 000, representing an increase of more than two-fold from last year. The rate of increase was also the highest in the world. From these figures, it is clear that the disparity between the rich and the poor has not been resolved. Instead, it is getting more and more serious indicating a possible onset of inter-generational poverty.

President, it should be very easy for Hong Kong as a wealthy and developed city to tackle the problem of poverty alleviation. However, since the Financial Secretary resumed office, he had reduced profits tax and the duty on wine to the benefit of wealthy people. However, various rounds of giveaway measures announced in the budgets have failed to benefit the majority of those having the greatest need with the least possessions. In the last financial year, Hong Kong has a fiscal surplus of \$25.9 billion, which was some \$10 billion more than expected. But fortunately, notwithstanding the hefty fiscal reserves, the Government has yet to review whether the items of goods and services covered under the current CSSA standard rates, which were last reviewed in 1996, are adequate to meet the basic needs of the recipients. While the Government is selling land to the wealthiest people to build palace-like luxurious

houses, many elderly persons have to wait many years before they can stay in subsidized residential care homes. Some died while they were still waiting. In the context of the Subcommittee on Poverty Alleviation (the Subcommittee), many cases of these unresolved problems have been discussed.

President, in terms of poverty alleviation and elimination, it is a case of the Government "not taking actions rather than not being able to take actions". The worsening wealth disparity is the result of the Government's misplaced trust in the principle of "big market, small government". The negative impact of such is that in the quest of economic growth, the Government has let a handful of people monopolize wealth. The trickle-down effect often mentioned by the Government has not occurred. Instead, the interests of the grassroots have been sacrificed in the face of market monopoly by big consortia and big businessmen.

President, the disparity between the rich and the poor is a major issue that Hong Kong must face up to. The Government must first formulate a clear direction with various short, medium and long-term objectives before taking decisive actions so that this deadlock can be broken gradually.

President, the majority of the grassroots in fact want to earn their living by working hard. Therefore, policies implemented by the government should encourage people to get out of poverty with their own efforts. However, under the current policies, the grassroots are being cornered into a dead end with no way out.

For example, for families where both parents have to work long hours or for single-parent families, they need reliable and affordable child care services. The unemployed or low-income workers living in remote areas need transport subsidies so that they can find employment or work in outside areas. And why the Government does not provide people suffering from chronic illnesses with new medicines which have better effects? From a humanitarian point of view, new medicines can alleviate side effects. From the overall social perspective, the patients can return to society upon recovery and become independent. They are also part of the precious human resources of Hong Kong. President, cases such as rental increases by The Link Management Limited, no designated places for hawking, eviction of bootblack hawkers, as well as prosecution of ice cream vendors and street performers happen every day. While these citizens do not

need any help from the Government, the bureaucratic system and insufficient resources have devoid them of a chance to make their own living.

President, the Civic Party considers that the absence of a fair political system is the root cause of the unresolved wealth disparity in Hong Kong. Our Chief Executive only needs to be accountable to the big businessmen and the small circle of people. Half of the Members in this Chamber are returned from the privileged functional constituencies. As a result of the separate voting system where the majority has to follow the wishes of the minority, many motions beneficial to people's livelihood have been vetoed. President, if there is no democracy, there is no livelihood. We must first have a Chief Executive who is accountable to the people and a legislature with all members returned by "one man, one vote" without any privileges before we can resolve the disparity between the rich and the poor once and for all. Without the monopoly by big consortia and big businessmen, the ordinary men and women in Hong Kong can also find their way out.

I very much hope that through today's motion debate, the Government can seriously and pragmatically formulate some short, medium and long-term plans so as to thoroughly resolve the deep-rooted conflicts and the disparity between the rich and the poor in Hong Kong.

I so submit.

MR ALBERT CHAN (in Cantonese): President, on the problem of poverty, Prof Nelson CHOW of the Social Work and Social Administration of the University of Hong Kong has in fact written a book 30 years ago, which was very famous in our generation, about the problem of poverty amidst Hong Kong's wealth. He pointed out 30 years ago that poverty was a general problem in the so-called developing economic system of Hong Kong towards a wealthy society.

Many years ago, I have also criticized the policies of the Hong Kong Government in this Chamber. At that time, I have already predicted about the gradual increase of the middle class in the Mainland. With the development of its economic system, increasing economic activities would improve the salaries of the people. The wealth of social groups in society would result in the increasing number of the middle class. We can all see that the Mainland has been

developing towards this direction in the past 10-odd years. At that time, I have also criticised that Hong Kong is moving towards poverty. A prediction was made and after less than 10 years, the problem of poverty has become a worsening phenomenon. However, the Hong Kong Government is still in a dream, high officials only care about their well-paid jobs and have completely ignored the existence of this problem.

President, the worsening problem of poverty is absolutely created by the Hong Kong Government single-handedly. Of course, the former Hong Kong Government under British rule has certain responsibilities because the problem involved the entire economic system and the overall government policies. When Donald TSANG worked in the Treasury Bureau, the then Financial Secretary was Sir Hamish MACLEOD who emphasized very much the so-called minimal intervention. He strongly considered that the Government should keep intervention at a minimum. The "big market, small government" concept adopted by the Hong Kong Government later on was born out of Sir Hamish's philosophy of keeping the role of the government to a minimum. Therefore, it follows that while the Government is said to be non-intervening, its policies are basically geared towards giving the big consortia a free rein to continuously expand their monopolies. As the situation worsens, many small businessmen and shop owners are being pushed out of the market in Hong Kong. In the past, corner shops selling rice or beverages were still viable, but they have now vanished one by one as they were forced out of business by the monopoly of supermarkets. Moreover, small shops selling clothing items or shoes also fail to maintain viable operation as they are being gradually replaced by chain stores. In the past, operators of corner noodle shops could still barely make a living. But now, these shops are being replaced by fast food shops. President, if one is to operate a cooked food stall selling fish balls, the monthly rental for a relatively good shop space alone will cost more than \$100,000. Their operation has really become increasingly difficult.

In the past, operators of shops in malls managed by the Housing Authority could still barely make a living. But it has become a thing of the past after The Link took over the management of the malls. Rental increases demanded by The Link are crazy. I have recently helped an owner of a Chinese medicine shop in Tin Shui Wai. He has been operating from the date people started moving to the housing estate to the completion of the mall. The final monthly rental he paid was \$60,000. But The Link has increased the rental to \$120,000 per month.

Just imagine, in this faraway district of Tin Shui Wai North, a poor district dubbed the City of Sadness, the monthly rental of a shop space can be as high as \$120,000, representing a two-fold or 100% increase. From this example, it is quite clear how difficult it is to operate a small family-owned shop in Hong Kong. The Link has even rented all the shop spaces after renovation to chain stores and refused to rent shop spaces to owners who have formerly operated chinese medicine shops there, even though they offered to pay double rent. The Link has also refused to renew the tenancy of a restaurant which has operated there for 10 years. Instead, it offered to rent the shop space to chain store operators. It is evident that the monopolistic operation of our economy is created single-handedly by the Government.

The second question is about the Government's policy on contracting out services. In the past, especially in early 1990s, the monthly salary of a workman employed by the Government to perform cleaning duties was about \$8,000 to \$9,000. Presently, after 10-odd years, a worker doing the same kind of work today earns as little as \$3,800 per month after sub-contracting. And the cleaner who earns \$3,800 per month now has to work full-time. We can see that a person who earns \$3,800 per month must be living below the poverty line. In the past, a workman employed by the Government to perform the same cleaning duties earned \$9,000 per month. The present salary level may have already increased to \$11,000 to \$12,000. However, due to the policy of sub-contracting by the Government, services which were directly engaged by the Government originally have been contracted out. After sub-contracting by the contractors, workers who perform the same kind of work are put through hell and have to live in absolute poverty.

The Government originally intended to deal with the problem of poverty. In a high profile gesture, it even established the Commission on Poverty (CoP) chaired by Henry TANG. Befitting his usual style of "dangling in the air", Henry TANG "dangled" for six years and CoP's work was a total failure. It even formulated He was very smart. Poverty is not eliminated by implementing measures to help the people get out of poverty. Instead, it is done by giving "poverty" a definition which is impossible to delineate so that nobody will know exactly how "poverty" is defined. It is absolutely ridiculous to turn poverty into an abstract concept, vapourize it or even making it non-existent at all. Therefore, if this "dangling" Chief Secretary for Administration were to become the Chief Executive, Hong Kong people will surely suffer. He just needs to

change the definition of things and all problems will go away. Then he can go on "dangling in the air", is that right? Therefore, I call on LEUNG Chun-ying and Rita FAN to make more efforts so that Hong Kong will not be dragged down by this "dangling" Chief Secretary for Administration. President, maybe you can also consider running for the office of the Chief Executive. Surely, you are better than the "dangling" Chief Secretary for Administration

Another question is the Government's responsibility and it finally goes back to the role of the Government. There is no doubt that the responsibility lies with the Government. Secretary, more than one million Hong Kong people live in poverty and you are responsible for it. If you see poor people suffering continuously and you just turn a blind eye and do nothing, you are guilty, Secretary, and you will really go to hell. If you cannot deal with these problems, this is a complete dereliction of duty on your part. And it is not only you who are derelict of your duties, all Secretaries of Departments and Directors of Bureaux and even the whole accountable team are derelict of their duties.

PRESIDENT (in Cantonese): Mr CHAN, speaking time is up.

MR RONNY TONG (in Cantonese): President, the objective of our Subcommittee on Poverty Alleviation of the Legislative Council is not to seek recognition from the public, but recognition from the Government. But unfortunately, to achieve this objective is, to put it plainly, a tall task indeed. President, it is chiefly because there is a sea of difference between Members of the Legislative Council and the Government in the overall mindset and fundamental position on poverty. On the question of poverty, the Government's approach can be said as "treating the head when it aches and treating the foot when it hurts", and "trying to cover seven pots with just six lids", not being able to have all the pots properly covered.

The biggest blind spot is that the Government always seems to think that the Basic Law has provided that we should go in the direction of a capitalistic society, and it seems to think that in a capitalistic society, the provision of reasonable welfare for the most needy groups in Hong Kong is out of the question. This mindset is certainly all wrong, President, because in the most successful capitalistic societies in the world, such as the United States and

Britain, their social welfare has far surpassed Hong Kong. Particularly, it has now been a political trend that many socialist countries are heading towards democratization, while democratic countries have started to move towards socialism. Actually, there is entirely no conflict between the two.

Just take a look at the Basic Law and you will see that it is clearly written in Article 36 that Hong Kong residents shall have the right to social welfare in accordance with the law, and the welfare benefits and retirement security of the labour force shall be protected by law. I would like to ask the Government: When has it ever respected the constitutional obligation under Article 36 of the Basic Law?

President, we do not have to go that far and let us just look at the subcommittees of the Legislative Council. How many of their recommendations have been accepted by the Government? What recommendations have been accepted by the Government? Of course, I must not cherish the extravagant hope that all of their recommendations would be accepted by the Government but you can find out the Government's mindset from what recommendations it has accepted. Roughly speaking, in respect of financial support, the subsidy for Internet access charges has been accepted. But to be frank, this is just a minor, piecemeal patch-up measure. We have all along been calling for a review of the appropriations for items under the Comprehensive Social Security Assistance (CSSA) to bring them back to the level of 2003. President, it is now 2010. We have been asking the Government to bring the rates back to the level of 2003 and relax the application eligibility for the CSSA and yet, this has not been achieved so far.

As a result, in such an affluent society of Hong Kong, elderly who live with their family still need to produce the so-called "bad son statement" before they can apply for CSSA. In the absence of an income allowance scheme, working poverty has remained to be the biggest problem. For residents not meeting the seven-year residency requirement, they have to share the CSSA payment with family members who live with them in meeting family expenses.

On the issue of social enterprises, it has been the established position of the Government that this is the responsibility of the business sector, that the business sector should have social responsibility to promote social enterprises. This is why we have seen that many social enterprises have the same fate in that they

have to close down and leave the market upon the expiry of the three-year subsidy provided by the Government.

Another example is the many community-based economic development schemes. The Government has been indifferent to them. Tin Shui Wai is a case in point. There was once a proposal of developing a food court there so that the local grassroots can make earnings from selling home-made food, thereby developing the community economy. But this proposal was ultimately dropped because the Government was asked to shoulder the cost of erecting the food stalls. Instead, the site was subsequently granted for a so-called one-stop elderly housing scheme undertaken by the Hong Kong Housing Society, and the Government has blown its own trumpet, boasting that it has done a lot of work in this respect.

Of course, President, I am not saying that this housing scheme is useless. But the two problems being dealt with are completely different. With regard to the development of community economy or social enterprises, the Government now tends to support well-established non-governmental organizations or enterprises with strong funding and manpower support. As a result, small-capital operators or those operating in the form of co-operatives in community economy basically do not have the ability, nor do they stand a chance, to survive and develop under such conservative policy mindset of the Government. As such, how could it be possible to enhance the vitality of society and the economy?

Lastly, what we would propose is certainly the re-establishment of the Commission on Poverty. What drives us to make this proposal is that since the Government refuses to listen to the recommendations of the Subcommittee, we hope that the Government can form a committee to combat poverty and that it may listen to the recommendations made by this committee. But honestly, according to past history, this way of thinking actually has not proven to be very successful.

President, what does it mean by poverty alleviation? In fact, even for the most important starting point of the definition of poverty alleviation, there is still a huge gap between the Government and the community. I remember that in 2009, the Hong Kong Council of Social Service adopted the international standard of setting the poverty line at a monthly income level of below 50% of

the median household income, in calculating the poor population in Hong Kong. The result showed that there is an impoverished population of 1.23 million in Hong Kong, which is equivalent to 16.7% of the total population of Hong Kong. But the Government argued that based on its own method of calculation, the number should be 700 000, which is 500 000 less for no reason at all. I wonder if these 500 000 people have gone to vote in the referendum and are hence not counted.

But President, if the Government and the community do not think alike even on the most basic definition of poverty, it would be immensely difficult for us to see any major progress to be made in this respect.

President, recently I have read a research report prepared by the University of Michigan in *The Wall Street Journal*. Have tracked a group of families for 40 years, they found that 49% of the people were in poverty for the first 18 years, and for people who were born poor, 21% would continue to be on the verge of poverty, whereas for people who were not born poor, their chance of being poor was a mere 4%. President, what does this mean? It means that in order to address the problem of poverty, we must start from the family. This can brook no delay, and the problem cannot be addressed by using an approach that "treats the head when it aches and treats the foot when it hurts".

MR WONG SING-CHI (in Cantonese): President, as a member of the Subcommittee on Poverty Alleviation (the Subcommittee) and Chairman of the Panel on Welfare Services, I wish to express some views on the Report of the Subcommittee. First, the contributions made by the members of the Subcommittee are beyond question, as the Subcommittee has not only studied the policies and measures relating to poverty alleviation and made recommendations, it has also actively implemented the recommendations of the former Commission on Poverty (CoP). As such, I hope that the Secretary will not take the views of the Subcommittee as mere platitudes, and that he will seriously listen to the views of the members on poverty alleviation, so that we can work together to solve the problem of disparity between the rich and the poor in Hong Kong.

I have said more than once in the Legislative Council that wealth disparity is a serious problem in Hong Kong. We have pointed out many times that the problem cannot be ignored when the Gini Coefficient reaches 0.533. Even I

find myself too long-winded by incessantly repeating what has been said time and again. However, if we stop talking about the problem, we fear that the Secretary may think the problem does not exist as we are not talking about it any more, and it would sound as terrible as what Mr TUNG had previously said. I want to reiterate my views and those of the Democratic Party, and hope the Secretary will reconsider the following ways to solve the problem of disparity between the rich and the poor:

- (a) Reviewing the items covered under the Comprehensive Social Security Assistance (CSSA) Scheme: the Subcommittee has repeatedly requested the Government to review the items covered under the CSSA Scheme. It is however disappointing that the Administration has all along maintained that it would not conduct a comprehensive review. The Administration has pointed out that the CSSA Scheme aims to provide a safety net for those who cannot support themselves financially, and to provide various social services and fee waivers to those in need. Moreover, CSSA payments will be adjusted according to the changes in the Social Security Assistance Index of Prices (SSAIP). That said, the SSAIP only reflects the relative significance of various items. The Subcommittee wishes the Government to conduct a review of the service items generally included in CSSA. The services and daily necessities for CSSA recipients should be updated with the progress of time, so as to avoid the situation that the items covered under the CSSA Scheme are unable to meet the needs of this group of poverty-stricken households. As I have said about this many times, I will not repeat the specific details here again.
- (b) Reviewing the requirement for the elderly to apply for CSSA on a household basis: under the existing policy, application for CSSA must be made on a household basis, thereby plunging many needy elderly into a dilemma. The Government requires that if the elderly who live with their family members need to apply for CSSA, their children must sign a "bad son statement". In responding to the question raised by Mr LEUNG Kwok-hung earlier, the Secretary denied that it is a "bad son statement", but actually everyone refers it as such.

- (c) Reviewing the disregarded earnings (DE) arrangements as soon as possible: according to the existing requirement, the CSSA Scheme is now implementing the DE arrangements, under which if CSSA recipients have worked for not less than two months, they can retain the first \$800 of earnings from employment and half of the remaining earnings for their own use, while the other half will be used to deduct CSSA payments. The total amount of DE is set at the maximum limit of \$2,500. However, such measure has caused a reduction in the number of CSSA recipients wishing to earn more than \$4,200, as the amount exceeding \$4,200 will all be deducted, hence it is useless to earn more, thus defeating the purpose of encouraging CSSA recipients to find and maintain employment. The Democratic Party has raised this issue for some 10 to 20 years. When Dr LAW Chi-kwong was still in the social welfare sector, he had proposed that the income of a CSSA recipient exceeding the upper limit of the DE be deposited into a saving account, and returned to the recipient when the accumulated amount exceeds the amount which is two times the upper limit of household income (subject to discussion). With this amount of money, the recipient can actually be relieved of the burden of poverty and stay away from the CSSA net. Even if he may not be able to get away with poverty, at least he has some savings. When he gets used to earning an income through employment, he may stay with it, and eventually get away from the CSSA net. I do not know why the Government still does not consider this proposal. Secretary, I will try hard to get this implemented in the remaining two years of my tenure.
- (d) Expanding the Transport Support Scheme: we have had discussions on this issue for quite some time, and there have been episodes of inflammatory and fiery exchanges, but so far there is no follow-up action. The Secretary said he would give some feedback by the year end, and we hope he can really provide us with some specific plans.
- (e) Re-establishing the CoP and actively studying and formulating long-term policy to assuage the poverty problem: the DP has put

forth in its policy address proposal that the Government should re-establish the CoP to study the policy on poverty alleviation. Unfortunately, we still do not see that action has been taken. The Government has commissioned the Social Welfare Advisory Committee (SWAC) to conduct a study on the long-term social welfare planning. Though being instructed by the Chief Executive, it is however very unfortunate that the SWAC has been fiercely condemned as it has really not given any consideration to long-term planning.

- (f) It is also suggested by the DP that a quota system concerning employment of people with disabilities be set out in the contracts of the Government and the statutory organizations. We hope that the Government can draw up policies in this aspect before the enactment of legislation so that people with disabilities can also have good access to employment. We will continue to strive for it through the Panel.

Lastly, it is about the issue of Old Age Allowance mentioned by Mr LEUNG Kwok-hung today. The Court has ruled that the requirement concerning the period of absence from Hong Kong for applying CSSA is in contravention of the Basic Law. So, we hope that the Secretary will consider the actual needs of the elderly, and treat the Old Age Allowance in the same way as CSSA payments, so as to help the socially disadvantaged and the poor, as well as to solve the problem of wealth disparity. Thank you, President.

MRS SOPHIE LEUNG (in Cantonese): President, although I have not joined the Panel on Welfare Services or the Subcommittee on Poverty Alleviation in this term of the Legislative Council, I do understand that many colleagues have made strenuous efforts to participate in the relevant work.

I have read the Report which is tabled today and I think that many of the Subcommittee's recommendations have actually been discussed by us on various occasions. However, in order to alleviate poverty, I think these minor measures which are like "band-aids" aiming only to patch things up can never be of any help. More often than not, these recommendations proposed by us have

compelled government officials to spend a lot of time and efforts dealing with them, thus precluding them from seeing how they should deal with the major aspects of the problem. I think this is not conducive to the entire society and to finding a solution to the increasingly serious problem of wealth disparity that we now face.

There are often people fighting for transport subsidies and saying that Members of functional constituencies (FCs) are against it. In fact, it is because we cannot see the way forward, or what the overall situation or the whole picture is. So, we eventually prefer not to say too much and take practical actions instead.

President, I have just officiated at the annual graduation ceremony of the "School-Company Partnership". This scheme has provided assistance to 2 300 students this year. We think that we should personally take actions, not just indulging in empty talks. I understand that the Subcommittee has held 12 meetings during the whole year and it has done a lot of work, and holding these 12 meetings must require a great deal of manpower and resources. But President, I think the results obtained are devoid of a direction. For example, with regard to the direction of "capacity building" proposed by the United Nations, the Subcommittee has not even mentioned this concept in its report. There is no mention of "self-reliance" either; nor is there the angle of inspiring self-confidence in young people or anything about showing them the real world. The Report has mentioned only some details, and I think we have not been doing enough, President. I think if we take this Report to the Government for discussion, the Government would only feel at a loss, not knowing what to do, and even feeling confused about the general scope and the concept.

President, I hope the Government will look back on the Commission on Poverty chaired by the Chief Secretary for Administration which was set up by the Government in a high profile. After the release of its report, I also considered that there were inadequacies in a way that the report did not discuss in a comprehensive manner the two points that I have just mentioned.

President, why do I take such a keen interest in this? Because I myself had started from scratch. I understand the importance of good education. Of course, it does not mean that one must get a doctoral or master degree; nor does it

mean that one must go to a good university. But through good education, some people will enlighten you and make you understand the meaning of life and how you should walk your path of life and that would make a great difference. President, I will later share with Members an essay written by a student who won the first prize in a writing competition. This student said that life is a large enterprise or his life is in itself a large enterprise and so, what should we do with it?

I also hope that the Government can review the current situation by referring to the report of the Commission on Poverty again, as the authorities have embarked on its work by setting up within the Government a Poverty Task Force, which is an inter-departmental working group. What is the job of this Task Force? I think the Government should not carry out work by rigidly following everything in the report of the Commission on Poverty. Instead of doing the same work year after year, it must gradually revise the direction of work. This Poverty Task Force should precisely be given this task. It should identify ways on how the direction can be revised and then share with us its thoughts. I think this will be a more suitable approach instead.

President, here, I would like to spend a little time reading out this essay entitled "Life as an enterprise". I think everyone must have the concept of enterprise. This student is very young and the essay written by him is short. In this essay he said, "Joining this scheme enables me to better understand life as a big enterprise. Various workshops have made me rethink as I experienced various problems in employment. I have come to realize that no matter where I go, I will always be expected to meet requirements: requirements in academic qualifications, requirements in morals and conduct, requirements set by clients, requirements in managerial skills, and so on. There are endless requirements to meet. Even when I am writing this essay to express my feelings, I have to observe the limit of words. These requirements can be challenges brought by the limits imposed, and they can be challenges resulted from a lack of limits. From the experiencing to the planning of life, I understand deeply that I must strive to meet requirements and only in this way can I realize my goals. In order to meet the requirements, I must first set standards for myself, and what gives us the momentum to do so is to have my own expectations of life." I hope that this concept will be applied to the future work of poverty alleviation. How can we inspire each and every person (especially people who need to rid themselves of

poverty) to really make an effort to lift themselves out of poverty? They must first help themselves before society can render assistance to them.

I agree with many colleagues who said that there are a lot of inadequacies in society. But can we eliminate poverty by solely focusing on these inadequacies? Certainly not. As a common saying goes, "a lump of loose mud can never hold onto a wall". What should we do to inspire everyone to develop such will? This is precisely the objective and intent of poverty alleviation that we are talking about now.

President, I so submit.

MR LEUNG KWOK-HUNG (in Cantonese): President, I have just listened to that essay read out by Mrs Sophie LEUNG. I always tend to make more allowances for young people. But if life is to be treated like an enterprise, that would be a big problem, because an enterprise can close down and life should not cease — That said, the Lehman Brothers have closed down, and Bernard MADOFF is a swindler. What is life? This is actually the origin of philosophy. The Greeks had thought about who they were and what their life was all about. At the sight of an ocean there comes the question: What is water? That is philosophy.

Certainly, this issue has been discussed for a long time. While none of us has been able to find an answer to the question of "What is life?" that the Greeks had been contemplating, we must live an enriched life, and we must live our life with no regret. In fact, there is one point that we have to ask ourselves and that is: Do we have goals? An enterprise stresses reasonable deals, which are a form of exchange. Whether in business exchange or in exchange between workers and employers, it is still an exchange of labour force for wages, so that workers can feed themselves. The capitalists purchase labour force and with the labour force that they have obtained, they produce goods and make a profit from price differentials.

The question that we have to look at is — What is the question that we have to look at today? Is poverty a goal of life? The answer is quite the

contrary. If poverty is not a goal of life, then, should the interest of big enterprises be a goal of life? I do not think so. I think a fruitful life is very important. A fruitful life must be a life with dignity. A life with dignity, so to speak, is what Guanzi, a Chinese philosopher, had said: "A person knows glory and shame when he is properly clothed and fed".

We now live in a society with an annual per capita income of over US\$30,000, and in the Legislative Council today we are discussing the elimination of poverty. This is basically a striking contrast. Had everyone been able to share this amount exceeding US\$30,000 derived from formal statistical studies, it would have been unnecessary to discuss this issue. Well, let us lower the standard and how about drawing the line at 50% of the average median income? That is the definition adopted by the United Nations. When it comes to 50% of the median income, President, you studied Mathematics and you should know that this is not the average income. When we draw the line at 50% of the average median wage, it already means that we are already asking for nothing at all and yet, this cannot be met either, and 1.23 million people are still living in poverty. If a person is considered poor if his wages are below 50% of the median wage, the number of the impoverished stands at 1.23 million, accounting for one sixth of the population including newborn babies who do not have productivity.

So, what are we discussing today? The Government said before breakfast that it would not tolerate poverty and it prayed before lunch. Our Chief Executive is a Catholic and when he received Holy Communion he said he would not tolerate poverty; and at dinner, there were fine cuisines on his dining table, and occasionally he would dine with wealthy people and have abalone for food. Pictures have been taken showing that he picked his teeth with a toothpick and enjoyed his meal, yet, he talked about eliminating poverty.

This Chief Secretary for Administration named Henry TANG has recently become very popular for concluding a deal on the revised District Council package. He had even come forth to blow his own trumpet, boasting that he had a part a play in making phone calls. This Chief Secretary for Administration was formerly the Financial Secretary. Hoping that his budget would not be negated in this Council by an overwhelming majority or passed by just a slim

majority, he talked about assisting the poor and had issued one cheque after another, right? That cheque book was this thick and all the cheques are signed and placed on the negotiation table. There is a big bargain or cut-throat sales, and the product for sale was the constitutional system. A whole stack of cheques were placed on the negotiation table, if you "acted properly" on the issue of the five-district referendum, you would be given a cheque; and you "acted properly" on other occasions, you would get another cheque.

Members, what is our problem now? What has caused poverty? Poverty is resulted from the grass-root workers' lack of protection for working hours, lack of protection for wages, lack of protection for employment, lack of protection for retirement, and lack of protection for unemployment. The Minimum Wage Commission that we have proposed consists of a member who is the boss of the Café De Coral group. The hourly rate offered by him can be as low as \$19. If he can decide on the minimum wage for workers in Hong Kong, that would certainly be a big problem. We have been calling for universal retirement protection, including the provision of contributory retirement protection for housewives and we are not going to have it. We have been calling for an allowance for unemployment and we are not going to have it. We have been calling for setting a ceiling for working hours and we are not going to have it.

President, you should be good at this. How can a faction be worked out if one of the two numbers is missing? The denominator is missing. Members, enterprises can close down. Life should be active, and if we can be compassionate, our life will be active. If the Government is not compassionate, the Government will be meaningless.

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

(No Member indicated a wish to speak)

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, once again, I thank the Subcommittee on Poverty Alleviation (the Subcommittee) for the many recommendations that it has put forward. I also thank Members

for expressing their valuable views on ways to address the problem of poverty. I will now give an overall response. But before that, I wish to stress that the Government and Members of this Council are not poles apart insofar as the issue of poverty alleviation is concerned. We actually share a common goal and we often hold very similar views. It can be said that we are standing on the same side. Perhaps let me briefly give a response to the 15 recommendations made by the Subcommittee and the views expressed by Members earlier.

First of all, with regard to the social security safety net, the Government has all along been providing financial assistance to families in need through the Comprehensive Social Security Assistance (CSSA) Scheme to help them meet the basic needs of living. The CSSA is a non-contributory social security scheme and as Members all know, its expenditure is fully borne by taxpayers. Any amendment to this scheme will warrant careful consideration, in order to ensure that public coffers are put to good use and the CSSA system can operate with sustainability. This is very important.

The standard CSSA payment rates are adjusted on an annual basis taking into account movements of the Social Security Assistance Index of Prices (SSAIP). In addition, to ensure that the SSAIP can reflect more accurately the latest expenditure patterns of CSSA households, the Social Welfare Department (SWD) updates the weighting system of the SSAIP every five years on the basis of the findings of the Household Expenditure Survey on CSSA Households. The existing mechanism has all along been operating effectively. We will continue to keep a close watch on the movements of the SSAIP to maintain the purchasing power of the CSSA payment rates.

To encourage CSSA recipients to seek employment and remain in employment and hence motivate them to move from "welfare to self-reliance", the SWD endeavours to enhance the employability of able-bodied CSSA recipients through the employment assistance services and community work schemes under the Support for Self-reliance (SFS) Scheme. From June 1999 to March this year, over 100 000 CSSA recipients participating in the SFS Scheme have found full-time paid jobs, thus they no longer need to participate in the SFS Scheme. About 30% or over 30 000 of them have successfully left the CSSA net.

The disregarded earnings (DE) arrangement has been an important measure under the SFS Scheme, whereby part of the recipients' monthly earnings from employment does not have to be deducted from CSSA payment. The maximum level of monthly DE is \$2,500. As Members all know, the criteria for allowing CSSA recipients to be eligible for DE has since December 2007 been relaxed from not less than three months on CSSA to not less than two months, while the amount that can be fully disregarded has also been increased from the first \$600 to the first \$800 of the monthly income. On the Subcommittee's proposal to further relax the DE arrangement, we will continuously keep a watch on the effectiveness of the DE arrangement and conduct a review in due course.

Some Members have proposed to review the requirement that applications for CSSA from the elderly must be made on a household basis, and they have also mentioned the "bad son statement". Just this morning I gave an explanation to address the misconceptions about the "bad son statement", but please allow me to add a few points. This requirement is adopted on the principle that family constitutes the core unit of society. Members of the same family should support and help each other and those with income should be responsible for supporting the living of family members who do not have the means to support themselves financially, rather than shifting the responsibility to taxpayers. This is very important. However, as we have explained at meetings of the Subcommittee, in some special cases, such as the elderly and their family members do not have a harmonious relationship, or the children cannot provide financial support to their elderly for special reasons, the Director of Social Welfare can consider allowing the elderly in need to file their CSSA applications independently in the light of the circumstances of each case.

As for the residence requirement, starting from January 2004, an applicant must have been a Hong Kong resident for at least seven years and have resided in Hong Kong continuously for at least one year immediately before the date of application in order to be eligible for CSSA. On 23 June 2009, the High Court dismissed an application for judicial review from a person who does not meet the seven-year residency requirement. The Judge pointed out in the judgment that the right conferred by the Basic Law is not an absolute right, but a restricted right. The seven-year residency rule helps ensure reasonable allocation of social resources and sustainable development of the social security system. As regards the one-year-continuous-residence requirement, in the light of the judgment made by the High Court on 21 June, the SWD has immediately suspended this

requirement under the CSSA scheme. We are studying in detail the contents and implications of the judgment before deciding on the next step.

As different groups in the community have different needs, we must target their actual needs before appropriate measures can be drawn up to effectively provide assistance to them.

The Subcommittee has proposed that the Government should provide computer facilities and subsidies for Internet access charges to students on CSSA and from the disadvantaged groups. We agree that in this digital age, web-based learning has become an integral part of education. In this connection, the Financial Secretary announced in this year's budget that \$500 million would be set aside as a start-up capital to subsidize students' online learning under a two-pronged approach, with a view to narrowing the digital gap. The specific measures include the provision of a new cash allowance for Internet access charges in 2010-2011, which is expected to benefit 300 000 low-income households and 410 000 primary and secondary students of whom 120 000 are students from CSSA households. Besides, the Government is prepared to commission a non-profit making organization to embark on a five-year scheme, under which these families will be provided with a suitable and economical computer and Internet services as well as the necessary training and technical support. The organization is expected to commence its services from the 2011-2012 school year. The funding application for this purpose was approved by the Legislative Council Finance Committee in May.

To avoid the provision of various types of subsidy schemes and methods of subsidy provision for the same purpose at the same time, we ceased to accept applications for the one-year free Internet service under the Computer Recycling Programme on 1 June this year. However, considering that it takes time for the non-profit making organization to commence the above scheme, the Education Bureau will continue to provide recycled computers to eligible students until the scheduled completion of the recycling programme in February 2011.

As pointed out by the Subcommittee and a number of Members who have spoken, the Transport Support Scheme has been an issue of concern to them. I would like to clarify here that the Labour and Welfare Bureau is comprehensively, thoroughly and seriously studying ways to ease the burden of

transport fares on people with low employment earnings. To this end, we are collecting and considering the relevant statistics and information, such as the data relating to the income of low-income earners, their travelling patterns and expenditure on transport. I will definitely complete the studies by the end of this year and then immediately put forth concrete proposals. However, I hope Members can understand that in order to draw up practicable measures, it is necessary for us to comprehensively study the objectives and positioning of the proposals as well as the support measures and the mechanism for implementation, in order to meet the needs of those who will benefit from the scheme, while ensuring that resources are utilized appropriately and effectively. As Mr LEE Cheuk-yan has said, the Financial Secretary has undertaken to clearly state in this year's budget that resources will be provided to support the scheme, subject to the findings of the studies. Before the completion of the studies, the Labour Department will continue to implement the existing support scheme to continuously provide support to eligible persons with low employment earnings who live in the four remote districts.

Some Members have proposed to provide tax credit for the working-poor households, and this is, in fact, also proposed in the Subcommittee's report. I wish to point out that in order to implement a policy with high welfare elements, the existing tax rates and regime would need to be substantially adjusted and I am afraid that it would be difficult to reach a broad consensus. In fact, the Government has over the years ploughed in massive resources for building a social security safety net to ensure that families incapable of supporting themselves financially, including the working-poor households, can meet the basic expenditure of living. In 2010-2011, the expenditure on CSSA and the Social Security Allowance Scheme (that is, the Old Age Allowance and the Disability Allowance) alone is estimated to be as high as \$27.5 billion, which means a daily expenditure of over \$75 million, accounting for 12% of the recurrent expenditure of the Government. The Government has also provided various free and heavily-subsidized services in social welfare, housing, health care, and education to meet the basic needs of living of these families.

The Subcommittee has proposed that the Government should vigorously support the development of social enterprises and this, I very much agree. To encourage the setting up and development of social enterprises, the Home Affairs Department launched the Enhancing Self-Reliance Through District Partnership

Programme (ESR Programme) in June 2006 to provide funding for non-governmental organizations to set up social enterprises. The objective is to take forward sustainable initiatives for assisting the poor in districts, and create employment opportunities for the disadvantaged in society to help them become self-reliant. Since its introduction, the ESR Programme has approved a grant of about \$100 million to 100 social enterprise projects, creating 1 600 employment opportunities for the socially disadvantaged.

The Government has also implemented the pilot scheme of awarding specific government contracts to social enterprises under priority bidding (the pilot scheme) to facilitate the further development of social enterprises, thereby enhancing the employability of the socially disadvantaged and creating more job opportunities for them. The pilot scheme commenced in February 2008, under which a total of 19 departments have provided 38 cleaning service contracts all over the 18 districts of the territory for priority bidding by social enterprises. The result is that social enterprises have been awarded 16 of these contracts at a total cost of \$6.6 million. We have continued to implement the pilot scheme in 2009-2010, and a total of 53 contracts at a cost of about \$20 million have been provided for priority bidding by social enterprises. The Government will review the effectiveness of the relevant measures in due course to tie in with the long-term development of social enterprises.

The Subcommittee has also proposed to raise the amount of seed grants to facilitate the development of larger-sized social enterprises. We consider that as social enterprise projects of a larger scale require greater support and their management is more difficult, we propose that non-governmental organizations should implement their projects in phases in order not to entail greater risks as a result of excessive investment.

To further promote the development of social enterprises, the Government established the Social Enterprise Advisory Committee early this year to provide advice on ways to further promote the development of social enterprises. The Advisory Committee comprises social enterprise operators, members of the business sector, academics and persons aspired to promote social enterprise. Through the participation of various sectors and by drawing on the concerted efforts of the Government and the community, we hope to formulate and improve policy measures which are conducive to the development of social enterprises. The Government will continuously work in four directions, which include

enhancing public understanding on social enterprises, promoting cross-sector collaboration, nurturing more social entrepreneurs, and strengthening support for social enterprises, with a view to creating an environment conducive to the further development of social enterprises.

Given that residents in different districts have different needs, the relevant Policy Bureaux and departments have implemented a number of district-based measures for promoting the development of community economy to create employment opportunities in districts, thereby providing support to the socially disadvantaged.

District Officers have been working closely with District Councils (DCs) and district organizations in providing a diversity of community involvement programmes from time to time to meet the district needs. Besides, the District Offices have also provided support to the DCs in promoting local community economic activities, such as the widely-known Hong Kong Computer Festival in Sham Shui Po, the Tai Kok Tsui Temple Fair and the Wan Chai Book Fair. These projects can promote the local features of districts, inject greater vibrancy into the community and strengthen social cohesion. They can also create employment opportunities and generate economic benefits. Ongoing efforts will be made by District Officers in this respect.

The relevant Policy Bureaux and departments have implemented a series of measures and schemes in the less well-off districts to further promote the economy and employment in the district. Let me cite a few simple examples. To help residents seek employment in the same district, the Housing Department has actively encouraged contractors of security and cleaning services in public housing estates in Tin Shui Wai to employ residents living in the district. As a result, of the jobs created by the relevant contracts, over 80%, or 1 000 jobs, have been taken up by residents of Tin Shui Wai, which means that 1 000 jobs have been created. Besides, the Integrated Elderly Community Project in Tin Shui Wai Area 115 undertaken by the Hong Kong Housing Society (HS) is expected to create about 300 jobs during the construction phase and no fewer than 1 200 jobs after its completion. Apart from creating employment opportunities, the ancillary facilities, such as the hotel, the care centre and recreation facilities, will attract more tourists to Tin Shui Wai, injecting economic activities in the area, which, in turn, will have a positive effect on the social and economic development of the region. As regards the two short-term land use projects, the

HS anticipates that the projects will create around 200 to 300 employment opportunities in the site construction, elderly services, retail, on-site management and exhibition sectors.

On the other hand, the Government has since April this year adopted measures to optimize the use of industrial buildings and encourage owners to put to good use those old, vacant and under-utilized industrial buildings through wholesale conversion. These industrial buildings are distributed in various parts of the territory, such as Kwun Tong, Kwai Tsing, Sham Shui Po, Tuen Mun, and so on. After conversion, these industrial buildings can be put to extensive commercial and social uses. For instance, they can be used as catering establishments, offices and shops, and also for other uses in the service sector. This can help stimulate the economic activities in the district, while taking forward and speeding up the restructuring of industrial zones in the district. To take the lead in promoting the revitalization of industrial buildings, the Government, where appropriate, will consider making use of old industrial buildings in the relocation of government offices and facilities. The relevant Policy Bureaux are currently working with the relevant departments to actively follow up the feasibility of this proposal.

Besides, under batch I of the Revitalizing Historic Buildings Through Partnership Scheme introduced by the Development Bureau, three historic buildings in the Sham Shui Po district, namely, the Lai Chi Kok Hospital, Mei Ho House and North Kowloon Magistracy, have been awarded to three non-profit-making organizations for adaptive re-use through operating social enterprises. Apart from creating job opportunities at district level, these projects will also have a positive effect on the economy in the district.

The Government has all along adopted the 24 multi-dimensional indicators proposed by the former Commission on Poverty to review the poverty problem in Hong Kong from different perspectives. Through these indicators, we can identify the different needs of various social groups and people across different districts. This will serve as references for the formulation of policies by various Policy Bureaux.

The Subcommittee has proposed that the Government should set performance targets for reducing poverty. I wish to point out that apart from government policies and initiatives, many external factors (including the external

economic conditions and changes in the demographic structure) also have a bearing on the poverty situation. So, it is indeed very difficult to make predictions on all relevant factors for setting specific and practicable targets for poverty alleviation. Instead, it is more desirable to adopt a pragmatic attitude to address poverty, and this is also an approach that we have consistently adopted.

The proposal made by some Members on the re-establishment of the Commission on Poverty by the Government has been discussed repeatedly at meetings. Let me stress once again that while the former Commission on Poverty completed its work in 2007, the inter-departmental Task Force on Poverty chaired by me has all along worked very hard, persistently doing our level best to follow up the recommendations of the former Commission on Poverty and co-ordinate the relevant poverty alleviation initiatives taken by various government departments. Of the 53 recommendations made by the former Commission on Poverty, many are of a strategic nature and most of them have been put into practice. They include relaxation of the DE arrangement under the CSSA which I have mentioned earlier, implementing the support scheme for remote districts in respect of which Members would like see more input from the Government, implementing a Child Development Fund which is precisely a way to effectively nurture the young people and the next generation, promoting district-based poverty alleviation measures, promoting collaboration among the Government, business and the public in the development of social enterprises to create job opportunities, and so on. The Task Force will make continuous efforts to co-ordinate the poverty alleviation work in the Government and explore new initiatives and measures which will assist the disadvantaged groups and people in need.

President, the views put forward by the Subcommittee and Members are inspirational to the Government in the formulation of poverty alleviation measures. We will continue to do our utmost to develop the economy, create employment opportunities, enhance the employability of the workforce, and build a caring and just society, while adopting a pragmatic and multi-pronged approach to improve the living of the disadvantaged and low-income earners. The legislation on minimum wage, which will soon be enacted as its Second reading is scheduled to formally resume next week, will have a positive effect on the protection of grass-root workers.

President, I so submit. Thank you.

PRESIDENT (in Cantonese): Mr Frederick FUNG, you may now reply and you have one minute 28 seconds.

MR FREDERICK FUNG (in Cantonese): President, just as I have said in my opening speech, the Secretary's response is as detailed as can be. But if the authorities have done so much already, how come there are still so many problems of poverty and how come they are getting more and more serious? Why is the gap between the rich and the poor getting wider and wider? Why are people still feeling that the Government has not done anything to help them? Does the Secretary know about these feelings? Is he aware of these feelings? Even though the Secretary has recounted the measures once again, the people still consider that the Government does not have the "heart" to help them.

There are different angles to the problem of poverty and its alleviation. This is neither a single problem nor a single issue. It is in fact made up of many problems ranging from economic, housing or even medical services. The affected groups are also varied including the elderly and the young, men and women. The affected areas are also varied with each of the 18 districts having their own poverty problems. The Government must use different means to deal with and resolve these problems.

Moreover, the problem of poverty will evolve. The poverty problem in Sham Shui Po in five years' time will be different from what it is today. The poverty problem in Tin Shui Wai today is different from what it was five years ago. Hence, it is clear that the methods for dealing with the problem of poverty have to evolve as well. There is a genuine need for the Government to set up a cross-bureaux/departmental committee to deal with the problem. The present arrangement where the Secretary for Labour and Welfare is tasked to handle the problem is tantamount to the Government shirking its responsibility. How can the Secretary alone handle such a complex and multitudinous problem? In the absence of a territory-wide and cross-departmental Commission on Poverty (CoP) led by the Chief Secretary for Administration, the problem will never be resolved. The Secretary only concentrates on the 53 recommendations made by the CoP, but the problem on hand is not only concerned with those 53 recommendations. Instead, it is about how to deal with Hong Kong people's feelings that the Government does not care and is not concerned about their problems. Even for the transport allowance mentioned by the Secretary just now, it is still a subject of

our constant grievances because the authorities have simply failed to do what we ask for. Thank you, President.

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

(Members raised their hands)

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

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion passed.

PRESIDENT (in Cantonese): Second motion: Enhancing the administration of tax policy in Hong Kong.

Members who wish to speak in the debate on the motion will please press the "Request to speak" button.

I now call upon Mr Paul CHAN to speak and move his motion.

ENHANCING THE ADMINISTRATION OF TAX POLICY IN HONG KONG

MR PAUL CHAN (in Cantonese): President, I move the motion on "Enhancing the Administration of Tax Policy in Hong Kong" as printed on the Agenda. The main objective of my putting forth this motion today is to urge the Government to

study and formulate tax policy more proactively so that Hong Kong can respond to the following aspects in a forward looking manner:

- (I) The requirements of the international society and the impact of the signing of bilateral agreements on avoidance of double taxation on Hong Kong;
- (II) The competition from other Asian countries and regions to compete with Hong Kong in attracting multinational companies to establish regional headquarters by lowering tax rates or offering more tax concessions;
- (III) Supporting Hong Kong's economic transformation and promoting the development of industries with competitive edge in Hong Kong;
- (IV) Addressing the problems of economic and social inequalities in Hong Kong; and
- (V) Reviewing the tax base of Hong Kong and continuously monitoring the risk of instability in Hong Kong's public finance.

President, to achieve these purposes, I suggest that the Government should establish a specialist tax policy unit to be staffed by experts with the relevant professional knowledge and practical experience, so as to assist the Government in making studies and formulating policies with respect to the above aspects.

At the G-20 Summit held in London in April last year, Hong Kong faced an unprecedented oppression in the area of international taxation and was almost blacklisted as a tax haven. Fortunately, Hong Kong managed to evade the possible penalty under the interference by the State President. I think all of you are aware of this incident, so I am not going to repeat the details here. Subsequently, the Administration has hastily introduced a bill to amend the Inland Revenue Ordinance (IRO) and the legislative procedure was eventually completed early this year.

Certainly I welcome this belated improvement by the Government for not only will it avoid Hong Kong being blacklisted, but also facilitate Hong Kong to sign more comprehensive agreements on avoidance of double taxation (CDTA)

with foreign countries, and this will facilitate Hong Kong to become a springboard for Mainland and foreign companies to go global. Nevertheless, the signing of CDTA will bring challenges to Hong Kong at the same time. As a party to the contract, the cross-boundary operating activities of Hong Kong companies not only have to be regulated by the IRO of Hong Kong, they also have to comply with the requirements in other aspects under the agreements concerned. Among the requirements, some involve legal concepts that have never been applied under the laws of Hong Kong such as the concept of tax residence, whereas some may contradict with the "territorial source principle of taxation" currently being adopted in Hong Kong. For instance, the Inland Revenue Department (IRD) has recently released a 52-page guideline on transfer pricing and that reflects the complexity of the problem. However, issuing guidelines alone is inadequate, it may involve adding, deleting and revising many provisions as well. President, the two examples I cited just now are only some of the many problems that we would face as we enter the international society. This shows that the current practice of relying only on the resources and establishment of the IRD to deal with these matters is impractical, instead, a specialist tax policy unit should be dedicated to study and deal with the issues concerned.

President, in recent years, the rapid economic integration between Hong Kong and the Mainland has given rise to new cross-boundary operating models, but the IRO has failed to progress with the times. The most glaring example is section 39E of the IRO under which some machines and equipment purchased by Hong Kong companies for operation in the Mainland must pay tax in Hong Kong as the profits are attributed to the companies in Hong Kong, but even these expenses are not given any tax concession, it is so ridiculous. Regarding this issue, the Panel on Financial Affairs has passed a motion urging the Government to make improvement, I am not going to repeat the details here.

President, over the past 20 years, obviously Hong Kong has been gradually transforming towards a knowledge-based service economy and has a need to develop some new industries with competitive edge. But our IRO fails to keep abreast with the new developments. Here I raise two obvious recent examples:

- (I) For years, the authorities have claimed that they will support the development of creative and cultural industries, yet the expenses on purchasing intangible assets such as trademarks and copyright are

not given any tax concession; on the contrary, the expenses on intangible assets relating to the purchase of patent right for use in manufacturing operation can enjoy a 100% tax concession.

- (II) Many countries (including Singapore and China) have raised the level of tax concession for expenses on "research and development" to over 100%, but Hong Kong has all along refused to adopt these international practices.

In respect of the two examples I raised just now, as we all know, on the first one, the Financial Secretary has finally admitted the inadequacy in his budget speech and indicated that tax regulations would be amended accordingly; as for the second one, after the meetings of the Task Force on Economic Challenges chaired by the Chief Executive, it was decided that cash allowances would be offered in the area of scientific research. From the above two examples, it is evident that the Government really lags behind in the provision of support to the formation and development of new industries in Hong Kong.

Besides, according to the information from the Financial Secretary's Office, about 196 000 families in Hong Kong earn less than \$4,000 each month, meaning that they can only live on \$134 each day. If we set the income at \$8,000, that is, \$267 each day, there are 488 000 families, accounting for about 21% of the total families in Hong Kong. While the Secretary has explained that our family structure has undergone changes and there is a tendency that some families have less and less family members, no matter what the reasons are, given that Hong Kong is a highly developed economy, these statistics make one feel very shameful and disturbing. We need to mobilize public resources to help the underprivileged groups and taxation is one of the means. President, apart from the purpose of financing public expenditure, another function of the tax system is to provide incentives to private companies to adopt commercial behaviours that are in line with social expectations. Take Singapore as an example, besides the introduction of "allowance for low-income work", tax concessions are granted to employers and low-income employees who are willing to enhance their skills through training.

President, in theory, the Financial Secretary is responsible for formulating tax policy with the assistance of the Financial Services and the Treasury Bureau and the Central Policy Unit. However, neither the IRD, the Financial Services

and the Treasury Bureau nor the Central Policy Unit has set up a tax policy unit at present. In fact, the Financial Services and the Treasury Bureau often consults the IRD insofar as tax policies are concerned. Hence, to a very large extent, the IRD also assumes the function of formulating tax policy. Take section 39E that I mentioned just now as an example, the IRD performs quite well as a tax collecting body, but there is a serious conflict of roles when it has to get involved in the formulation of tax policy. As far as I know, apart from the IRD, no official in the Financial Services and the Treasury Bureau is specially in charge of tax policy. Different officials will be appointed to take charge of the relevant policy from time to time, there is no responsible officer at all.

President, in this aspect, what are the practices of other countries and regions? In other jurisdictions, many tax policies are formulated by a specialized unit within the government. The only function of this unit is to formulate tax policy so as to ensure that tax policy will not be overlooked due to the implementation of tax laws and regulations or the recovery of tax by the authorities. For instance, the Taxation Department under the Ministry of Finance of China is a department established to oversee tax policy besides the State Administration of Taxation.

If we look at other developed countries, in fact they have adopted similar structures, such as The Treasury (Revenue Group) of Australia, the Department of Finance (Tax Policy Branch) of Canada, the Ministry of Finance (Tax Bureau) of Japan, The Treasury of New Zealand, the Ministry of Finance (Tax Policy Directorate) of Singapore, the HM Treasury (Budget, Tax and Welfare Division) of Britain and the Department of the Treasury of the United States.

President, the International Monetary Fund has advised the governments of various countries that the formulation and implementation of tax policy should be handled by different departments; the formulation of tax policy should be the responsibility of the tax policy unit under the government policy division of higher seniority (such as the Ministry of Finance), such unit should be assisted by experts, and the final decision on the relevant policies will be vested in senior government officials.

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

Deputy President, I would like to take this opportunity to clarify two points. The first one is about widening the tax base. By the end of 2006, the Government has decided to shelve the proposal of introducing a goods and services tax after a consultation exercise. Back then, the Government admitted there are hidden worries in the tax regime, among others, the Government's revenue relies heavily on the income from land sales and investment return, yet such incomes can fluctuate greatly as they are susceptible to the influence of economic cycles, posing a risk of instability in public finance. In addition, a rapidly ageing population is exerting more and more pressure on medical expenditure and creating hidden worries in public finance. Subsequently, given that Hong Kong was hit by the financial turmoil, the Government rolled out a series of measures and also lowered the standard rate. But on the other hand, as the problem of disparity between the rich and the poor is exacerbating, public indignation is on the rise, it seems that Government policies attend to one matter but neglect the other. I raise this point in this motion not to suggest that we need to handle the problem of tax base right now. In the light of Hong Kong's current financial condition, there is absolutely no pressing need to address the problem of tax base, and I absolutely do not mean to revive the issue of goods and services tax. I only want to say, the Government should constantly stay alert and be mindful of the instability in our tax base and finance.

The second point I want to clarify is about my support of a progressive tax as reported by some newspapers yesterday. President, there may be some misunderstanding. In fact, what I mean is that the same rate may not be suitable for all companies. Some think tanks and political parties in Hong Kong have mentioned that lower rates can be applied to small companies whereas higher rates can be applied to large companies. This idea, by itself, is not tantamount to progressive tax and such practice is common in other countries. This point that I raised yesterday does not mean that we have to do so. I only want to point out that the tax policy unit should be open-minded when studying tax-related matters, and should not refuse to adopt certain practices in a sweeping manner. I believe that in handling tax regime, we can either be too simplistic nor too emotional, we should instead analyses and deliberate in an objective and composed manner with regard to the overall interests of society.

Deputy President, I end my speech here and will make a focused reply after listening to the Secretary's reply and the speeches of other Members. Thank you.

Mr Paul CHAN moved the following motion: (Translation)

"That, whereas:

- (a) Hong Kong, through its membership of the Global Forum on Transparency and Exchange of Information for Tax Purposes under the Organization for Economic Co-operation and Development and the comprehensive agreements on avoidance of double taxation to be signed with many countries in the world, is increasingly involved in international taxation matters;
- (b) international organizations such as the Group of Twenty (G-20) are proactively developing tax policies for implementation by the member countries and jurisdictions which are actively involved in the global economy and financial system, including Hong Kong;
- (c) complementary tax initiatives must be introduced in Hong Kong to facilitate the development of industries with competitive edge and the smooth transformation of the Hong Kong economy;
- (d) Hong Kong must compete with other jurisdictions, which offer tax concessions, to attract external investors to establish their regional headquarters in Hong Kong;
- (e) tax initiatives can be an effective tool in addressing the problems of economic and social inequalities in Hong Kong; and
- (f) the tax base of Hong Kong remains very narrow, posing a risk of instability in public finance,

matters relating to the tax policy in Hong Kong have therefore become increasingly complex and important, yet the Administration has so far vested such matters primarily in the Inland Revenue Department (IRD) but its function should be confined to the implementation of tax laws; if IRD is required to undertake in-depth and substantial studies on tax policy, it will encounter a conflict of roles as well as resources constraints; as such, this Council urges the Administration:

- (i) to adopt a proactive approach in responding to international agreements on tax initiatives and their requirements, including the tax policies and initiatives introduced by the G-20 and other multilateral international organizations;
- (ii) to critically review the existing taxation system with a view to identifying feasible initiatives to enhance the competitiveness of Hong Kong as a regional business centre;
- (iii) to study the use of tax initiatives as one of the means to address the problems of social and economic inequalities;
- (iv) to study afresh the identification of reasonable and sound initiatives that can broaden the tax base of Hong Kong without undermining its competitiveness; and
- (v) to establish a specialist tax policy unit within the government structure, to be staffed by local and international tax experts with the relevant professional knowledge, technical expertise and practical experience, to assist the Administration in undertaking the tasks in (i) to (iv) above, so as to ensure effective formulation of future tax policy in Hong Kong."

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

DEPUTY PRESIDENT (in Cantonese): Mrs Sophie LEUNG will move an amendment to this motion. This Council will now proceed to a joint debate on the motion and the amendment.

DEPUTY PRESIDENT (in Cantonese): I now call upon Mrs Sophie LEUNG to speak and move her amendment to the motion.

MRS SOPHIE LEUNG (in Cantonese): Deputy President, I move that Mr Paul CHAN's motion be amended. The content of the amendment is contained in the relevant document.

We have had a lot of discussions on enhancing the policies and administration of taxation in Hong Kong. I think that it is very appropriate for Mr Paul CHAN, as a representative of the professionals, to move this motion today. I would like to talk about the voices we have heard from the small and medium enterprises (SMEs). We have heard that many trades have great hidden worries and difficulties. We anticipate that if taxation is handled improperly, it will have substantial and far-reaching impact on the future development of Hong Kong, particularly the various developments relating to its connection with the neighbouring regions.

In fact, the Economic Synergy has already put forth some opinions on enhancing tax policy for the previous budgets, suggesting that the Joint Liaison Committee on Taxation should review the IRO and remove the stumbling blocks, especially the noticeable ones at present, that impede the further development of business, trade and the service industry. More importantly, we have requested the Government to examine afresh the enforcement of section 39E of the IRO. This proposal has consolidated the views of various sectors and has taken into account factors such as the macro development direction of the State and Hong Kong's integration with the Mainland.

In the past, Hong Kong businesses engaging in processing trade in the Mainland mainly operated in "contract processing", and the IRD would usually assess the profits tax payable by Hong Kong businesses on a 50:50 basis of apportionment. However, in recent years, to tie in with the Mainland policy of encouraging enterprises to develop domestic sales, Hong Kong businesses has transformed their manufacturing plants in the Mainland from the previous "contract processing" to "import processing" one after another. While the two are named differently, they are the same in essence and generally the same in terms of operation — in principle, it is about Hong Kong businesses supplying raw materials or parts to Mainland enterprises and after processing, the products will be exported. But given that the IRD has abolished the 50:50 basis of apportionment for assessment, companies have to pay full tax, moreover, companies operating in "import processing" will no longer be given depreciation allowance on machinery.

In this connection, we have held talks, seminars, and so on, through which we have received a lot of information and messages from the SMEs. We also wish that Hong Kong businesses can directly share with us the difficulties they meet under the new taxation arrangements. Many Hong Kong businesses have expressed that after the changes in policy, the authorities ask them to pay back the tax for the previous six to seven years, and this amounts to \$2 million or \$3 million for some of them. What I want to say is, as the majority of them are typical SMEs, asking them to pay several millions of tax is tantamount to forcing them to close down as they have never expected to pay such amount. I hope Members are aware that these are not isolated but common cases which give us an idea of how great the impact of this taxation arrangement is on Hong Kong manufacturers.

In fact, the closing down of factories in the Mainland will certainly affect Hong Kong. Try to think about the logistics, exhibition or other service industries relying on Hong Kong businesses in the Mainland, how much survival space is left to them after the factories have closed down? In addition, most of the processing trades in the Mainland are interdependent to each other. The garment factory may be only one street away from the button factory, if the button factory closes down, the whole production line will break. The garment factory will have to order goods from farther places, it may as well close down because it fails to sustain after taking into the account the transportation cost. In this way, a domino effect will be triggered, undermining what is renowned as the most comprehensive production line in the world.

Deputy President, another focal point of the amendment is about relaxing the restrictions on giving waiver to personal income tax in the Mainland. Similarly, the proposal compiled by the Economic Synergy for the previous Budget has mentioned that, to tie in with the "one-hour living sphere" and coupled with the fact that the Arrangement between the Mainland of China and the HKSAR for the Avoidance of Double Taxation on Income has been signed for over 10 years, we propose that the Government should proactively communicate with the Mainland authorities and conduct review to relax the conditions for giving waiver to personal income tax in the Mainland, that is, to relax the current limit of 183 days to 270 days. This proposal is based on our expectation that the passenger and cargo flow between the Mainland and Hong Kong is going to get more and more busy, this will be particularly so after the commissioning of the Express Rail Link. Many Hong Kong people working in

the Mainland or travelling between the two places need to stay in the Mainland for an average of three to four days each week. Basically, this has exceeded the quota, and has definitely exceeded the limit of 183 days. But the "one-hour living sphere" we said means that other than working, Hongkongers should also have the right to visit relatives or widen their horizons through taking pleasure trips in the Mainland. Nevertheless, under the limit of 183 days, such right of some people will be deprived.

I can see that Mr Paul CHAN is very concerned about this from his moving this motion today. The Economic Synergy supports the wordings and the macro directions, but on some details, we have our own stance. I mention only two points here. I hope that in future I can have more communication and exchanges with the colleagues in this Chamber and the Government on some proposals. I believe that many colleagues returned by functional constituencies will also present their views with respect to the situations faced by the professional sectors that they belong to.

Deputy President, I so submit.

Mrs Sophie LEUNG moved the following amendment: (Translation)

"To add "with the increasingly closer economic and trade relationship between Hong Kong and the Guangdong Province under the Framework Agreement on Hong Kong/Guangdong Co-operation, the flow of passengers, goods and information will become more frequent, and" after "(c)"; to add "the upgrading and transformation of small and medium enterprises and to complement" after "facilitate"; to add "to examine afresh all the taxation policies involving cross-border trade and employment, including section 39E of the Inland Revenue Ordinance and assessment of profits tax for the processing trade, and to relax the existing 183-day standard under the Arrangement between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, so as to match the trend in the economic development of Hong Kong and Guangdong and the new life pattern of the 'one-hour living sphere'; (iv)" after "(iii)"; to delete the original "(iv)" and substitute with "(v)"; to delete the original "(v)" and substitute with "(vi)"; and to delete "(iv)" after "tasks in (i) to" and substitute with "(v)"."

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mrs Sophie LEUNG to Mr Paul CHAN's motion be passed.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Deputy President, first of all, I am grateful to Mr Paul CHAN for his motion and Mrs Sophie LEUNG for her amendment, which enables us to discuss matters relating to Hong Kong's tax policy once again in this legislature.

The subject of the debate today is "Enhancing the administration of tax policy in Hong Kong" and in the past, there have been debates on similar motions in the Legislative Council. For example, Mr Paul CHAN moved the motion "Enhancing the tax system to keep Hong Kong competitive" in May last year. In that debate, we listened to the valuable views of a number of Members on various aspects of the tax system. Since the tax system in Hong Kong is closely related to economic development, the livelihood of the general public and the operation of companies, the discussion on the tax system is often highly controversial and it is also very difficult to forge consensus. Nevertheless, we are still very happy to see Members discuss this subject once again.

One of the competitive edges of Hong Kong is the provision of a level and effective playing field for all businesses and a crucial element is our fair, neutral, simple and low-tax regime. In this regard, we have all along been enjoying worldwide recognition. These are also the most important factors in attracting overseas companies to set up regional headquarters or regional offices in Hong Kong.

In the Global Competitiveness Report released by the World Economic Forum for the year 2009-2010, the competitiveness of Hong Kong is ranked eleventh while its competitiveness in respect of taxation has been elevated from the third place to second place globally, ranking higher than our major competitors in the region. Similarly, according to the Tax Misery & Reform Index released recently by the Forbes Asia, Hong Kong is ranked the third most tax-friendly region in the world. Moreover, according to the surveys conducted by the Census and Statistics Department in recent years, Hong Kong's low and simple tax regime is considered one of the most important factors in attracting

overseas companies to set up regional headquarters or regional offices in Hong Kong. Therefore, when considering any proposal on changing the existing taxation system, we must assess the implications on Hong Kong as a whole and its long-term interests.

In order to ensure that our taxation system can keep abreast of the times, we will conduct timely reviews of the taxation system and make appropriate adjustments according to the ever-changing economic and social circumstances.

Deputy President, I so submit. I wish to listen to the views of Members first before giving a detailed response to the issues raised in the motion.

MR ANDREW LEUNG (in Cantonese): Deputy President, as pointed out by the two Members just now, tax policy is used by the Government as a tool to promote economic development and help people in need. Every country and region is required to examine its tax policy from time to time and, having regard to its latest economic condition, upgrade its competitiveness with foresight through tax initiatives. Under globalization, countries around the world have, in recent years, even adopted measures to lower profits tax rate to attract overseas capital, encourage enterprises to boost investments and stimulate economic development. In recent years, Singapore has been attracting overseas capital and leading enterprises towards research and development (R&D) through taxation while granting allowances to its citizens with a view to alleviating the pressure on the lower and middle strata. In comparison, the tax policy in Hong Kong is indeed quite outdated. Let me cite industries as an example. Some Hong Kong businessmen operating businesses on the Mainland have endless grievances because of the constraints imposed by the local taxation system on their practical operation.

As pointed out by Mrs Sophie LEUNG just now, for the sake of complementing the Mainland policy, Hong Kong businessmen engaging in processing trade have transformed and upgraded themselves from engaging in "contract processing" to "import processing". However, they are denied the depreciation allowances for machinery and the 50:50 basis for calculating profits tax as they previously enjoyed.

Deputy President, at the meeting held by the Panel on Financial Affairs on Monday, Members expressed great support for the offer of 50% concessions on profits tax for bonds in Hong Kong. Although the Secretary was absent from the meeting, I did point out that it was a good thing to develop the local bond market. But why does the Government not offer the same concessions to support Hong Kong businessmen engaging in processing trade? Over the past three decades, Hong Kong businessmen have in fact worked miracles by upgrading the service industries in Hong Kong to a world-class standard.

Deputy President, next I will talk about the 183-day standard under an arrangement made between the Mainland and Hong Kong for the avoidance of double taxation, an issue also mentioned by Mrs Sophie LEUNG earlier. The economic and trade partnership between Hong Kong and the Mainland, especially Guangdong Province, has actually become increasingly close. With the launch of the Hong Kong section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link, the development of Qianhai in Shenzhen has also commenced. Guangdong Province has also made it clear that in the areas of service industries and R&D, talents of Hong Kong's service industries and R&D will be given more opportunities, through CEPA and the Framework Agreement on Hong Kong/Guangdong Co-operation, to work on the Mainland to support the Mainland's high-end service industries, manufacturing industries and R&D, with a view to assisting with the development of the Mainland's high value-added economy. We should formulate, with foresight, better and more favourable tax policy for these people who have to work across the boundary.

Deputy President, there is nothing novel about cross-border employment tax arrangements. In the 1950s, Germany and France in Europe had already formulated tax initiatives for cross-border employment for their nationals. Up till now, tax agreements have been reached by eight European countries with their neighbours. For instance, tax concessions are offered by Belgium, where the population is relatively small, and France, where the labour force is large, to encourage their nationals to work across the border. Targeting these cross-border workers, these countries include a special tax clause for cross-border workers in their agreements on the avoidance of double taxation, with a view to encouraging people living in their countries to work across the border. According to the agreements, cross-border workers are only required to pay tax to the countries where they live without having to pay tax to the countries where they work. In the agreements signed by France, Germany and Belgium, it is

provided clearly that the agreements merely apply to nationals living and working in border cities.

If this concept can be applied to Guangdong and Hong Kong so that Hong Kong people working in Guangdong Province will only be required to pay tax in Hong Kong, then Hong Kong people will not be required to go through the complicated formalities of paying tax in the two places, and they will not be subject to additional taxation pressure. Moreover, more Hong Kong people can be attracted to go northward for development, and this will facilitate integration between the two places, thereby promoting long-term economic development of Guangdong and Hong Kong. We also share the view that the Administration should study the matter seriously and consider expediting the introduction of relevant taxation provisions. Under the mechanism of "early and pilot implementation", a special taxation clause for cross-border workers should be incorporated into the "Arrangement between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income" for implementation in Guangdong, Hong Kong and Macao. If the results are good, consideration can be given to promote this arrangement to Mainland provinces which have close economic and trade relationship with Taiwan, with the aim of promoting integration between China and Taiwan.

Lastly, when it comes to taxation, I must mention the proposal raised by the Federation of Hong Kong Industries for offering triple tax deduction for expenditure on R&D and design. At present, R&D accounts for less than 0.8% of Hong Kong's gross domestic product, which lags far behind the 2.3% of the Organisation for Economic Co-operation and Development. We have all along emphasized that tax concessions can attract enterprises to inject more resources into R&D and innovation. I suggest that the Government should offer triple tax concession for expenditure spent by enterprises for R&D, design and brand-building; promote transformation and upgrading of enterprises; grab the opportunities provided under the Framework Agreement on Hong Kong/Guangdong Co-operation, and expand local consumption. The effect of tax concessions provided by many countries around the world to enterprises for investment in R&D and innovation has proved to be quite significant, and it is worthy to be considered by the Administration.

Deputy President, I so submit.

MRS REGINA IP (in Cantonese): Deputy President, I am very grateful to Mr Paul CHAN for proposing this motion for debate today. I think it is opportune for this debate to be held because the tax policy in Hong Kong has not been reviewed for years. In particular, it appears to me that the speech delivered by Secretary Prof K C CHAN earlier was drafted by civil servants, because it sounds very rigid. I wonder if the civil servants under the Secretary really behave like those in the television drama "Yes Minister" — the Secretary simply reproduced what he was told to say.

I believe the Secretary, with his profound knowledge, should be aware that the governments of countries around the world, from faraway countries, such as Europe and the United States, to nearby countries, such as the Mainland and Singapore, have often employed taxation as a means to achieve some political, economic or social objectives, with a view to redistributing benefits and wealth. For instance, as the Secretary should have known, personal tax assessments in European countries are generally based on a progressive tax system, so as to achieve a more even distribution of wealth. Deputy President, let me first declare that I will describe some overseas practices, but I am by no means an advocate of these practices.

Just now, Mr Andrew LEUNG also mentioned Singapore as an example. In order to achieve the economic objective of encouraging multinational companies to invest in high technology in Singapore, the Government has even resort to lower the rate of profits tax for companies and raise the rate of sales tax to 7% in 2007. Of course, Singapore knows that the tourism industry and luxurious high-end consumer market will be hit as a result. However, its goal is to upgrade itself as a knowledge-based economy. Therefore, it is determined to proceed at all costs.

However, our Government is unwilling to accept new things. Over the years, it has never seriously considered how to reform our taxation system in order to achieve some economic, social or livelihood objectives. In my opinion, a review must be urgently conducted. As we can see from the previous motion debate initiated by Mr Frederick FUNG, why are there such a large number of poor people and a feeling of dissatisfaction, despite the 23 initiatives launched by the Government to alleviate poverty? Nowadays, we are confronted with a host

of problems, including an ageing population; a large number of senior secondary students failing to be admitted to universities; a large number of young people earning meagre income upon graduation; and a lack of opportunities for upward mobility. We are very disappointed that many demands for social services are not yet satisfied, and the Government has failed to consider adopting tax initiatives to create more wealth. Therefore, I hope the Secretary would no longer read from the speech prepared by civil servants in future.

I would like to provide some additional information here in response to Mr Paul CHAN. In fact, during the colonial era, Inland Revenue Reviews were frequently conducted in Hong Kong by tax experts from Britain, and Inland Revenue Review Committees were set up from time to time. I had seen the establishment of such Committees at least once or twice while I was a civil servant. The Secretary might perhaps ask his young subordinates to check out such information. Of course, after the review, the Government would find it better to leave things as they are to save troubles, as raising tax would definitely cause public dissatisfaction and disputes. Since land sales could already bring in generous revenue, why should tax be raised?

However, please do not forget, this mindset was typical of a colonial government. Nowadays, things are different. We have to satisfy the growing demands of society for social services and raising the levels of the economy.

Furthermore, as a further response, Mr Paul CHAN has mentioned that there are specialist departments in Britain and the United States for taxation. Actually, this is not the case. The US Treasury is not just responsible for taxation — the Secretary should know this very clearly — it is also responsible for many aspects of work, such as financial policies, rescuing Lehman Brothers, printing banknotes, and issuing bonds. The same goes for Her Majesty's Treasury. As for the Secretary, there is one Permanent Secretary under him and two Deputy Permanent Secretaries, responsible for revenue and expenditure separately, under the Permanent Secretary. Am I right? Therefore, there are officials responsible for revenue-related issues. However, they are civil servants, and civil servants do not like changes. I think once you join the Government, you are taught how to do things. Therefore, there is a complete lack of new thinking. Today, we find this very disappointing.

This explains why, as raised by Mr Andrew LEUNG, an official only at the rank of Principal Assistant Secretary and his staff attended the meeting of the Panel on Financial Affairs the day before yesterday to discuss the question of using taxation as a means to stimulate the development of the bond market — we welcome the Administration's proposal of granting a 50% tax concession. Did the Government treat this issue as a technical issue? Why did the Administration not take action earlier? Why has it taken so long for the Government to take action, given that it has been talking about issuance of bonds for nearly 20 years? All these give us an impression that the Administration lacks initiative and there is no leader to lead the way. Secretary, you are an officer under the political appointment system. I hope you can lead the civil servants under your command.

I would like to cite an example I have mentioned to the Secretary, and that is, many people in the insurance sector have requested the Government to promote the development of captive insurance in Hong Kong, which matches Hong Kong's edges perfectly. In future, when some multinational companies or private companies from our Motherland establish in Hong Kong, their own groups can then be their underwriters. Hong Kong is very suitable for developing captive insurance business because we have a sound legal system. Moreover, developing captive insurance can give a boost to many high value-added services.

It was a veteran from the insurance sector who suggested that I should promote this proposal. He said that the trade did not ask for tax reduction, definitely not for tax concessions as well. It merely hoped that the Commissioner for Inland Revenue could make some clarifications, so that those companies could have a better understanding. However, he was received by an assessor from the Inland Revenue Department, and no directorate-grade officials were willing to meet him. I do not know if this was really the case. I have to verify with him. It is indeed very regrettable should the Administration really act with this mindset.

Given that we have so many social aspirations and so many social services not being satisfied, I hope the Government can really have the guts to examine how our taxation system can be reformed. Mr Paul CHAN is perfectly right in

pointing out that over reliance on land sale revenue will not only result in great fluctuations in tax revenue, it will also lead to high land price policy, and such a policy will impede the development of other economic activities.

With these remarks, Deputy President, I hope the Secretary will not merely read out the draft speeches prepared by civil servants in dealing with these issues in future. He should show us the leadership thinking of a professor-level officer. Thank you.

MR RONNY TONG (in Cantonese): Deputy President, a philosopher has once said that no one can avoid paying tax and death in his or her life. While this remark sounds interesting, it still fails to answer the question why we must pay tax.

Deputy President, I find the motion proposed by Mr Paul CHAN today very meaningful. It has also given us an opportunity to reflect on these questions: What is the purpose of paying tax? Does paying tax simply serve the purpose of sustaining the operation of some essential government facilities? Or should people in various strata of society be allowed to share the achievements of society? In my opinion, this is a very fundamental issue.

Mr Paul CHAN is very right in saying that Hong Kong's tax base is extremely narrow, a view also shared by many people. Right, there are 3.5 million-odd wage earners in Hong Kong, but only 1.4 million-odd people are required to pay tax, that is, only one-third of the population has to pay tax. Is our taxation system really has a narrow tax base? This is actually not the case. As pointed out by Mrs Regina IP just now, every one of us is being affected by the high land price policy, as we are all paying Government rent, only in different manners. More importantly, why are two-thirds of the wage earners not required to pay tax? It is not because they do not want to pay tax; it is because their income is basically inadequate for them to feed themselves. They can simply not afford to pay tax.

So, Deputy President, is such a narrow tax base making our financial conditions very unstable? No. On the contrary, our financial conditions are

very stable. According to the latest figures I saw on the Internet, our foreign exchange reserves have rocketed to US\$256.8 billion. Deputy President, I am talking about US dollars, not HK dollars. It is reported in today's news that we are ranked eighth in the world. It can be said that there is nothing to worry about as Hong Kong, being such a small place, has so much money to keep Hong Kong dollars stable.

Besides foreign exchange reserves, what about our fiscal reserves? The latest figures show that — Secretary, you can confirm this figure — our fiscal reserves stand at more than \$510 billion, which is equivalent to more than 20 months of Government expenditure. If we calculate on the basis of a monthly expenditure of \$20 billion, or an annual expenditure of \$240 billion, the amount of fiscal reserves is equivalent to more than 20 months of expenditure. In other words, even if people do not pay any tax, or there is no revenue from tax, the Government can still continue to operate at this level for 20 months, as our fiscal conditions are very stable. So, why must we consider improving tax revenue? This leads to another key issue. What is the purpose of improving tax revenue? Will the business sector or taxpayers pay less tax as a result? Can the Government do better in terms of welfare policy? Will improving tax revenue give the Government more courage to do something?

Deputy President, I think we must get this issue clear. If we are talking about improving tax revenue so that the business sector or super wage earners can pay less tax but, in the end, our fiscal reserves will be increased from 20 to 40 months, I think there is no need for tax revenue to be improved. If reducing tax makes it even harder for society as a whole to share the fruits of success of society, I cannot see what benefits reducing tax can bring. If it is said that Hong Kong's economy can thus be pushed further up, yet people in various strata can still not share the fruits of economic prosperity, we will actually be brought back to the time when feudalism was practised. Paying tax will only benefit the emperor and bring him more wealth.

Deputy President, I think that these are not the reasons for us to improve tax revenue and widen the tax base. In my opinion, the only reason is that we might not need to have more than 20 months of fiscal reserves if our tax base is wider and more stable. Frankly speaking, many governments around the world

do not have 10 months, not to mention 20 months, of fiscal reserves. If our fiscal reserves can be lowered substantially, can the money thus saved be spent on building universities and hospitals, and giving help to those in need so that they will not live with uncertainties? With their meagre income, they do not have enough to feed themselves, not to mention purchasing a property. I will definitely give my support, Deputy President, if this is an objective the Government wishes to achieve. However, is it one of the Government's objectives? Frankly speaking, Deputy President, I have served this Council for many years — no, it has been six years only, many colleagues have served this Council for an even longer period — but still I have not seen that the Government has such a mindset and determination and think in such a way.

Simply put, the most common practice to widen the tax base is to impose a sales tax. The Government conducted a study on the levy of a sales tax years ago but finally gave up the idea. Why? It is because the Government has all along been reluctant to design some compensatory measures on the basis of a regressive tax system. As a result, the grassroots cannot lead a better life due to the introduction of a regressive tax system. Owing to the Government's reluctance, the proposal of widening the taxation system was eventually aborted.

Deputy President, this underlines the thinking of the Government in that it merely hopes to save money as far as possible to prevent being accused of doing something wrong in the future while it is still uncertain about the fundamental purpose of levying the tax. Deputy President, it is completely wrong for the Government to think in this way. From this angle, there is nothing to lose even if there is no tax revenue reform.

DEPUTY PRESIDENT (in Cantonese): Time is up.

MR JEFFREY LAM (in Cantonese): Deputy President, a stable and reasonable taxation system not only provides a nation or a region with essential revenue, but also has a bearing on the economic development, living standard and social stability and harmony of a region.

The economic prosperity enjoyed by Hong Kong as a world-class city is evident to all the people in the world. Besides Hong Kong's stable social environment, open and transparent system and its belief in the principle of free market, its existing low tax rates are also a key factor conducive to business operation because small and medium enterprises are the nucleus of Hong Kong's commercial and industrial development. Their demand for low tax rates is usually greater than that of large enterprises.

In particular, as an outward-looking economy, Hong Kong cannot stay aloof and avoid the impact of external economic fluctuations as the global economic ups and downs are hardly predictable. Therefore, for Hong Kong to maintain its status as an international financial centre and maintain its competitive edge so that Hong Kong enterprises can stand firm amid the storm, the Government must maintain its simple and low taxation system and, in so far as practicable, consider further lowering the profits tax rates and commencing studies on bringing our tax policy and complementary initiatives in line with the international community.

We are pleased to see that, over the past couple of months, the Government has signed agreements, one after another, with a number of countries on avoidance of double taxation in accordance with the latest standards set by the Organization for Economic Co-operation and Development and adopted a relatively proactive attitude in dealing with matters related to tax initiatives. However, as mentioned by Mr Paul CHAN in his motion, Hong Kong's taxation system is still having some problems, such as a narrow tax base, the limited function of the Inland Revenue Department (IRD), and so on. There is a need for the Administration to set up a specialized unit to conduct an in-depth study on tax policy in order to deal with these issues.

This is particular so when co-operation between Hong Kong and the Mainland is getting increasingly frequently today. Apart from boosting exchanges in the flow of goods, passengers and information, the two places should also assess the situation in implementing trade policy and initiatives and adopt more complementary measures to cope with integration between the two places.

Deputy President, I would like to express my views on section 39E of the Inland Revenue Ordinance, an issue of grave concern to many Hong Kong businessmen on the Mainland — in fact, I have raised this issue with the Secretary many times before. Since the opening up and reform of the Mainland, many Hong Kong businessmen have been engaging in processing and manufacturing businesses in Guangdong Province and other Mainland provinces and municipalities for more than three decades. As one of the Hong Kong businessmen returning to the Mainland for investment three decades ago, I have seen Hong Kong businessmen do a remarkable job in contract processing in the vicinity of the Pearl River Delta, thanks to these policies. During the process, I have from time to time made many different suggestions to the Governments in the two places on issues such as commercial and industrial policies and tax rebate on exports. Hence, I should be considered as a witness to the history of this period. Thanks to the nation's policies, many Hong Kong-invested enterprises engaging in contract processing on the Mainland have attained success. They have also benefited from the 50/50 depreciation allowances for machinery, which serve to alleviate the burden of costs on factory operators on the Mainland.

Over the past couple of years, especially when the financial tsunami was still raging, Hong Kong-invested enterprises on the Mainland could not avoid facing problems such as diminishing orders, rising prices of raw materials, and so on. The Mainland Government has also realized the importance of upgrading and transforming manufacturing industries and exploring domestic markets and the fact that enabling enterprises to shift from labour-intensive and high energy-consumption mode of production to the direction towards high-tech products is the only way out for consolidating the development of manufacturing industries.

Since the implementation of CEPA in 2003, the economic and trade relationship between Hong Kong and the Mainland has continued to deepen, especially in manufacturing industries, for the sake of complementing the international policy of optimizing industrial structure. Moreover, the signing of CEPA removes a lot of constraints on Hong Kong-invested enterprises in taking root on the Mainland and stabilizing their development. In the light of the national policy, many Hong Kong-invested enterprises on the Mainland have shifted from the previous mode of "contract processing" to "import processing". Nevertheless, having regard to section 39E of the Inland Revenue Ordinance, the

IRD has ceased the arrangement of allowing enterprises engaging in import processing to receive depreciation allowances on machinery and plants and recovered tax payable according to the previous depreciation rates, thus putting additional pressure on enterprises which are already in great distress.

The industrial and commercial sectors expressed concern about section 39E for a long time. The Government has reiterated time and again that the problems related to the utilization of relevant industrial machinery and plants by people outside the boundary are quite complicated, and there are a lot of difficulties in monitoring. A loophole will also appear should section 39E be relaxed, and this will give rise to controversial cases.

However, we also hope the Government can realize that it should not avoid controversial matters. Up till now, the Government has still refused to give us an account of the scope and timetable of the study undertaken on this issue by the Joint Liaison Committee on Taxation. We hope the Government can size up the situation, jump out of its previous constraints, re-examine the Inland Revenue Ordinance, revise its internal assessment guidelines, and allow manufacturers engaging in import processing to apply for depreciation allowances on machinery and plants.

Deputy President, I so submit.

DR RAYMOND HO (in Cantonese): Deputy President, our taxation system has along been seen as a key cornerstone for Hong Kong's economic development. In the light of a globalized economy and with competition in the global market becoming increasingly keen, the taxation system has become a key decisive factor in the flow of capital and talents. Under the new global economic conditions, Hong Kong's previous low tax rates and simple taxation system will not necessarily give us the best edge.

Some tax regulations in Hong Kong have even been criticized as failing to meet the global taxation standards. In a relatively recent case, when a meeting was convened last year by the G-20 to discuss initiatives to combat tax havens, a proposal was raised to include Hong Kong in its list of tax havens. Fortunately, Hong Kong was eventually not included in the list, thanks to China's strong

opposition. However, this example illustrates that it is imperative for Hong Kong to review its tax policy. To start with, Hong Kong should adopt the latest tax standards expeditiously and bring its arrangements for exchanging taxation information in line with the international community, so as to enable Hong Kong to sign relevant tax agreements with the world's major economies.

The SAR Government should promptly seek to sign comprehensive agreements on avoidance of double taxation with other regions to prevent Hong Kong from being listed as a tax haven and enhance Hong Kong's status as an international business and trade centre. On the other hand, the signing of the relevant agreements can help alleviate tax burdens on enterprises as well as individuals, remove taxation uncertainties, improve the business environment and enhance business, investment and manpower exchanges. On the contrary, the Mainland has already signed more than 90 similar taxation agreements with different regions. If Hong Kong can reach agreements with these regions, I believe this can help Mainland enterprises use Hong Kong as a platform for external investments.

Meanwhile, the economic and trade relationship between Hong Kong and the Mainland has become increasingly close, especially after the signing of the Framework Agreement on Hong Kong/Guangdong Co-operation. Having regard to the frequent economic and trade, investment and manpower exchanges between the two places, the relevant authorities should consider seriously reviewing relevant taxation systems in connection with cross-boundary economic activities to complement the needs of the latest conditions.

Apart from affecting external economic and trade development, the local taxation system will also have a direct impact on Hong Kong's public finances and the distribution of social resources. In the past, our simple taxation system had been seen as an edge that could help attract foreign investment. However, in a globalized economy, Hong Kong should enhance its own competitive edge through taxation policy. Among others, we can attract foreign investment through tax concessions.

I have stated in this Council a number of times that Hong Kong's investment in research and development (R&D) has always been proportionally low. While the proportion in Singapore and Taiwan is approximately 2%, it is

more than 3% in Japan. It is indeed imperative for Hong Kong to encourage private enterprises to launch R&D here in order to upgrade competitiveness and prevent our economy from tilting excessively towards the services sector.

Owing to the growing public expectations on the role played by the Government in social development, whether public finances can break even has gradually become a social concern. Serious tax reform is also required to resolve the problem of Hong Kong having a narrow tax base. Of course, this necessitates in-depth discussions conducted by various social strata.

Deputy President, our taxation system must keep abreast of the times and complement the needs of Hong Kong's economic and social development. I so submit.

MS STARRY LEE (in Cantonese): Deputy President, tax policies must keep abreast of the times and according to the information I have looked at, the last time the Government conducted a full review of the Inland Revenue Ordinance (IRO) was in 1976. Since then, the Inland Revenue Department (IRD) has adopted the approach of ongoing review by tinkering with the taxation system in response to economic changes. However, in the face of increasing competition around the globe and the persistent deterioration in wealth disparity in Hong Kong, Hong Kong can no longer be complacent and it is really necessary for the Government to conduct a timely and thorough review to improve the taxation system, so as to enhance Hong Kong's competitiveness on the one hand and effect a more reasonable distribution of wealth in society on the other.

As an accountant, I often come into contact with members of the sector and also understand that Mr Paul CHAN, in proposing motions relating to taxation over the past two years — if my understanding is correct — is speaking on behalf of members of the sector about the refusal of the Government for many years to conduct a thorough review of the IRO.

For many years, the Taxation Institute of Hong Kong, the Hong Kong Institute of Certified Public Accountants, the four major accountancy firms and the Bauhinia Foundation Research Centre (Bauhinia Foundation), which Members have great trust in, have all voiced views concerning the taxation

system in Hong Kong and released a number of reports, which contain many proposals worthy of serious examination by the Government. If we summarize these views, on the whole, it is considered that at present, there are three major shortcomings or three "not enoughs" in the existing taxation system: not being clear enough, not being fair enough and not taking enough care of the socially disadvantaged groups.

Let me first talk about the taxation system not being clear enough. I often hear members of the business sector say that a taxation system lacking clarity does greater harm to the competitiveness of a place than a bad taxation system. The research results released by the Bauhinia Foundation in May 2008 confirmed this view and members of the business sector interviewed considered that "clear tax laws" and "certainty in the practical application of tax laws" were more important than the tax concessions offered by the Government.

The examples of ambiguity in Hong Kong's taxation system are numerous. Of course, one major reason is that for many years, Hong Kong adopts the territorial concept of taxation in levying profits tax and this has caused great controversies. In particular, given that the economic and commercial interactions between China and Hong Kong are becoming increasingly intensive, this concept has given rise to many grey areas in its implementation. What should be taxable in Hong Kong? What should be taxable on the Mainland? If we have discussions with members of the sector in the past few years, we would know that there are many case laws in this regard but even so, it does not imply that the territorial concept of taxation has become increasingly clear to the sector. In fact, the sector also hopes that the IRD can clearly lay down its set of internal rules and draw up more implementation guidelines in the light of the numerous case laws or the actual development. As such, there will be enhanced clarity in the application of the territorial concept of taxation. With clearer guidelines, the industry and the business sector can know the thinking of the authorities in advance when they draw up their taxation plans.

Of course, other issues requiring clarification include section 39E of the IRO, which was mentioned by a number of Honourable colleagues just now but I am not going to dwell too much on this provision. Another controversial issue resulting from the Ordinance is, I believe, the fact that with the change in the mode of investment on the Mainland from contract processing in the past to

import processing at present, it seems that the 50:50 taxation arrangement for tax on the Mainland and in Hong Kong is no longer suitable. At present, there are still many businessmen involved in disputes with the authorities concerning this issue.

Precisely because of the ambiguities in the taxation system, taxpayers would naturally dispute with the IRD on the basis on their arguments, so as to protect their own rights. Members of the business sector told us that under the existing arrangement, a dispute will first be referred to the Board of Review; and if the taxpayer concerned is not happy with its decision, he can continue taking legal action and even take his case to the Court of Final Appeal. However, we all understand that this process can easily take six to seven years and when a case goes before the Court of Final Appeal or the High Court, no matter who is right or wrong, the party making an appeal, that is, a member of the public or a company, is required by the IRD to first pay the tax that is in dispute. To small and medium enterprises (SMEs), the capital of these taxpayers will be frozen immediately, so this is tantamount to being penalized even before the case has been dealt with.

Apart from having to pay the tax in advance, the taxpayer concerned also has to consider the risk relating to interest. At present, the authorities would require him to buy Tax Reserve Certificates and if he wins the case, of course, he has to pay the tax payable and the interest that he is entitled to is the interest on the Tax Reserve Certificates. If he loses the case, the Court may order the party who has lost the case to pay very high interest. To SMEs, in order to avoid trouble, prolonged litigation and the risk, generally they would rather pay the tax to avert trouble rather than spend too much time on taking the IRD to court.

If we look at the practice of other countries like Australia, as far as I know, some funds have been established to provide assistance to companies, in particular, SMEs. If these companies take the taxation authorities to court on account of taxation principles, these funds can be used to assist these companies in taking legal actions, hence taxpayers need not take great risks. In the case of Hong Kong, most SMEs would choose not to take the risks by taking further actions under the basic principles of the IRO.

Deputy President, another shortcoming of the taxation system in Hong Kong is that it is not fair enough, particularly to people like us, who pay the

salaries tax. We often feel being treated unfairly because the standards for the tax deductible items under salaries tax paid by individuals and profits tax paid by companies differ greatly. At present, for profits tax, expenses that incurred for earning an income are tax deductible and basically, the deductions for various items are very generous. Generally speaking, so long as there is an audit report, the claims for tax deduction will not be challenged. However, in respect of salaries tax, the standards for tax deductible items are much more stringent and the three conditions of "wholly, exclusively and necessarily" must be complied with before tax deductions can be granted.

We all understand that to ordinary members of the public, many expenses should in fact be entitled to tax deductions in connection with their current salary tax. I once learnt about an extreme example, that is, some teachers bought some teaching materials out of their own pocket for the purpose of doing their job well, but according to the Inland Revenue Ordinance, they could not meet the conditions for tax deduction, so in the end, they were not entitled to tax deduction. As far as I know, some countries such as Australia have already standardized the practices in these two areas by adopting the term income tax, so that the problem can be dealt with more easily.

Deputy President, the last problem is that of wealth disparity (*The buzzer sounded*)

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

MS STARRY LEE (in Cantonese): Yes.

MR JAMES TO (in Cantonese): Deputy President, in recent years, Mr Paul CHAN has proposed several motions along this line, hoping that the Government would conduct a comprehensive review of the taxation system, so as to respond to the international situation. In addition, the most important point is: I think he is most unhappy that the tax policy is under the charge of the Inland Revenue Department and he does not understand why this is so. Therefore, I can see where his emphasis lies.

(THE PRESIDENT resumed the Chair)

President, I must point out that after looking into this matter, the Democratic Party thinks that generally speaking, in the context of the new environment, if we intend to use taxation system as one of the factors to attract companies or multinational companies — if we want to attract local companies, maybe there are certain matters to which little change can be made, but if we want to attract multinational companies by means of taxation system as a major factor, I believe the scope for doing so will also be very limited. Why do I say so? Let me say it more frankly. At present, multinational companies will, after making a comparison of various places, draw up plans regarding in what ways they want to pay taxes and at what the places they want to pay taxes. However, regarding the other options available, if comparisons are made, I think not many options are available to companies in the West and even those on the Mainland. Given the lower tax rates in Asia, the advantages of Hong Kong in the general competition lie in its clean Government, its systems and the free flow of information. However, I think that even if we try to make ourselves attractive by combining all these factors together, how great an advantage can the taxation system confer on us? In fact, it is really minimal.

Of course, I do not wish to take the wind out of Mr Paul CHAN's sail because he said that there is perhaps scope for further study, so I say, "Fine, let us look at this matter together then.". Of course, he has given this matter a lot of thought, in particular, he proposes to use tax initiatives as one of the means to address the problems of social and economic inequalities. Obviously, for the Democratic Party or other political parties which are very concerned about people's livelihood and the livelihood of the grassroots, they have also studied the taxation system. At least, I believe the person who moved this motion is not thinking solely whether consortia would be benefitted, rather whether a redistribution of local wealth is possible through the taxation system. He still cares for the livelihood of the public. I know his good intentions and I can hear and see them.

President, why do I say so? In fact, if we look at the overall global environment and the premise of the original motion, that is, the six points mentioned under "whereas", it can be seen that due to globalization, in areas of

the flow of capital or manpower, it has become increasingly difficult to lay down detailed and precise definitions of products and services. As a result, the structures of industries are now complex beyond words. Sometimes, I think that apart from going to the washroom, which must be done personally and it is not possible to find others to do it for you, or in the case of having one's hair cut, in which it is not possible to have one's head taken to Shenzhen for a hair cut, it is actually possible to ask other people to do an increasingly wide array of things for you, is it not? For example, the preparation of a plan does not have to be done locally at all and this is also the case for all service industries. Apart from going elsewhere to enjoy massage or foot massage services, frankly speaking, other jobs can also be handled by the computer and it is even possible to give long-distance tutorials. At present, even long-distance grave-sweeping service is available, is it not? In that case, may I know to what place should the incomes earned through such services as long-distance tutorial and long-distance medical consultation (even medical consultation is now a cross-boundary service) belong? Or what other aspects can a place levy taxes?

Of course, if I subscribe to the views voiced by Mr Paul CHAN, I have the impression that the tax policy of the SAR Government is actually inclined to a responsive nature. As regards whether the tax policy is purely within the purview of the IRD, I think nearly all the policies are within its purview. Why? This is founded on several points. First, we have limited scope because Article 108 of the Basic Law states that we have to "take the low tax policy previously pursued in Hong Kong as the reference", and even when the SAR enacts "laws on its own and other matters of taxation.", it is stated that a low-tax policy has to be implemented. Therefore, the room for change is limited.

Moreover, Hong Kong has its own basic industrial structure. For example, in times of property boom, a certain company will carry out a lot of development work; if we talk about local consumption — of course, now that the Individual Travel Scheme has been introduced, there is more room — however, in the midst of all these changes, if major amendments are made, frankly speaking, Hong Kong people would be even more worried than others. Hence, concerning the issues mentioned by me, only fine-tuning within a very narrow scope can be carried out.

Of course, there is one point I believe the SAR Government thinks it can be sure of, that is, even though we are facing very strong competitors (nowadays, it may be the provinces and cities on the Mainland), please take note, the SAR Government may firmly believe that the overall policy of the Central Authorities will protect Hong Kong, so that it can continue to survive. Sometimes, special policies would even be introduced to take care of Hong Kong. Therefore, under this premise, if Hong Kong wants to introduce drastic measures, even though the Basic Law provides that Hong Kong can enact laws on its own, the Central Authorities are still very worried because they wonder if the SAR Government would change abruptly, that after several years of major reform, it would offer the accumulated tax concessions to enterprises, provide them with choices and allow them to transform until they become mature, hence pinning all its hope on the future? To be honest, I think that if such a major change is to be made to Hong Kong as a whole, even the public will have some reactions and I believe that after careful consideration, knowledgeable people would not let the SAR Government do so.

Therefore, having talked about the general situation, I can see that there is one specific point in the motion and probably, it is about broadening the tax base. When it comes to broadening the tax base, the goods and services tax surely has to be introduced. Therefore, if someone talks about the need to study how to broaden the tax base, in the final analysis, it is all about whether or not the goods and services tax should be introduced.

MS LI FUNG-YING (in Cantonese): President, today, Mr Paul CHAN moved the motion on enhancing the administration of tax policy in Hong Kong. I think two core questions that have bearing on the future of Hong Kong are involved: How the economy of Hong Kong can move forward, as well as how social conflicts can be relieved and people's livelihood be improved. It can be said that the future of Hong Kong hinges on these two questions. I hope that in addition to today's debate, more extensive and in-depth discussions can be conducted in Hong Kong society in the future, so as to forge consensus, which can then be translated into policies to promote social development.

On the question of how the tax policy can assist Hong Kong in its economic development, I believe a number of Honourable colleagues in this

Chamber have better knowledge than I. However, in order to allow tax policy to perform the guiding function in the free market, action must be taken prudently. In the face of global competition and economic transformation, it is inevitable that the Government would make appropriate intervention in the market through its policies. I can cite some examples of the Government's intervention in the market easily. For example, regarding the development of hardware, the Hong Kong Science Park in Tai Po supports the research and development of innovative high technology; the cruise terminal responds to the development trend in the tourism industry. On the policy on software, the Film Development Fund for the film industry and the loan schemes for small and medium enterprises (SMEs) are designed to assist the trades in their development in various degrees. I agree that tax policy can serve to promote Hong Kong's economic advancement but such measures should have more substance. While the tax policy assists various industries in their development, the "across-the-board" system for profits tax must be reformed, so that a progressive profits tax system can dovetail with tax concessions.

At the end of last year, the United Nations Development Programme published a rating report on income inequality worldwide. Among the 11 poor and rich countries in the world with the greatest wealth disparity, this problem was the most serious in Hong Kong. The poorest 10% of the population only shared 2% of the fruits of economic success of society as a whole while the richest 10% shared 34.9% of the fruits of labour in society. I have repeatedly raised in this Council the point that the problem of wealth disparity does not hinge completely on making a bigger "cake" but, more importantly, on how the "cake" should be allocated.

I opine that a progressive profits tax system can improve the redistribution of wealth in society nowadays. Although over 90% of the commercial organizations in Hong Kong are SMEs, economic activities that affect various aspects of life of the public, such as clothing, food, accommodation and transportation, are in the hands of several consortiums. It can be said that they have reaped by hook or by crook the greater part of the fruits of labour in society. In the past, when I had meetings with the Financial Secretary to express my views on the Budget, I proposed that he should consider putting in place a progressive profits tax system. However, the views expressed by me each year were like stones dropped into the sea. Today, I reiterate this proposal. A progressive

profits tax system and the tax policy on assisting the development of industries and economic transformation can be complementary to each other, so that the overall taxation arrangement can be more reasonable.

President, this year, property prices in Hong Kong have become a hot topic in society and recently, the heat has been turned up again. The Financial Secretary proposed in the Budget four measures to reduce property bubbles. Later, the "nine proposals, 12 requirements" were announced to regulate the sale of newly completed properties. However, these measures have failed to check the rising trend of property prices.

In April this year, in his response to the budget debate, the Financial Secretary said that the rise in property prices was an exceptionally "unusual" situation resulting from the financial tsunami and that changes in the relevant factors would pose downside risks to the property market. The Financial Secretary's anticipation has not materialized and property prices in Hong Kong have risen to a level close to that in 1997. Let me give an example. A flat measuring less than 400 sq ft on a housing estate in Sha Tin was sold at over \$2 million, registering a rise of nearly \$300,000 when compared with the price early this year. At present, property prices have exceeded the affordability of the majority of families in Hong Kong. I wonder if the Secretary would still insist that the present situation is an exceptionally "unusual" situation. However, even if the Secretary's remark is true, this exceptionally "unusual" situation has persisted for a year and skyrocketing property prices, coupled with the significant rise in rent, have already seriously impacted on people's livelihood.

President, I have all along requested the Government to introduce a capital gains tax. I pointed out in this year's Budget debate that if the Financial Secretary was worried that introducing a capital gains tax hastily would have too much of an impact on the property market, he might consider introducing a capital gains tax levied on transactions involving the transfer of properties within three or six months of purchase as a start. Such a measure will not have any impact on members of the public who have genuine need for housing but will curb speculation in properties. I hope the Government can reconsider the proposal of introducing a capital gains tax to curb speculation in properties and cool off the overheated property market, thereby reducing the pressure of inflation and alleviating the burden of living borne by the grassroots.

MISS TANYA CHAN (in Cantonese): President, the motion moved by Mr Paul CHAN today has suggested some concrete proposals to be taken by the Government. We are going to share some of our views on his proposals.

Speaking of the taxation system of Hong Kong, people will immediately think of the features of "low tax rates" and "a simple taxation system". These two attributes can be said to be the most fundamental principles of the taxation system of Hong Kong, helping Hong Kong create economic miracles over the years. Just as what Mr James TO has mentioned earlier, Article 108 of the Basic Law stipulates that we have to maintain a taxation system of low tax rates, but we can decide the tax rates and the types of taxes on our own. Members seem to assume that Hong Kong can remain competitive as long as it maintains low tax rates or a simple taxation system.

However, Members can see that in recent years, with the economic development of the neighboring regions and the diversification of industries, the old way of thinking may turn from a form of assistance to that of resistance. We should put some thought to this question: Can low tax rates and a simple taxation system alone really be able to support the economy of Hong Kong to move forward and allow us to contend with our competitors?

In fact, the edge of Hong Kong in respect of low tax rates has been narrowed down by many competitors. The current profits tax rate of Hong Kong is 15%, while that of Singapore has dropped from over 20% in the past to 17% of late, with a further reduction to 15% for some government-boosted industries. Hong Kong cannot solely resort to the cut-throat price war of low tax rates to attract investors, as low tax rates is no longer a selling point of Hong Kong, and we may not have the conditions for a substantial reduction in the tax rates.

As regards enterprises, it is of utmost importance to have a taxation system that is clear, transparent and easy to understand. In the past, the simple taxation system of Hong Kong was readily understood and complied with by enterprises. However, with the advent of globalization and the diversification of economic activities, the simple taxation system in the past may no longer be able to cope with the present economic activities and business models that are complex and volatile.

For instance, the tax assessment principle of "source of income" adopted in the taxation system of Hong Kong was very clear-cut in the past. In sum, only revenue arising from operations within Hong Kong will be assessed under the taxation system of Hong Kong. The concept is very reasonable and easy to understand. However, when the development and production processes of multinational conglomerates are scattered across different regions today, the interpretation of source of income will lead to disputes, incessant litigations and uncertain business environment. This example shows that it is time to review the simple taxation system of Hong Kong.

President, in view of the need to review the taxation system of Hong Kong, the Civic Party will support the original motion moved by Mr Paul CHAN. As regards the amendment proposed by Mrs Sophie LEUNG, the Civic Party is aware that this is the taxation arrangement which the industrial sector has all along been fighting for, and it affects the business environment for many small and medium enterprises (SMEs) engaged in production. Under the principle that improvement should be made to the business environment for SMEs, the Civic Party will support the amendment proposed by Mrs Sophie LEUNG.

As regards the proposals in principle mentioned in the original motion, I hope to express my views on two particular points, that is, the broadening of the tax base and the use of tax policy to promote economic development.

Let me start with the broadening of the tax base. Many professionals in the fields of taxation and accounting have pointed out that the tax base of Hong Kong is too narrow, with most of the tax being paid by a small number of taxpayers. In Hong Kong, only one out of three persons is required to pay salaries tax. The 10 most profitable enterprises contributed to one-seventh of the profits tax proceeds in the previous financial year. Judged from these figures alone, the tax base of Hong Kong is of course very narrow, but if we look a little deeper, the situation may not be that simple.

A high land price policy has been adopted in Hong Kong, and many Honourable colleagues have mentioned this point of concern earlier. Land premium is one of the very important sources of revenue in Hong Kong that can be used to meet the recurrent expenditure for multifarious social policies. In the 2007-2008 financial year, land premium amounted to \$62.3 billion, which was

higher than the salaries tax proceeds from that year. In 2008-2009, land premium also amounted to \$16.9 billion. Compared with the annual government revenue of about \$300 billion, these figures are indeed not small.

If land premium is a kind of tax revenue, who actually are the taxpayers? We will certainly think of property developers direct, but indirectly, part of the cost is actually borne by each of the property owners and tenants. As such, many Hong Kong people also need to contribute to this type of tax revenue. From another point of view, the tax base of Hong Kong may not be narrow.

In fact, the ultimate policy objective of broadening the tax base is to stabilize the source of revenue for the Government in support of various kinds of recurrent expenditure. To achieve this goal, the first thing the Government has to do is to abandon the high land price policy and the public finance management practice of covering recurrent expenditure with non-recurrent revenue, rather than broaden the tax base. So long as no change is made to this practice, the Government will only remain reliant on land revenue. Should the situation persist, there will be no incentives at all for society to look into ways to broaden the tax base.

The original motion has proposed that the Government should consider promoting economic development through tax policy. The Civic Party considers the proposal feasible. This practice is of utmost importance to some emerging industries. Through tax relief, operators of emerging industries can amass capital to support their long-term development in future. For instance, the recycling industry is one of the six economic areas with good potential. If the industry is granted tax relief or even rebates, this will foster the continuous development of the industry and even offer employment opportunities for people engaged in low-skilled work types.

Lastly, the Civic Party agrees to the proposal to establish a tax policy unit at the bureau level. This is because of the fact that although the current Joint Liaison Committee on Taxation comprises representatives from the industrial and commercial sector, the professional sector, the Government and so on, the main function of the committee is to study the technical details and the state of implementation concerning the taxation system of Hong Kong. It is not appropriate to extend its purview to the discussion on public finance and tax

policy principles. The Government should set up a research organization of a higher level.

President, in the face of the ever changing economic models and industrial structures, the two most important principles in the past may no longer be sufficient at present. It is hoped that the Government can embark on a comprehensive review of the taxation system as soon as possible to ensure sustainable development for the economy of Hong Kong. I so submit. Thank you, President.

MR WONG KWOK-HING (in Cantonese): President, the Federation of Trade Unions (FTU) holds that tax revenue serves the major purpose of redistribution of wealth. Through the taxation system, the Government can achieve a relatively balanced distribution of wealth in society, so that the scenario in which "meat is allowed to spoil in rich man's homes while at the roadside, people freeze to death" will not happen. But obviously, the current tax policies cannot serve this purpose effectively. As we can see, Hong Kong is the city with the greatest wealth disparity among the richest places in the world with a Gini Coefficient as high as 0.533. While there are over 75 000 millionaires each sitting on more than US\$1 million of assets, there are also 630 000 poor people at work earning less than \$6,000 each month. The disparity between the rich and the poor has given rise to deep-rooted conflicts that are widely recognized in Hong Kong, it has also led to mounting indignation and serious division in our society. Hence, we agree to Mr Paul CHAN's idea of using tax initiatives as a means to address the social and economic inequalities in society as mentioned in his motion for today.

In addition, regarding Mr CHAN's proposal to establish a tax policy unit to study and give advice on tax initiatives, I think this is something that can be perceived with an open attitude. In fact, the low tax regime that the Government is upholding at present and has been used as the major selling point to attract investors to Hong Kong is exactly the cause for today's problems. Undoubtedly, maintaining a low tax regime can attract investments, yet this will reduce government revenue and thus affect public finance. As such, we can see that the Government upholds the low tax regime on the one hand, and complements its revenue by high land price on the other hand. While the public are not heavily

taxed, they have to pay soaring rent and high property prices. Similarly, companies are unwilling to set up their headquarters in Hong Kong due to the expensive rent and property prices. Consequently, it becomes increasingly difficult for local people to purchase a flat and secure a job. As such, the Government has very often shelved public services and social security on the pretext that the tax revenue generated under a low tax regime can hardly cover the expenditure of services. For example, service for the elderly has been postponed time and again, and so is the community-wide retirement protection. Many support initiatives that can be improved such as unemployment allowance and transport allowance fail to get additional resources for implementation. Even public health care service fails to meet demand, many patients who need specialist treatment have to wait for one year or six months, and some are still on the queue even after waiting for a few years. As the Government regards a low tax regime as the only formula to attract investors, many social services, such as those relating to air and environment, are neglected with inadequate resources for improvement, and many foreign investors are discouraged to come to Hong Kong in the light of the unresolved problems.

Therefore, President, low tax regime is one of the ways but not the only way to enhance and maintain competitiveness. For instance, the tax regime of the Mainland is not simple at all, it also levies heavy taxes, how come many foreign companies are still so eager to break into the Mainland market? The reason is very simple, they are eyeing on the enormous Mainland market. Business is all about profits and the opportunities to make profits, though heavy and complicated taxes are levied in the Mainland, the companies do not mind. This shows that the competitiveness of a place not only hinges on whether the tax burden is heavy or light, it is also determined by many other factors, such as social stability, the quality of the environment and the people, whether the market is fair and transparent, and so on. As such, insofar as tax revenue is concerned, I hope that the Government can review its tax philosophy and consider if the current tax policies have any need for improvement so as to achieve a higher degree of stability and fairness in our society.

President, the FTU has all along considered that the principle of vertical equity should be applied in tax policy, so that the capable ones pay more to help those who are incapable. Hence, the FTU proposes that the Government should implement a progressive tax regime under which companies with substantial

profits will be required to assume more social responsibilities. In fact, salaries tax is already assessed in a progressive manner, but profits tax has not yet adopted this method of assessment, so large companies and major business groups are given preferential treatment indeed. The Government should consider introducing a progressive scale into profits tax so as to require the capable ones to pay more. As for some industries which merit our support for transformation and assistance, such as the social enterprises, environmental and recycling businesses and companies engaging in scientific research, the Government should consider providing more tax concessions to assist these industries and companies. We have no objection in this aspect.

President, in the original motion and the amendment, there are wordings urging the Government to consider widening the tax base in the light of the narrow tax base at present. The FTU has great reservation as this remark implies the possibility of reconsidering the levy of a sales tax. The grassroots are very concerned about this point. We cannot support the original motion and the amendment on the grounds of those wordings, hence we can only abstain from voting. I hope Mr CHAN can understand the rationale we base on. In this case, if he deletes the part on widening the tax base, we may give our support. Thank you, President.

MR WONG TING-KWONG (in Cantonese): President, although there are signs that the world economy is recovering since the second half of last year, and factories are getting more orders, many Hong Kong businessmen operating on the Mainland air their grievances to me. They say that they have to face other kinds of tough tests, such as shortage of labour, pay hikes, appreciation of the renminbi, rising production costs and gradual abolition of rebates for products exported. Certain big enterprises choose to pursue added value in their products so as to get higher returns. But for some small and medium-sized enterprises (SMEs), they can only resort to cutting cost. Many of them are struggling to survive. It is feared that in the not-too-distant future, there will be another wave of factory closures in sight.

Under the circumstances of uncertain external conditions, economic outlooks are still gloomy. The road to recovery is long and dreary. As Hong Kong manufacturers are still groping a way out in their transformation, if the SMEs want to stay in business and grow, they must get some support from the

Government. The provision of tax incentives and concessions is an effective way to help Hong Kong manufacturers upgrade their business and speed up the transformation process. However, the Government has not responded adequately to the demands of Hong Kong enterprises in taxation matters. Such demands include tax allowance for capital costs in machines and industrial installations as stipulated in section 39E of the Inland Revenue Ordinance, which has caused great dissatisfaction of Hong Kong manufacturers over the past few years. This Council has discussed this issue many times but the authorities still adopt a tough stand.

The authorities stress that the objective of the provision is to restrict taxpayers to lease machines or industrial installations or through other means to avoid tax. Since any arrangement in tax avoidance would often involve machines or industrial installation owned by Hong Kong companies leased for use by companies outside the territory over long periods of time, so Hong Kong companies cannot obtain any tax allowance in depreciation. But the authorities also say that they are aware that under the import processing arrangement, Hong Kong manufacturers sometimes let Mainland enterprises use their moulds and dies for free, hence they do not get any rentals in return and they cannot get any depreciation allowance because of section 39E. As the problems involved are very complicated, the restriction concerned cannot be lifted.

Hong Kong manufacturers found the Government's response both unreasonable and unfair. They stress that in order to complement the changes in the State's economic policies, they have changed their operation from contract processing to the so-called "three capital enterprises" and engage in import processing. They are forced to do that and in fact, for both modes of operation, the difference lies only in technical adjustments. It is unfair to deprive these enterprises of the tax concessions that they should have enjoyed because of the transformation they make. Also, although the original intention of legislation is to prevent tax avoidance by resorting to lease arrangements, for those Hong Kong companies which do not intend to evade tax and do not enter into any form of leasing, they cannot get any tax allowance all the same. Moreover, the authorities also admit that some Hong Kong manufacturers let Mainland companies use their moulds and dies or other facilities for free without asking for any rentals; it is extremely unreasonable if the authorities will still regard this as leasing arrangement.

The authorities explain that section 39E is an anti-tax avoidance provision and is applicable to all commercial arrangements. Hence enforcement of the provision cannot be selective. It is also said that the Ordinance can be invoked regardless of whether the taxpayer has any intention to avoid tax. The more the authorities explain, the more apparent that there are flaws in law enforcement. There is no flexibility and everything just goes by the book. An across-the-board approach is used to simplify matters and no attention is paid to the real situation. The authorities are only concerned about the current difficulties, with no intention to make any improvement. How can this mindset raise the competitive edge of Hong Kong enterprises and steer out of the predicament?

I therefore urge the authorities to re-examine and review the Ordinance concerned to keep it abreast with the times, and in consideration of the practical mode of business operation and the economic conditions, enhance and improve the law to meet the needs of enterprises. Furthermore, as machines are used by people outside the territory, it is difficult for the Inland Revenue Department to ascertain how these machines are actually used, so the authorities should discuss with their Mainland counterparts how these technical problems can be resolved. I would also like to suggest that the authorities should first consider cases in places like Dongguang where Hong Kong manufacturers are in great number and are most seriously affected. If these manufacturers can furnish documentary proof that they have switched to "three capital enterprises" in line with national policy, they can apply for a one-off tax allowance. By resorting to such interim measure, it will benefit any study made on the feasibility and effectiveness of adopting long-term policy on lifting the restrictions on tax allowance.

President, I so submit to support the original motion and the amendment.

MS MIRIAM LAU (in Cantonese): President, with the outbreak of the European sovereign debt crisis, the external economic conditions have turned uncertain recently. The unemployment rate released last month rebounded and it rose from 4.4% to 4.6%. So after the anchor has weighed for the constitutional reform, the authorities should redirect their focus on economic issues, including enhancing the administration of tax policy to enhance the competitiveness of

Hong Kong, helping small and medium-sized enterprises (SMEs) to upgrade and transform, as well as easing inequality in the social and economic fronts, in order to ensure sustainable development in Hong Kong. An example is that the tax policy of Hong Kong had almost caused Hong Kong to be dubbed as a haven of tax avoidance in the G-20 Summit last April. Fortunately, the Central Authorities gave their firm support to Hong Kong and this disaster was averted.

Even though the authorities finally amended the Inland Revenue Ordinance this January and adopted the latest standards on exchange of information under the Organization for Economic Cooperation and Development (OECD), the authorities should learn the lesson from this incident and adopt a proactive approach to catch up with the latest developments in international tax arrangements and requirements, take prompt action to cope with the situation and avoid having to enact laws in haste to remedy the situation. It can be seen that the suggestion made in the motion to establish a specialist tax policy unit under the government structure should be studied.

In fact, the Liberal Party has always urged the authorities to take swift action and enter into agreements with the major trading partners of Hong Kong on avoidance of double taxation in order to make Hong Kong more attractive to trade, investment and talents. However, the authorities has acted slowly, claiming that as Hong Kong has not yet adopted the latest OECD standards on exchange of information, there are difficulties in entering into agreements with foreign places. Now that obstacles in this area are cleared, the authorities should catch up by expeditiously discuss and enter into agreements with our major trading partners such as the United States, Japan, Taiwan, Singapore, Malaysia, Korea and other ASEAN countries, thereby consolidating our position as a trade and business centre.

Moreover, the Liberal Party has all along been advocating a number of recommendations in taxation to enhance our competitiveness and render support to SMEs. These initiatives include the introduction of a loss rebate, raising the tax allowance for R&D to 200%, offering tax allowance for expenses in the purchase of trademarks and brands, and conducting a review of tax exemption for Hong Kong-owned enterprises engaging in import processing on the Mainland.

For Hong Kong manufacturers operating on the Mainland who have transformed from "contract processing" to "import processing", they have to face four problems, namely upgrading and transformation of industries, rising exchange rates of the renminbi, surging wages and slackening export demands. Apart from these problems, they are also burdened with the problem of the Inland Revenue Department's abolition of tax concessions previously offered to them, and the recovery of tax for the past few years. Hence, it can be said that they are attacked from all sides. Secretary, the fact that this issue has been raised by so many Honourable colleagues today well illustrates the serious effect on Hong Kong manufacturers. I hope that the Government can give serious consideration to this issue. The Liberal Party calls on the Government again to undertake a speedy review of section 39E of the Inland Revenue Ordinance and the relevant tax policy to enable enterprises engaging in "import processing" to obtain appropriate tax concessions, so as to ease the pressure experienced by SMEs in their upgrading and transformation.

President, the Liberal Party also agrees that as a matter of fact, tax policy can — at least to a certain extent — be used as an important tool to solve the problem of social and economic inequalities and narrow the wealth gap to a certain degree as well. The Liberal Party has in the past studied and proposed the introduction of a plan similar to the Workfare Income Supplement in Singapore. Under the proposed plan, the Government will offer a supplement to those low-income people presently not on CSSA, in order to encourage these people to be self-reliant and undertake employment to improve their living. In our expectations for the 2010-2011 budget, we suggest setting up a training scheme for middle-age employees so as to enhance their competitiveness.

In implementing the above plan, is it really necessary, as suggested by Mr Paul CHAN, that some new tax initiatives must be introduced, or else the plan will fall through; or is it necessary to think of measures to widen the tax base whenever comments are made on the narrow tax base, we opine that further deliberation is needed. It is vital for us to take note, no matter what actions we take, our core advantage of having a simple tax regime with low tax rates must not be undermined. The Secretary has also mentioned the importance of this point in his speech and many Members have also mentioned just now. Hong

Kong must preserve this simple tax regime with low tax rates. This is of utmost importance.

President, apart from low-income people, the problem that the middle-class pay the most tax and get the least welfare must be attended to. At the end of last year, the findings on the survey held by Lingnan University on the Happiness Index of the Hong Kong people showed that, despite a rise in the Happiness Index readings for society as a whole in 2009, there was a fall instead of a rise in middle-class families. Scholars in charge of the survey said that the findings showed a correlation with the financial pressure experienced by middle-class families. Therefore, the Liberal Party urges the authorities to further reduce the salaries tax, such as expanding the tax band to \$45,000 and adjusting the last two marginal tax rates downwards by 1%, to ease the financial pressure of the middle-class families. We estimate that these moves would save 10% of the tax payable by middle-class families with a monthly income of \$20,000 to \$30,000, hence relieving their pressure. I think this should be considered by the Government.

Lastly, the amendment proposed by Mrs Sophie LEUNG suggests using tax initiatives to facilities the upgrading and transformation of SMEs. This is in line with the view held by the Liberal Party. As for striving to relax the existing 183-day standard for those working across the border — when the National People's Congress was in session early this year, I put forward this proposal to the Central Government in my capacity as a delegate to the NPC — this suggestion is actually beneficial to enhancing the economic integration of the Mainland and Hong Kong. This is something which the Liberal Party would agree very much to and we hope the Government can follow up proactively.

President, I so submit.

MR CHAN KIN-POR (in Cantonese): President, the main axis of the proposals put forward in Mr Paul CHAN's motion "Enhancing the administration of tax policy in Hong Kong" today is to enhance the tax policy in Hong Kong but in fact, the scope covered by and the enhancements mentioned in the motion is not just designed to help Hong Kong secure a larger market share of the regional headquarters established by multinationals in Asia or even in the world, and to

enhance Hong Kong's competitiveness as an international financial centre, the motion also proposes that the Government use tax initiatives as a means of addressing economic and social inequalities, including the bridging of the wealth disparity in Hong Kong.

The implications of the motion are far and wide. I personally agree very much to and support Mr Paul CHAN's views. This also fully illustrates that as a functional constituency Member, he is capable of making quality and constructive proposals in the legislature and society.

President, I wish to talk in particular about a very important proposal in the motion, that is, to use tax initiatives to enhance the competitiveness of Hong Kong as a regional business centre. In fact, Hong Kong's competitiveness has all along been challenged by neighbouring countries. In recent years, I have seen a trend that is unfavourable to Hong Kong's long term development, that is, many multinationals have established their regional headquarters at such places as Singapore, Beijing and Shanghai rather than Hong Kong, some companies have already established themselves at other places and some have even chosen to move out of Hong Kong.

A low tax rate and simple taxation system has all along been one of the cornerstones of Hong Kong's success and there is no doubt about this. However, a so-called simple and low-tax regime is actually relative. When other countries and cities adopt this approach and are doing so even more actively and aggressively than Hong Kong, for example, to attract foreign capital to establish their regional headquarters by lowering the tax rates or offering various tax concessions, naturally, Hong Kong's competitiveness would pale in comparison.

I agree very much with Mr Paul CHAN that the system of profits tax in Hong Kong obviously cannot keep up with the rest of the world. Compared with some neighbouring countries and cities, Hong Kong has failed to provide adequate tax concessions and other attractive business measures in an effort to make business organizations worldwide establish their headquarters in Hong Kong, and it cannot even make multinationals already established here stay in Hong Kong and choose Hong Kong as the location for their regional headquarters.

The latest figures of the Census and Statistics Department indicate that the number of regional headquarters based in Hong Kong decreased from 1 298 in 2008 to 1 252 in 2009. In the process of globalization, the competition to attract multinationals to establish their regional headquarters is actually very keen. Many countries are striving to develop so-called "headquarters economies" because "headquarters economies" can bring economic benefits in terms of taxation, industry multiplier, consumption, labour and employment, as well as social capital, which are far greater than the tax concessions offered by governments to those companies.

In March this year, Mrs Sophie LEUNG proposed a very meaningful motion and I moved slight amendments to her motion. At that time, she proposed the motion "Adding impetus for promoting upward social mobility" and my amendment proposes that the Government should introduce tax concessions and other appealing measures for running businesses, so as to strive for business organizations around the world to establish their regional business headquarters in Hong Kong, thereby creating more employment opportunities, providing diversified posts, developing room for upward mobility for young people and their international outlook.

The major message of this amendment is that, it is hoped that the Government, through tax concessions or certain appealing measures for running businesses, can attract overseas capital to choose to establish their regional headquarters in Hong Kong. The message is very clear and positive. In the amendment moved by me or in the speech delivered by me, I did not call on the Government to cut the tax by a certain extent or provide tax concessions at all. I only hope that the Government can consider the measures of neighbouring regions and through its tax policy or business policies, attract overseas capital to come and establish their regional headquarters in Hong Kong. However, due to the abstention of some Members in the pan-democratic camp, my amendment was voted down.

Subsequently, some friends in the pan-democratic camp told me that the reason for their abstaining from voting was that they considered the tax rates in Hong Kong already very low. On hearing this, I felt very disappointed. The reason for my disappointment is that some Members do not understand the importance of a "headquarters economy" to Hong Kong at all, nor do they

understand that Hong Kong is finding itself in a dynamic and competitive environment. If Hong Kong stands still, it will only gradually lose its competitiveness. Conversely, if the Government can make good use of taxation strategies to attract overseas capital to establish their headquarters in Hong Kong, so that a large number of jobs and a large volume of consumption can be generated, this is ultimately a smart thing for Hong Kong to do despite the apparent losses, so why do we not do something so desirable?

The major source of tax revenue in Hong Kong is the sale of land and income from investment. The tax base is quite narrow and any changes in the taxation system will give rise to a ripple effect, just as the case of the study by the Government of levying the goods and services tax in the past. The scope of impact is extensive and cannot be handled by a single Policy Bureau. Therefore, the Government should really consider the establishment of a dedicated unit to deal specifically with the tax policy in Hong Kong.

We all know that the Legislative Council is now discussing the issue of a minimum wage. Moreover, inside and outside the legislature, we are all discussing from time to time ways of alleviating poverty and resolving the wealth disparity in Hong Kong, in particular, the issue of the working poor. I personally fully support a minimum wage but sometimes I doubt whether the Government should propose or study the relevant tax policies at the same time, so that discussions in society can be more multi-dimensional and comprehensive?

For example, in studying issues related to alleviating poverty, the working poor and a minimum wage, should the Government show greater courage by leading the legislature and society in discussing other complementary tax policies, so that the discussion by society as a whole can be enriched?

In the United States, the Earned Income Tax Credit, abbreviated as the EITC or EIC, was introduced as early as 1975. The aim of formulating the EITC is to give low-income people greater incentive to work and it is considered the most important measure in alleviating poverty in the United States. Concerning the economic and social benefits of the EITC, many economists have already made a great deal of detailed analysis and I will leave the Government to conduct a study.

President, a tax policy is definitely an effective tool for solving economic, social and livelihood problems. I hope the Government can study it carefully because the implications of any taxation reform are very far-reaching. I hope the Government can make good use of the tax policy. Apart from maintaining and promoting Hong Kong's competitiveness in the international arena, it will also help resolve Hong Kong's poverty problem.

President, I so submit.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): Mr Paul CHAN, you may now speak on Mrs Sophie LEUNG's amendment. You may speak up to five minutes.

MR PAUL CHAN (in Cantonese): President, Mrs Sophie LEUNG's amendment is divided into two parts, the first part is about section 39E of the Inland Revenue Ordinance. I think we have discussed this issue on many occasions inside and outside this Council, and many colleagues have spoken on it just now. We have attained the consensus that the Government should amend the relevant legislation. I support the amendment in that respect.

The second part of her amendment is about Hong Kong residents working on the Mainland, and the bilateral taxation arrangement between Hong Kong and the Mainland. It is hoped that Hong Kong residents working on the Mainland, who have exceeded the 183-day standard only have to pay tax in Hong Kong and need not pay tax on the Mainland. This proposal has gained a considerable degree of support in the professional sector, as well as in the business sector. I think we may try to petition the Mainland for this proposal, so I will also support the amendment.

President, I do not have anything to add.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, I am very grateful to Members for giving their valuable advice on this motion. I can hear that Members speak from their heart, they have made a careful analysis of the competitiveness of Hong Kong, how the tax regime in Hong Kong should be improved, as well as how certain social and livelihood problems can be resolved. Therefore, this is indeed a meaningful debate. Even though I hold different views from Members on certain issues, I believe this discussion will compel me to reflect on them. With respect to particular tax initiatives and policies mentioned by Members, as the scope involved is wide, I will try to respond to various areas involved.

As I have said before the debate starts, our simple and low-tax regime is impartial to all persons and companies and it fully realizes the principles of equity and neutrality. I consider this the key to Hong Kong's success. This is not fixed and unchangeable, it is a crucial principal which makes us stay competitive. As mentioned by a number of Members, Article 107 of the Basic Law stipulates that "The Hong Kong Special Administrative Region shall follow the principle of keeping expenditure within the limits of revenues in drawing up its budget, and strive to achieve a fiscal balance, avoid deficits and keep the budget commensurate with the growth rate of its gross domestic product." Article 108 of the Basic Law stipulates that "The Hong Kong Special Administrative Region shall, taking the low tax policy previously pursued in Hong Kong as reference, enact laws on its own concerning types of taxes, tax rates, tax reductions, allowances and exemptions, and other matters of taxation." Hence under this major premise of prudent financial management and maintaining low tax rates, there is limited room to provide tax concessions under various headings or in a large scale. However, I wish to stress that this is also the principle which Hong Kong relies on to stay competitive. So this is something we should take note of.

Many Members also mention tax concessions offered in other places. The fact that most of these places or countries are able to provide various kinds of tax concessions is due to the following reasons: first, the original tax rate is relatively high; and second, a large part of their tax revenue comes from indirect taxes such as sales tax. Hence, some countries have a larger scope of offering tax exemptions and concessions in direct taxes by raising the sales tax.

Concerning the Tax Misery and Reform Index which I mentioned when I spoke for the first time, when various kinds of tax we have are seen as a whole, Hong Kong offers far more advantages than our neighbours. Over a certain period in the past, I have maintained a close dialogue with the industry, many friends from the business sector and some tax experts have expressed their views to me on how we can offer more tax exemptions and concessions. Very often, after discussing with them and listening to their suggestions, I will ask myself, if so many exemptions and concessions are to be offered, our profits tax will be affected, for example, less revenue from profits tax. Then should the tax rate be raised so that we may at least remain revenue neutral? The answer is of course "no". The Government is asked to lower the tax rate but at the same time offer more tax concessions. This is really a dilemma to be faced by the Treasury. For the Government, we must assess whether our tax regime is competitive and how a balance should be maintained.

However, this does not mean that the Government will not listen to suggestions made by the industry on tax matters. In the past we had rolled out a number of tax initiatives to tie in with the needs of developing the economy and the enterprises, as well as enhancing our competitiveness. Currently, the operational expenses incurred by enterprises for the purpose of generating taxable income will get a 100% tax deduction. We also give 100% instant deduction to specified machinery used by the manufacturing industry such as machines, computers and software. We also offer concessionary tax rates to qualified interest revenue from debt instruments, as well as setting up a system whereby the Commissioner of Inland Revenue may determine tax matters in advance.

In addition, in preparing each year's budget, we will examine the existing tax regime in accordance with the prevailing socio-economic conditions and the needs of sustainable development. We will consult people from all sectors across the community for their views. There are numerous examples of tax initiatives proposed in the budgets and let me give a number of such examples:

- abolishing the hotel accommodation tax;
- waiving of duties on wine, beer and all other alcoholic beverages;

- exempting the payment of profits tax by offshore funds;
- abolishing estate duty;
- expanding the scope of exemption for stamp duty levied on funds traded in the stock exchanges;
- providing tax deductions on capital expenditure incurred in R&D, purchase of patents, industrial expertise, registered trademarks, copyrights and registered designs and the purchase of specified green production facilities and environmentally-friendly vehicles; and
- amending laws to facilitate Hong Kong's adoption of the latest international standards on information exchange under the comprehensive agreements on avoidance of double taxation, thereby permitting the signing of relevant taxation agreements with more places. Such initiatives can promote the development of related trades and consolidate our position as an international financial, commercial, tourism and logistics centre.

A number of Members have enquired of the person responsible for formulating tax policies. Some Members have suggested setting up a specialist tax policy unit. With respect to this, I wish to make the following response. As Mrs Regina IP has mentioned, there is a special unit under the Treasury Branch of the Financial Services and the Treasury Bureau to undertake the task of reviewing and formulating tax policies. As the Secretary of Financial Services and the Treasury, I am in charge of this policy area. My colleagues and I will consult the industry and the public extensively to gauge their views when we review and draw up public tax policy. We attend the meetings of the Joint Liaison Committee on Taxation (the Committee) on a regular basis.

I wish to mention the fact that as we examine public revenue, we will keep in close contact with the industry, including members of the Committee. When we prepare the annual budget, we will listen to a lot of views. We will analyse these views, and review what tax adjustments should be made to develop the economy, maintain or enhance our competitiveness or tie in with the development

in certain policy areas. All these works are undertaken by us regularly. Let me give an example. Mrs Regina IP has just mentioned tax concessions on bonds. We have spent some time discussing the issue with the fund industry and we have also studied many proposals. However, we have not accepted many of these proposals as they would affect the impartiality of our tax regime. Nevertheless, we have still adopted some of the proposals. Regarding captive insurance, I have met many members of the trade personally. They put forward many views and I have asked relevant public officers to study them to see if these are conducive to enhancing our competitive edge. We have to hold on to the principle of equity and ensuring that public revenue will not be affected. We will examine if there are any suitable policies to allow us accept these proposals on tax adjustments.

Some Members have spoken on subjects of popular concern, that is, the tax problems related to Hong Kong businessmen investing on the Mainland and Hong Kong people working on the Mainland. During our regular contacts with the related professional bodies and business associations, we have very often exchanged views on Hong Kong people doing business and working on the Mainland. We also study the views put forward by people from all sectors across the community on taxation matters. What I want to say is that we are aware of the demand made by the industry on reducing the tax burden, but I hope Members would understand that the proposed tax initiatives cannot run counter to the existing and well-established taxation principles, otherwise it will have far-reaching impacts on our tax regime.

On the computation of profits tax for the processing trade, we have explained to Members on many occasions that like other Hong Kong enterprises, when we calculate the profits tax for Hong Kong enterprises engaging in processing trade on the Mainland, a territorial source principle of taxation is adopted. As Hong Kong enterprises engaging in "contract processing" are involved in the manufacturing process on the Mainland in many aspects, and at the same time, they have to carry out certain operating and manufacturing activities in Hong Kong, so under the territorial source principle of taxation and for reasons of administrative convenience, the Inland Revenue Department will regard half of the profits made as originated from the Mainland, whereas the other half will be regarded as originated from Hong Kong. That is to say, these Hong Kong enterprises are permitted to pay tax on the profits they generate in Hong

Kong and on the Mainland on a half-and-half basis. As for those Hong Kong enterprises which engage in "import processing" on the Mainland, as they only engage in trading activities concerning the sale and purchase of goods, so the Inland Revenue Department does not think that part of the profits comes from the Mainland. All the profits which come from their trading activities in Hong Kong should therefore pay the profits tax. If tax for the general trading activities is levied under the 50:50 approach applicable to "contract processing" enterprises, it will cause a fundamental change to the existing taxation principles of Hong Kong.

As regards tax allowances for depreciation of machines or industrial installations under "import processing" arrangement, another issue greatly concerned by Members, we are now studying the issue with the Committee as requested by the trade. As I have repeatedly said in the Legislative Council, the proposal concerned will affect the integrity of anti-tax avoidance provisions in the Inland Revenue Ordinance, and there are practical difficulties in implementation. Some loopholes leading to tax avoidance may arise. As such, we must study carefully the feasibility of relaxing the above restrictions and the implementation details, including measures to plug the loopholes of tax avoidance. We will complete the study concerned as soon as practicable.

In addition, some Members suggest relaxing the 183-day standard under the Arrangement between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion. In fact, the main objective of this Agreement on avoidance of double taxation is to delineate the powers of both signatories in levying tax. On the distribution of authority to levy tax on the income of those who engage in cross-border employment, the standard generally adopted by various tax jurisdictions is whether or not the related cross-border employment exceeds 183 days over a period of 12 months. Other agreements on tax revenue entered into by the Mainland with other tax jurisdictions all adopt the 183-day standard. So the 183-day rule in the Arrangement serves to allocate in a fair and unequivocal manner the authority between the Mainland and Hong Kong in levying tax. It has also greatly reduced the possibility of being asked to pay mainland tax on account of employment on the Mainland. It is definitely beneficial to the integration between the two places.

We have reflected the aspiration of certain members of the trade in Hong Kong to relax the 183-day rule to the Mainland authorities. The Mainland authorities are of the view that since the 183-day rule is well-established and meets the standards specified in various templates of agreements on avoidance of double taxation, there is no justification for any change at the moment.

As to the question raised by Members on how Hong Kong should cope with the international tax agreements and requirements, I would like to point out that being an international business city and an ideal location for multinational corporations to set up their regional headquarters, Hong Kong has been actively taking part in tax conferences and seminars organized by international organizations. This is to ensure that the tax regime of Hong Kong complies with international standards and requirements. As for enhancing transparency in taxation, some Members are of the view that Hong Kong enacts laws in taxation only to meet the demand made in the Group of Twenty (G-20) summit so that we can meet the requirements of the OECD on the exchange of information for tax purposes. However, before the G-20 has ever put up that demand, we have already undertaken a number of internal studies and the market is also consulted. It is when the consultation paper is published that we will have the basis to commence legislative work to implement the provisions of this Ordinance. We are happy to see that after this amendment law was passed in this Council in March, we may adopt the most recent standards governing the exchange of information as prescribed by the OECD when Hong Kong enters into any comprehensive agreement to avoid double taxation.

In as short as four months after the passage of the amended legislation, we have entered into agreements with eight partners including Brunei, Indonesia, the Netherlands, Hungary, Kuwait, the United Kingdom and Ireland, using the latest version of the information exchange provisions of the OECD. Besides, we have updated our agreement on the exchange of information with the Mainland according to the latest version of the OECD. In addition, we have also reached an agreement with four partners respectively and they are France, Japan, Switzerland and Lichtenstein. Also, we are negotiating with many other countries concerning the agreement. We also discuss with existing signatory partners such as Vietnam, Belgium and Luxembourg on updating the provisions on information exchange in the existing agreements to the latest version of the OECD. In my opinion, this will consolidate and strengthen our position as an

international trade and finance centre and show our determination to support the work done by the international community in enhancing transparency in taxation.

Apart from the OECD, Hong Kong has been exchanging views with the International Monetary Fund (IMF) on matters concerning economic policies, including tax regime. The IMF deputation has expressed the view that unless after very careful consideration, Hong Kong should avoid giving further tax concessions, as such move would result in a long-term reliance of the budget on non-tax income which is volatile. Hence, as we explore the feasibility of expanding the tax base, we also make reference to the suggestions made by the IMF on stabilizing the non-tax revenue of Hong Kong. After careful considerations, and conforming to the principle of not affecting the power of the Exchange Fund to defend the Hong Kong dollar and stabilize the monetary and financial system of Hong Kong, we have, since 1 April 2007, revised the sharing arrangement between the fiscal reserves and the Exchange Fund in order to raise investment return for the Government and increase its stability. This will enable us to have sufficient fiscal reserves and hence enough resources to cope with the impact of a global financial crisis on the Hong Kong economy, and at the same time, handle the financial pressure brought about by changes to the social structure.

Concerning the G-20 Summit, the SAR Government has always been active in attending these meetings in the capacity of a member of the Chinese deputation. The G-20 Summit held recently in Toronto was on the themes of economic recovery and financial reform. I believe Members have learned from media reports that due to the different circumstances of member countries, in order to reach a compromise, the G-20 has consented to allow individual country to decide on its own if the terms concerned will be enforced, and in what ways will they be enforced. This includes levying a tax on banks to recover costs of the bailout and adopting more stringent measures on capital reserves of banks and so on. All in all, discussion made and the decision reached at international levels are to call on different countries to learn from the lesson of the financial crisis and adopt more prudent attitude and measures to reduce fiscal deficits and loans. This will lead to the long-term stabilization of the economic and financial systems, hence making sustainable development possible. I think this coincides with the financial management philosophy that we have always clung onto.

As for Members' suggestion to use tax initiatives as one of the ways of solving the problem of social and economic inequalities, I wish to reiterate that tax rates in Hong Kong are already very low and our tax regime fully realizes the principle of equity that those with higher capacity should pay more. With respect to salaries tax, we not only have progressive tax rates but also offer very attractive allowances. Now about 60% of the working population has to pay salaries tax. Likewise, the more profits a corporation makes, the more profits tax it will pay. I have pointed out just now that in the Tax Misery and Reform Index released by Forbes in Asia, Hong Kong ranks the third most tax-friendly country in the world. From this it can be seen that tax burden borne by citizens and corporations in Hong Kong is lower than that in most places in the world.

I have pointed out many times in this debate that an equitable and neutral tax regime is vital to the social and economic development of Hong Kong. The offer of tax exemptions or more attractive deductions to certain types of people or trades would contravene the principles of equity and neutrality in taxation and it will further narrow our tax base. The introduction of such concessions and exemptions to the tax regime shall be made by way of legislation. In order to prevent acts of tax avoidance, the Government needs to enact detailed and stringent anti-tax avoidance provisions. But this move will make our tax regime more complicated. As we know, tax laws in many countries in Europe and North America are very complicated, cumbersome and verbose. This is precisely the cause. A complicated tax regime will add directly to the compliance costs of individuals and corporations, especially SMEs.

I also wish to point out that an over-reliance on the tax regime to handle the issue of the distribution of wealth in society will certainly lead to fundamental changes in the tax regime. There is a likelihood that substantial changes will have to be made to existing tax rates and the tax regime itself. Such changes include higher tax rates and levying of other types of taxes. This will lead to great tax burden undertaken by individuals and corporations. This will also be detrimental to the simple and low tax regime that we have always been proud of, hence seriously undermining the competitiveness of Hong Kong as a small open economy, and bringing adverse impact on the long-term economic development. In the end, the gains made may not be able to offset the loss suffered.

On the issue of tax base, we made an extensive consultation on reforms in the tax regime in 2006. As we have pointed out in the Final Report of Public Consultation on Tax Reform, when considering any proposal to widen the tax base, the Government should take the following three criteria into consideration: first, the option must be effective in broadening the tax base and providing stable and considerable revenue for the Government to meet its future needs; second, the option must be fair and in line with the "capacity to pay" principle, and should not widen the wealth gap; and third, the option is in line with our simple and low tax system so as to attract capital and talent and maintain our competitiveness. We will examine various proposals to widen the tax base according to these principles

(Mr LEUNG Kwok-hung stood up)

PRESIDENT (in Cantonese): Secretary, would you stop for a while. Mr LEUNG, do you have any question to ask?

MR LEUNG KWOK-HUNG (in Cantonese): I demand the Secretary's clarification.

PRESIDENT (in Cantonese): What question do you have?

MR LEUNG KWOK-HUNG (in Cantonese): I want the Secretary to clarify his remarks.

PRESIDENT (in Cantonese): You request the Secretary's clarification? Secretary, do you wish to listen to Mr LEUNG Kwok-hung's question on the issue he wishes you to clarify?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, there is one more paragraph for me to finish my speech.

MR LEUNG KWOK-HUNG (in Cantonese): Then, will he clarify after delivering his speech?

PRESIDENT (in Cantonese): Secretary, please go on with your speech.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, the tax regime of Hong Kong, being simple, low and fair, is the major factor which creates the ideal business environment in Hong Kong. With a wide range of consultation channels available and a well-established consultation mechanism in place, the SAR Government will continue listening to views from people of various sectors across the community. We will review our tax regime from time to time to maintain our competitive edge and we will adopt measures as appropriate to meet the needs of the social and economic development.

President, these are my remarks.

MR LEUNG KWOK-HUNG (in Cantonese): President, can I ask him to make a clarification now?

PRESIDENT (in Cantonese): Mr LEUNG, as I have explained many times, in accordance with the Rules of Procedure, if a Member interrupts when another Member or public officer is speaking because of a point of order, he is entitled to do so at any time. But if he asks for a clarification, he should have the consent from the Member or public officer who is speaking, as well as my approval. The Secretary was obviously not prepared to let you ask him for a clarification. Now he has finished speaking. So I cannot allow you to speak again to ask the Secretary for a clarification.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the amendment moved by Mrs Sophie LEUNG to Mr Paul CHAN's motion be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr 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.

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 results be displayed.

Functional Constituencies:

Dr Margaret NG, Mr CHEUNG Man-kwong, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Ms Miriam LAU, Ms LI Fung-ying, Mr Vincent FANG, Dr Joseph LEE, Mr Jeffrey LAM, Mr WONG Ting-kwong, Dr LAM Tai-fai, Mr Paul CHAN, Mr CHAN Kin-por, Dr LEUNG Ka-lau, Mr CHEUNG Kwok-che, Mr IP Kwok-him, Mr Paul TSE and Dr Samson TAM voted in favour of the amendment.

Mr IP Wai-ming and Dr PAN Pey-chyou abstained.

Geographical Constituencies:

Mr Albert HO, Mr Fred LI, Mr CHAN Kam-lam, Mr LAU Kong-wah, Ms Emily LAU, Mr TAM Yiu-chung, Ms Audrey EU, Mr LEE Wing-tat, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Ms Starry LEE, Mr CHAN Hak-kan, Dr

Priscilla LEUNG, Mr Alan LEONG and Miss Tanya CHAN voted in favour of the amendment.

Mrs Regina IP, Mr LEUNG Kwok-hung, Mr Albert CHAN and Mr WONG Yuk-man voted against the amendment.

Mr WONG Kwok-hing and Mr WONG Kwok-kin abstained.

THE PRESIDENT, Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 21 were present, 19 were in favour of the amendment and two abstained; while among the Members returned by geographical constituencies through direct elections, 23 were present, 16 were in favour of the amendment, four against it and two abstained. Since the question was agreed by a majority of each of the two groups of Members present, he therefore declared that the amendment was passed.

PRESIDENT (in Cantonese): Mr Paul CHAN, you may now reply and you have two minutes 19 seconds.

MR PAUL CHAN (in Cantonese): President, firstly, some colleagues said just now that I request, in my motion, to use tax initiatives as the means to address the problems of social and economic inequalities, and regrettably, that was only window dressing. Frankly speaking, I only joined the legislature for just two years, I move the motion because I feel deeply about the problem. Previously, I was so naive to think that if the "cake" is made bigger, the problem can be solved. However, I find that making a bigger "cake" is not enough; even if the "cake" is made bigger, there is still the problem of allocation, in particular, how the disadvantaged and the grassroots can be benefited.

President, secondly, just now when Mr James TO analysed my motion, he said that the motion only focused on the point of broadening the tax base to discuss whether sales tax should be implemented. President, this kind of scepticism is unnecessary. Perhaps he was not in the Chamber when I delivered my speech. I have stated clearly that the purpose of moving this motion was absolutely not to widen the tax base, nor to strive again for the implementation of sales tax or goods and services tax at this stage. All these are unnecessary. As far as our current economic strength is concerned, there is no such need at all. However, I opine that, being a responsible government, the Hong Kong Government should constantly stay vigilant in this regard.

President, thirdly, the Secretary asked how the Government could ensure public revenue if it was requested to provide tax concessions? The answer is actually very simple. So long as the Government does not indiscriminately give money away, there will not be any problems. The Government gave \$6 billion away by cutting the standard rate and profits tax rate by 1%, but that sum of money can be effectively spent if they are used to enhance the tax regime or alleviate poverty.

Lastly, President, just now the Secretary said that the tax regime should be a fair regime, but section 39E of the Inland Revenue Ordinance has proven an element of unfairness in the tax regime. It was true that tax regime should be neutral. However, while expenditures on trademark and copyright are not tax deductible, expenditures on patent of the manufacturing enterprises are deductible. This is not fair.

President, I hope that colleagues who are present will support my proposal of establishing a specialist tax policy unit within the government structure to conduct in-depth study and analysis, and put forward options for consideration, so that the community as a whole can have the information for discussion. In considering economic development, we should also attach importance to social development and social justice. Thank you, President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Mr Paul CHAN, as amended by Mrs Sophie LEUNG, be passed.

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

(Members raised their hands)

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

(Members raised their hands)

Mr LEUNG Kwok-hung rose to claim a division.

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung has claimed a division. The division bell will ring for three minutes.

PRESIDENT (in Cantonese): Will Members please proceed to vote.

PRESIDENT (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result displayed.

Functional Constituencies:

Dr Margaret NG, Mr CHEUNG Man-kwong, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Ms Miriam LAU, Ms LI Fung-ying, Mr Vincent FANG, Dr Joseph LEE, Mr Jeffrey LAM, Mr WONG Ting-kwong, Dr LAM Tai-fai, Mr Paul CHAN, Mr CHAN Kin-por, Dr LEUNG Ka-lau, Mr CHEUNG Kwok-che, Mr IP Kwok-him, Mr Paul TSE and Dr Samson TAM voted for the motion.

Mr IP Wai-ming and Dr PAN Pey-chyou abstained.

Geographical Constituencies:

Mr Albert HO, Mr Fred LI, Mr CHAN Kam-lam, Ms Emily LAU, Mr TAM Yiu-chung, Ms Audrey EU, Mr LEE Wing-tat, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Ms Starry LEE, Mr CHAN Hak-kan, Dr Priscilla LEUNG, Mrs Regina IP, Mr Alan LEONG and Miss Tanya CHAN voted for the motion.

Mr LEUNG Kwok-hung, Mr Albert CHAN and Mr WONG Yuk-man voted against the motion.

Mr WONG Kwok-hing and Mr WONG Kwok-kin abstained.

THE PRESIDENT, Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 21 were present, 19 were in favour of the motion as amended and two abstained; while among the Members returned by geographical constituencies through direct elections, 22 were present, 16 were in favour of the motion as amended, three against it and two abstained. Since the question was agreed by a majority of each of the two groups of Members present, he therefore declared that the motion as amended was passed.

PRESIDENT (in Cantonese): It is now 8.54 pm. I will announce the meeting to be adjourned by 10 pm tonight and the meeting to be resumed at 2.30 pm tomorrow.

PRESIDENT (in Cantonese): Third motion: Utilizing Young People's Power of Civic Participation.

I now call upon Dr Samson TAM to speak and move this motion.

UTILIZING YOUNG PEOPLE'S POWER OF CIVIC PARTICIPATION

DR SAMSON TAM (in Cantonese): President, I move that the motion as printed on the Agenda be passed.

President, the motion moved by me today is "Utilizing Young People's Power of Civic Participation". Young people are the future of society, we should definitely enable them to participate and bring their wisdoms into play, so as to jointly create a future world belonging to them.

President, my speech today will focus mainly on three aspects: first, I wish to say that the Government must understand that the net era has come to this world, for the advent of the Internet world has been with us for almost 20 years, and during these 20 years, it has affected the new generation of young people, and we often call them young people growing up in the net generation. A book entitled "Grown Up Digital : How the Net Generation is Changing Your World" has studied the characteristics of young people grown up in the net era. The author visited 12 countries, including China, and interviewed 7 000 young people, for the purpose of studying the differences between our generation or the previous generation and the net generation. The findings showed that there were many different characteristics, and two of such distinctiveness were: this group of young people aged between 16 and 19 were courageous enough to challenge the authority, and they also craved for independence and equality; secondly, they wanted to pursue freedom, in particular, freedom of expression. This new generation grown up under the influence of the Internet may often spark off more social movements as young people hope to play an active part role in these social movements or social reform, and they have virtually become a new force in the promotion of social reform.

The book advanced such a theory, but is the reality just like that? We can see that because of the Internet, the participation of young people in a lot of demonstrations and processions which took place in many countries in recent years was also sparked off by the power of the Internet. For example, people in the Philippines ganged up through the Internet and mobile phones connection and protest in the capital Manila, which had forced the president to step down. In addition, there are also some smaller-scale incidents, such as bad business practices of supermarkets — the Carrefour incident in China was an incident

involving the siege of Carrefour by a group of young people instigated by some netizens. There are many different examples all over the world.

Therefore, we must not only think that so many young people in Hong Kong were instigated and took the radical path because we have the three Members of the League of Social Democrats (that is, our colleagues) in Hong Kong; this is actually a global phenomenon. The Government should not try to change this, instead, it should consider how to adapt to and accept it.

I consider that after identifying and understanding this phenomenon, the Government should be convinced that the participation of these young people in social reform movement is absolutely positive to the community. The Government must not, as it always does, regard them offbeat voters and try different ways to pacify them or bring them into some committees; it is a rather futile move. Because they do not want to be pacified or harmonized, instead, they want the Government to listen to their views on reforms. Hence the Government must cherish the voices of these young people. This is the first point I hope the Government will understand.

What should the Government do next? The Internet is changing the world, but the pace of reform by the Government or the Legislative Council is the slowest. People always say that the pace of progress of laws is often the slowest; the same applies to that of the Government and education. How can the Government keep abreast of the times in the wake of the Internet's technological advancement instead of sticking to the old rut? This is very important. Why does the Government not keep abreast of the times? According to my own analysis, one of the most important reasons is that officials are suffering from Internet anxiety disorder. Generally speaking, the Internet anxiety disorder refers to the problem of young people that if they cannot get access to the Internet, they will soon feel anxious. The same happens to my son. If he is not allowed to get online for a day or two, he would feel uncomfortable and ask me what he should do. However, if we ask government officials to communicate with the public via the Internet, they would also become very anxious.

Why is there anxiety disorder? There are three reasons. The first is not enough time. The schedule of officials is very tight, and they also have to attend reception parties and other occasions, so how can they find the time to communicate with the public via the Internet and make immediate and round-the

clock responses? So once they heard that they have to communicate with the public via the Internet, the pressure would mount. The second is grievance anxiety disorder. On the Internet, regardless of an official having performed well or badly, there must be many people criticizing him, especially when the language employed by netizens is rather unpleasant to the ears and the prospect of such grievances would make the official become withdrawn. The third is the fear of accountability; the current culture is the fear of accountability. Officials speaking in the Legislative Council are already very cautious, so if they make a mistake in their speeches on the Internet, it would be spread among tens of millions of Internet users. They are so much worried about having to step down if they say anything wrong. All of these make the officials dare not enter the world of Internet.

Under the Internet anxiety disorder, we have seen a group of people assuming the roles of vanguards with a view to accomplishing "the tasks" or because of political pressure, and they are the Political Assistants or Under Secretaries going online to communicate with the public. To a certain extent, they are also victims because it was the Government who asked them to participate in online discussions without any policy support, including a community networking policy. The Government asked them to do so, but there were no additional resources, how can the time and manpower made to cope? Yet the most deplorable thing is that the Government has not put in place a political consultation system on the Internet. We should take a look at China or other countries where there are many different systems governing, for example, when officials set up discussion forums on the Facebook website, how they should respond and reply to queries in emails and how emails should be screened, and so on. In European and American countries, rules have been made so that they will not run into a blind alley. Therefore, I suggest the Government should draw up as soon as possible clear guidelines for officials to conduct online political consultation or to engage in online communication with the public.

Another thing the Government should change is opening up access to government information. Why? Any attempt to win the trust of the people in the Internet era absolutely depends on the degree of transparency of information. If officials withhold information, netizens will have an impression that there must be some dark secrets that are not to be divulged, which will definitely reduce the public trust in the Government. Therefore, the Government must adopt as its core value transparent policies. In fact, the Hong Kong Government has drawn

up the Code on Access to Information, which was set down 15 years ago, but is it still effective today? The Ombudsman revealed earlier this year seven sins of the Code and also suggested some improvements, including placing the public sector under the purview of the Code, and a more important one is, as suggested by some political parties, to follow the United States practice of enacting the Freedom of Information Act. I consider access to information is absolutely indispensable to the world of networks.

President, with the implementation of these measures by the Government, I believe the progress of democratization will gradually move forward. Let us take the President of the United States, Barack OBAMA, as an example. The United States has all along been a democratic society, and he implemented online political consultation in recent years, so that the public may express their views on government policies, instead of putting forward their views only every four or five years at polling. In this way, they may keep on participating in the policy formulation process in a bottom-up approach, which is the second generation of democracy (Democracy 2.0) currently being talked about by Western countries.

European and American countries have implemented online political consultation, can Hong Kong do that? Some people will worry that when Democracy 2.0 is developed, in which communication with each other and immediate responses can be made, will it advance to direct democracy? I do not think direct democracy is good for Hong Kong. I have recently discussed with some friends from Switzerland on the question of functional constituencies in Hong Kong and their long-standing implementation of direct democracy. Direct democracy is not a bad thing, for if a country's development is mature, it will stand to benefit. However, if the online political consultation is not well implemented and if only a handful of people can participate, unfairness or various online violent acts will emerge. However, I believe even with Democracy 2.0 we are talking about, not everything will be decided by online polling, but through discussions and participation which enable a better process of policy formulation.

President, lastly, in addition to giving young people opportunities of participation, I consider that the promotion of civic participation among young people is certainly the duty of Legislative Council Members, political parties and NGOs. In the past, I have told friends from political parties that we must attract young people to participate in politics and let young people take up the baton. If young people cannot see the future, they will not join political parties. If young

people are reluctant to join political parties, political parties will age gradually, which is not good for Hong Kong. How can we make a political party suitable for young people's participation? How can we make use of online wisdom to rejuvenate political parties? All of these require enormous efforts.

As to the NGOs, I believe that between the Government and the public, it is very likely that we have to rely on NGOs or Members to serve as the bridge. Insofar as the existing NGOs are concerned, it is not true that the Government has not allocated resources, but can they make more effectively use of the power of the Internet to perform better? I am sure that they can. For this reason, I have promoted online social workers with different Members, including Mr CHEUNG Kwok-che, and hopefully we can find more volunteers on the Internet and promote online social reform. I have also held discussions with the Hong Kong Council of Social Service on the promotion of electronic communities. If NGOs can work together with political parties and Members, I believe it can enhance the civic participation of all young people.

In order to implement effective governance, traditionally, we rely on the wise officials, but in future society, the implementation of effective governance must rely on pooling the wisdoms of society. Therefore, the Government should ensure that political parties, NGOs and young people will jointly take forward social reforms.

President, let me reiterate the three points I have just put forward. First, I hope the Government will attach importance to the power of young people's participation and try its best to facilitate it, instead of fearing them or warding them off, so as to allow them to play a role in the process of social reform. Second, the Government must overcome its own fear. It must make transparency its core value, so that it can keep abreast of the times and become an improved version of future government. Third, the Government should provide resources and opportunities so that political parties and NGOs can bring their functions into play in networking, which will facilitate the reconciliation of different social conflicts and consolidate them into a force for promoting social progress and reform, thus enabling Hong Kong to move forward in a fairer and more open manner.

President, I so submit.

Dr Samson TAM moved the following motion: (Translation)

"That in recent years, with the development of a knowledge-based society and dawning of the network era, the attitude of young people in Hong Kong towards the discussion of social issues has become increasingly active, and they have gradually become one of the major political commentary groups in society, and the ways of expression and actions of some of these young people have aroused extensive discussions and concerns in the community; some members of the public consider that the Government's lack of effective internal and external communication of information, as well as the obvious inadequacies in its existing consultative framework has affected the formulation of public policies; in this connection, this Council urges the Government to make reference to the relevant experience of other countries or regions to formulate overall objectives and strategies, and allocate sufficient resources to enhance young people's civic participation, as well as:

- (a) to formulate a clear public sector information access policy to make public government information and documents, so that members of the public have the right of access to or commenting on them;
- (b) to make use of the Web 2.0 interactive platform to enhance direct communication between policy-making government officials and young people, so as to listen to the views of young people;
- (c) government officials should change their mentality and mind to bravely deal with interactive communications and accept criticism; and
- (d) starting from education and social culture, to allocate resources to enhance the quality of the network citizens, and to promote a way of communication based on reasons, mutual trust and mutual respect, thereby bringing together social wisdom effectively."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Dr Samson TAM be passed.

PRESIDENT (in Cantonese): Three Members will move amendments to this motion. This Council now proceeds to a joint debate on the motion and the three amendments.

PRESIDENT (in Cantonese): I will call upon Mr KAM Nai-wai to speak first, to be followed by Miss Tanya CHAN and Mr LEUNG Kwok-hung; but no amendments are to be moved at this stage.

MR KAM NAI-WAI (in Cantonese): President, a few months ago, this Council conducted a debate on urging the Government to formulate a comprehensive youth policy. Today, we are presenting views to the Government again on matters relating to young people's civic participation, and various opinions have been expressed. Dr Samson TAM has placed his focus more on information technology just now, probably because he is a Member returned by the information technology functional constituency. Certainly, it seems rather reasonable to start from education and social culture and allocate more resources to enhance young people's civic participation. However, I would like to remind the Government that the network has a set of rules of its own. If the allocation of resources implies the need to strengthen the monitoring of the network to enhance the so-called quality of the network citizens, we from the Democratic Party will not agree to it.

As mentioned by Dr Samson TAM just now, judging from many young people's recent participation in social campaigns, we may come to the conclusion that young people's social participation is actually not confined to the network. We should not call them "otaku", nor should we say that they would only discuss social issues through the computer. From the earlier campaign of defending the Queen's Pier, the recent campaign of defending Choi Yuen Tsuen, to the latest saga of the constitutional reform, all of us can see that a group of young people have taken concrete actions to participate in reforming society. I believe these campaigns will not cease and young people will continue to pursue this cause. Just now, Dr Samson TAM said he hoped the Government would stop being afraid because it has been fearful not only of the network but also of young people. I believe more and more young people will put forward their opinions and campaign against the unjust systems in society. Now that young people have become more active and the civil society has become more mature, how

should we use more novel means to communicate with these young people? Actually, as all of us can see that this may have already outgrown the Government's perception. When it comes to the network, some government officials said earlier that they would open a Facebook account, but I consider it rather ridiculous that they have only logged in the account for three hours. It is simply a joke. Such a mode of communication fails to achieve any effect, and the communication is more perfunctory than real.

Besides the network, Members can see that the Democratic Party has also proposed an amendment to the motion, suggesting to set up youth councils or hold youth forums. Actually, these are outside the realm of the network. Apart from the virtual world, we have also put forward similar proposals in relation to the actual world. However, how did the Government treat these youth councils or youth forums in the past? Records show that we raised a discussion on this issue six to seven years ago, and youth councils were not non-existent in the past. According to the records, there were actually youth councils in Sha Tin, Tai Po, Sai Kung, Kwun Tong and Tsuen Wan in 2000. However, all of them ceased operation for no reason in the end.

What I remember most clearly, and which also has aroused the deepest feelings in me is that in 2004 and 2005, the Home Affairs Bureau and the Commission on Youth (COY) intended to organize district youth forums in the 18 districts to encourage young people to express their political views, care for society or even engage in direct dialogues with government officials. At that time, I was one of those who assisted in the preparation of the youth forum of the Central and Western District. Just when I was thinking about how to organize the youth forum and select young people to it, the initiative was discontinued all of a sudden. I had no idea at all why it was so, and the preparatory work was certainly discontinued, too. From subsequent press reports, I learnt that the Government thought organizing elections of young people in local communities would lead to queries among the public as to why members of the youth forums should be returned through elections from among young people themselves. Some government officials also queried in private why all members of the local youth forums should be returned by direct elections when full-scale direct elections were not implemented in Hong Kong. As a result, the initiative was discontinued. Looking back, the present situation would have been far better had the Government not been so timid and apprehensive that it only made decisions behind closed doors. Certainly, not all young people would like to

participate in youth forums and many of them might only want to express their views outside the establishment, but at least they were not as passive as the Government thinks.

Therefore, we can see that in recent large-scale assemblies, they have adopted a symbolic approach, such as campaigning for their cause by organizing protest walks, and I greatly admire them for this. While we have never thought of this approach, young people were able to come up with this idea. Such activities have aroused public discussions, and young people have also expressed their own views on each and every issue. Actually, we have to face squarely the demands of young people expressed outside the system. Besides, we from the Democratic Party also hope that young people will be given more room of participation in public affairs within the system. The youth forums or youth councils we referred to in the motion also involve the collection of views on the Web mentioned by Dr Samson TAM. Actually, what is most important is not how the Government collects such views, as it is only a means, but rather how the Government responds to these views. How will the Government respond to the views collected? Will it attach importance to them? I hope the Secretary will talk about later of how the Government will actually listen to the views of local communities. Does the Government consider it useless to involve this group of people and gauge their views as they will take an opposition stance on each and every issue? What attitude does the Government take?

Let us take a look at examples in other countries. In the United Kingdom, for example, the Youth Parliament is set up, so that young people aged between 11 and 18 may elect representatives from among themselves through polling to participate in parliamentary business. Besides, the British Government also attaches great importance to these representatives. They can conduct annual debates in the House of Lords and the House of Commons, which are broadcast live by the British Broadcasting Corporation. The British Government has put in place a comprehensive framework to enable the sustained operation of this initiative and instill in young people a sense of participation in public affairs, and it also provides continual support to it. This shows that the attitude adopted by the government is vitally important. Certainly, the Democratic Party thinks that some time may be required to set up youth councils or organize youth forums in the whole territory, but actually Hong Kong has all the conditions necessary to facilitate the organization of such forums or the setting up of these councils both

in schools and in youth organizations. We from the Democratic Party consider this far more practical than allocating additional resources for organizing in schools the so-called patriotic study tours to instill in students a sense of patriotism. I think that if young people have a sense of belonging to society, they will naturally develop a sense of patriotism and love for Hong Kong and there is no need to specifically conduct patriotic educational activities.

We have also referred to the COY in our amendment. We have always criticized the COY for its composition, including its Chairman, of being middle-aged people, with only a few of them being young people. Some people even said that its Chairman is an elderly person. While we do not discriminate against people of any age, should we bring in more young people to participate in the work of the COY? This is indeed necessary. We do not hope that the COY will become the Government's platform for giving credits to certain people in the light of their merits by appointing people it considers desirable to implement the youth policy. I consider this most inappropriate. I hope the Government will allow more young people to join the COY so that they can express their views from the perspective of the youth. This way, the Government will be better able to keep tabs on the pulse of society.

Finally, I would like to point out that the Government should maintain a Central Personality Index of its advisory organizations in which young people can register their names. Although such an Index may already exist, there is a lack of transparency in the present mechanism. How can young people register their names in the Index? After registration, what criteria do they have to meet before they can be appointed to some advisory committees that serve as official channels for their expression of views? We hope the Government will provide for a public and official self-nominating process in which youth representatives will be able to recommend themselves for appointment to advisory committees and statutory bodies in order to express views on social policies and other specific subjects. We consider it vitally important to provide young people with a channel for their expression of views within the establishment.

President, I so submit.

MISS TANYA CHAN (in Cantonese): President, "The world is yours, as well as ours, but in the last analysis, it is yours." President, I believe you will still remember this remark made by MAO Zedong in the 1950s during a talk at a meeting with Chinese students in Moscow. However, this remark was actually very ironic. The following remark made by Prof LUNG Ying-tai is probably the best response to it. She said that looking back over the past 60 years, an entire generation of elite was swallowed by the anti-rightist movement, and another generation was snapped off by the Cultural Revolution, and yet another was eliminated by the 4 June Incident. The history of new China is like a gigantic sieve, which sieves away the nation's most precious treasure, that is, young people, time and again.

Actually, there is not a single truly strong nation which does not regard talents as its national treasure, or to put it the other way round, a nation which does not regard talents as its national treasure will not become truly strong. The motion today is "Utilizing young people's power of civic participation", and I believe we should place the focus of the discussion on how the Government, high-ranking officials and society should address the question and how they should treat young people, who are like treasure, rather than discussing what kind of activities we should organize. If we do not respect and understand the young generation, or even misunderstand them, how can we talk about promoting young people's civic participation?

Young people are always the future of a nation, and also in them lies the hope of historical progress. In the wake of the anti-Express Rail Link (XRL) incident, increasingly more members of the community have been discussing the "post-80s" phenomenon. Some people adopt a positive attitude while others take a negative attitude towards it, and quite a lot of people have labelled the youth as radical and described them as a group of irrational people. Officials present have also made similar remarks and even misinterpreted or distorted young people's wishes. For example, one such official, Secretary Eva CHENG, remarked in the *Ming Pao Daily News* on 4 February 2010 that young people should have aspirations and listen to different voices. She also said that young people should exercise critical thinking to obtain a clear view of the facts and avoid being misled by slogans. John TSANG's remarks even left a deep impression on us. When talking about the great difficulties faced by the young generation in purchasing their own first homes, he even said that the major concern of the fourth generation of Hong Kong people was probably what

facilities were available in the clubhouse of the residential complex or how big the swimming pool was and whether there was adequate privacy protection. I remember that when the Chief Executive's Question and Answer Session was held at the beginning of the year, the anti-XRL incident was taking place and the "post-80s" were launching a protest walk outside and besieging the Legislative Council Building. At that time, the Chief Executive said he hoped to listen to young people's voices. However, when I asked him whether he would engage in dialogues with the young people of the "post-80s" outside the Legislative Council Building, he even said that a suitable occasion would be found and such communication should be conducted in a peaceful manner.

President, these remarks have reflected that there is a discrepancy between the expectations of the Government and young people and the actual situation. In a nutshell, the remarks made by the Chief Executive and Secretary Eva CHENG suggest that in their mind, the "post-80s" are impulsive and easily misled, and they will not engage in discussions in a peaceful manner in most cases. The remark made by Financial Secretary John TSANG was even worse. He said the fourth generation of Hong Kong people is only concerned about materialistic satisfaction. For example, in purchasing a flat, they will only look for leisure and entertainment facilities in the clubhouse. I agree with Dr Samson TAM that we should make use of the Web 2.0 interactive platform. However, if high-ranking officials of the SAR Government do not change their mindset and continue to look at young people this way, they will not be able to improve their communication with the youth even if they log in the Facebook more often or organize more youth forums.

President, young people of our society have many aspirations, and they are full of vitality, creativity and hope. The Government originally thought that the "spoon-feeding" education left over from the colonial era and the selective national education implemented after the reunification could stifle young people's thinking, but it could never have thought that with more suppression, young people are better able to exercise their independent thinking. In the past, young people were described as indifferent to politics and society. Now, it seems that we cannot casually describe young people around us this way. We can also see that some so-called "otaku" who used to be addicted to video games and some so-called "Hong Kong women" who were only concerned about the pursuit of

prestigious brands have voiced many political views over the past few months. In particular, when we handed out promotional leaflets in the streets, we could see that many young people were very eager to receive them. This is indeed a good beginning.

The world of young people is full of creativity. Mr KAM Nai-wai just now said that apart from launching protest walks, they have even made use of novel means, such as cartoons or even rap songs, to express their views on social issues. Actually, the Government simply cannot deal with the next generation using an established approach of implementing a mode of education that does not allow for individual differences, hoping to mould a group of identical young people who love the nation and the party but are incapable of independent thinking.

Civic participation has its root in civic awareness, which in turn finds its root in the education system. The Government's civic education is all about singing the national anthem, organizing study tours and glorifying our nation's economic success and significant achievements in space endeavours, while completely avoiding issues relating to human rights, politics and the contemporary history of the nation. President, are human rights activists like LIU Xiaobo and HU Jia not part of the nation? Are the blood and tears shed in the 4 June Incident, human rights incidents and incidents relating to the "lodging of complaints" unable to instill in the public a civic awareness? However, the Government has avoided them all and only exaggerated the economic success of the nation. Whether we can bring hope to Hong Kong and our nation depends on how we educate and treat the next generation.

President, the Government's change of attitude towards youth summits is cognate with high-ranking officials' attitude towards the youth. The summit organized in March this year could precisely reflect the problems of the Government's civic education and youth policy. In August last year, I wrote to the Home Affairs Bureau to enquire about the summit. Subsequently, the Bureau advised in its reply at the end of September that details were yet to be examined and would only be announced after they had been finalized by the Commission on Youth (COY). It turned out that the Bureau did not convene the first preparatory meeting until December last year, and the preparatory work was

completed only after two focus group meetings had been conducted. Not only was the preparatory work carried out in a hasty manner, but the theme of the summit this year was also set in advance for young people. President, as far as I can recall, the preparatory work of previous summits took more than half a year, and local forums were organized before the themes were set by the young people themselves. Most strangely of all, those who had the opportunity to participate in the summit and engage in dialogues with the Secretary were people elected from among members of youth organizations recognized by the Government. No wonder young people described this summit as a "harmony summit". A youth representative who had participated in the 2006 Summit said after the summit this year: "While the 'bottom up' approach was adopted in previous youth summits, for reasons unknown, the 'top down' approach was adopted recently; and local youth organizations were excluded while territory-wide uniform groups were included. I can only say that it is regulated youth participation."

With the gradual exposure of the truth regarding the SAR Government's policy blunders and its indifference towards the aspirations of Hong Kong people, more and more young people have come to realize that the Government is both lame and hypocritical. Some people said that the "post-80s" are radical, but the real synonyms for the youth are dignity, courage and perseverance. Young people are always the ones who take the lead in changing the world. During the May Fourth Movement which took place 91 years ago, countless young people came forward and chanted slogans of "anti-imperialism" and "anti-colonialism". The Movement promoted the progress of the nation and demonstrated to the world the commitment and patriotic sentiment of young people in China. Seven decades later, young students gathered again in the Tiananmen Square and chanted loudly their demand for "anti-corruption" and "anti-official profiteering". The Government may have suppressed the patriotic student movement, but it could not suppress many nationals' determination to pursue democracy. Looking at the young people of Hong Kong today, we can see that they do not compare unfavourably with those in the past. In the *de facto* referendum on 16 May, the voter turnout rate of young people aged between 18 and 30 increased significantly by 10%. Was this not a change in the political landscape? Young people have all along been regarded as being indifferent to politics and society. However, the recent political development is precisely the best response to this.

Why do increasingly more young people care about society? Because our society is becoming increasingly unjust and unfair, and the Government is becoming increasingly hegemonist. The public are no fools, and we are moving forward on the tracks of the May Fourth Movement, the 4 June Incident and the 1 July rally. It is indeed a big mistake to think that the "post-80s" and "psot-90s" are radical and unreasonable. Young people are agitated because the system is brutal and the Government is unrighteous. Under this system, voices of the public, particularly those of young people, will never be heeded by the authorities; and stakeholders' views are often neglected. Even if more local youth activities are held, they will achieve no effect at all.

John TSANG quoted from the *Four Generations of Hong Kong People* as a comment on the political phenomenon of this generation, and I would also like to use the same framework to point out the reasons why high-ranking officials have lost touch with young people. To the first and second generations of Hong Kong people, Hong Kong was a borrowed place. The fact that the first and second generations of Hong Kong people have developed a sense of belonging to Hong Kong and a sense of national identity does not necessarily mean that the fourth generation of Hong Kong people will regard Hong Kong their home. I hope the Government will respect them.

I so submit.

MR LEUNG KWOK-HUNG (in Cantonese): President, lately I have been condemned as having offended an old man. Senile politics or paternal politics is a serious ill of our nation. What is it all about? That is to say, we should by no means refute what elders have said. If the elder is a public figure, he should be highly respected. In that case, why should we only be allowed to put a request to him in compliance with the norm, rather than using other criteria? This explains why we should criticize DENG Xiaoping in the Tiananmen Massacre by using other criteria. After all, being the commander of the reform, he could in no way allow the blood in his hands to ruin the reform initiated by him.

MAO Zedong's remarks quoted by Miss Tanya CHAN no longer apply today. As far as I know, those young people who came out to vote in the five

geographical constituencies referendum campaign and hoped to object to functional constituencies through this campaign were blamed for being hoodwinked, whilst the League of Social Democrats (LSD) was widely regarded as the culprit. Without the LSD, these young people would not have acted like that. This is really very ridiculous. I have all along been an ordinary man. As a matter of fact, a buddy also called himself an ordinary man. Of course, I am so incompetent and dare not compare with him. He is SOCRATES. Do you know why he was killed? You should know it. He was killed for luring young people in Athens not to believe in God. At the point of death, he said, "The hour of departure has arrived and we go our ways; I to die, and you to live. Which is better? Only God knows." SOCRATES needed not appeal to God. Now, he should know that the one who claimed that he had lured people not to believe in God was blamed in history.

Being a layman, I can enter this Council only because I am elected by my voters. Is it an offence for me to say something rude or something that I personally consider appropriate? I just wish to reflect views for those who have no chance to speak here. But I am coerced into making an apology; otherwise, I will be regarded as shameless and imprudent. I see that a god statue is hitting me. I see that a group of people are attacking me with a god statue, saying that I do not respect it and lure others to do so. However, that god is just like Zeus in Greek mythology, which is a human-being only. He said, "Who are you? Will I betray you? How much can I get in return? You are nobody at all." How can such a comment can be made? Those who attack me with a god statue in this solemn Chamber are in fact touching and protecting it.

Young people have reasons to justify their objection to the previous government, for they find that it is no longer suitable for the development of our society now. There is a saying among British people, "If you cannot confront him, you may baffle him". We have been criticized for baffling young people. This is absolutely unfair to us. In fact, young people are baffled by them. When a government sings praises of one-party dictatorship, saying that those killed in the 4 June Incident do not deserve our sympathy; and when the Chief Executive says that Hong Kong people do not have any conscience, thinking that the blood in the 4 June Incident can be erased and replaced with recited lies, we say that this is not true. Are we baffling young people? Are we bewildering

them at all? I do not have such power. But the history written in blood, which is more than obvious, can be powerful to do so.

We advocate that all Hong Kong people can express their opinions in a universal and equal manner by means of a *de facto* referendum. But once again, we have been criticized for violating the constitution, being inappropriate and confronting the Central Authorities. Worse still, we have been spurned away by our allies. They have really spurned us away, for they consider that we are wrong to ask Hong Kong people to do so. During this process, we have also experienced their cold shoulders, witnessing that they have become frequent and welcomed guests of the Central Authorities. We have once again been criticized for baffling others. They describe us as anti-China, causing chaos in Hong Kong.

Honourable Members, I wish to reiterate here that I am absolutely incapable of hoodwinking young people in Hong Kong. They rise in confrontation because this poor system has operated for 10-odd years, not to mention the system under the colonial administration. I heard Secretary Prof K C CHAN tell lies just now, saying that one of the three principles of our tax regime is to avoid widening of the disparity between the rich and the poor. Buddy, he was indeed telling lies with his eyes wide open. I asked him to make a clarification. Of course, he turned me down. It is because with his implementation of this tax regime, our Gini Coefficient has increased from about 0.4 under the governance of TUNG Chee-hwa to about 0.5 now. How dare he to tell us in this Chamber that they have all along been observing these three principles very well?

"羣眾是真正的英雄，而我們則往往是幼稚可笑的", meaning that the masses are the real heroes while we ourselves are often childish and ignorant. President, you should be very familiar with this sentence when you were young.

PRESIDENT (in Cantonese): You have omitted two words.

MR LEUNG KWOK-HUNG (in Cantonese): Fine, can you rectify my mistake then?

PRESIDENT (in Cantonese): It should read, "..... 而我們自己則往往是幼稚可笑的".

MR LEUNG KWOK-HUNG (in Cantonese): You are right. It is really ridiculous. However, the political party to which you belong says that the masses are cowards. They are very often childish and ignorant and will be baffled by a man called "Long Hair". In that case, it is useless even though you can recite it accurately, right? Because you fail to grasp its actual meaning.

I wish to further elaborate on this. How do I feel? I would like to conclude by quoting a poem,

"Desolate indeed are the mountains of Ba, the waters of Chu,
Where for twenty-three years I've kicked around.
Thinking of the past, in vain I sing the old Flute Song,
Returning home, I'm like the man who found the ax handle
rotting in his hand.

One ship sinks, a thousand sails go by.
One tree is stricken, spring brings ten thousand more to bloom.
This cup of wine, the poem you just sang
Have today resorted my soul."⁽¹⁾

LIU Yuxi⁽²⁾ was demoted and had been an exile for 23 years. When he returned home, he found that everything had changed. In my eye, "Old SZETO" has changed, and so has Emily LAU. "One ship sinks, a thousand sails go by" — you may negotiate and continue to argue cunningly; "One tree is stricken, spring brings ten thousand more to bloom" — confrontation put up by young people will never end; and "This cup of wine, the poem you just sang, have today resorted my soul" — even though they are criticizing me, I am in good fettle and will have a drink later.

(1) *In Response to a Poem by BAI Juyi, Composed upon Our First Meeting at a Banquet in Yangzhou* written by LIU Yuxi, *Chinese Classical Treasury — The Traditional Chinese Culture Classical Series (Chinese-English) — 100 Tang Poems*, compiled and translated by ZHANG Tingchen and Bruce M. Wilson, November 2007.

(2) LIU Yuxi was a Chinese poet, philosopher and essayist in the Tang Dynasty, who was an associate of BAI Juyi and known for his folk-style poems.

SECRETARY FOR HOME AFFAIRS (in Cantonese): President, the subject of today's motion debate is "Utilizing young people's power of civic participation", showing that we are concerned about the young generation and agree that young people should participate in social affairs proactively, so as to make contribution to social development and establishment.

Young people are the pillars of society and will be the master of it in future. The SAR Government attaches great importance to their views and cherishes their ideas. It encourages public participation in policy formulation and has always listened to and received views from people of all sectors in the community through a number of channels. This includes face-to-face direct dialogues and communication through representatives of public opinion and different media, as well as social websites, blogs and forums on the Internet which are commonly used by young people. In view of the extensive use of the Internet nowadays, we will make further use of this platform to communicate with young people and listen to their views, so as to understand their personal expectations and those on society and the Government.

The SAR Government also puts emphasis on fostering positive values and civic awareness among young people and encouraging them to participate in social affairs proactively, so as to add momentum to the long-term development of society. Policy Bureaux and government departments will continue to co-operate with different stakeholders through various means, so as to encourage young people to take part in discussions and studies on social issues, thereby enhancing communication with them and enabling them to express ideas and opinions on matters of concern to them.

President, I will make a further response after listening to other Members' comments.

MR CHEUNG KWOK-CHE (in Cantonese): Young people are stakeholders of society, so it is only natural that they should participate in social affairs. Recently, there has been an avalanche of negative labelling, criticisms and accusations of young people in society, alleging that they are radical, irrational and immature, and there have also been comments one after another that they will undermine social stability. Young people have been made the scapegoat for problems relating to the social system and social inequality. Being in an

unfavourable situation due to the lack of avenue to express their views, they do not have any opportunity of vindication at all. They could only be constantly depicted by the community as perpetrators of social problems.

I think society should refrain from looking at young people's views through tinted glasses, and so on 3 February this year, I moved the motion on "Formulating a comprehensive youth policy" to request the Government to, among others, immediately consult the youth through various channels, provide a platform for the youth to participate in social affairs and respect and listen to the views and needs of the youth.

On the one hand, adults always stress that young people are the future masters of society and so they should have a sense of responsibility and commitment to society, but on the other, they do not have confidence in young people. They often create obstacles to impede their participation in policymaking and social affairs and label them as immature. This is undoubtedly suppression and disempowerment of young people, dealing a blow to their confidence and autonomy in social participation. Under such an imbalanced power relation, and when young people are constantly ostracized and marginalized by the mainstream adult world, how could there be a desirable environment for the development of the future masters of our society, thereby enabling them to take up the baton?

I agree to the original motion, in which Dr Samson TAM requests the authorities to make public government information and documents so that members of the public can access or comment on them, because what young people need most now is a fair social environment of equal power and equality, and the first step in achieving such a social environment is to make public government information, as it will allow young people to enjoy the right of and easy access to information. Certainly, it is not enough to have equal right of access to information, and adequate rights to speak and participation are also necessary.

Besides, the original motion urges government officials to change their mentality and mind to bravely deal with interactive communications and accept criticisms. I agree to this because as public servants, government officials should seek to serve members of the public, with the ultimate aim of working for their benefit. They should humbly listen to and accept the general public's

criticisms and opinions. We know that the quality and attitude of government officials are very important, but I think what is more important is the development of a direct public mandate system in which a governing team that can truly meet public expectations can be returned by "one person, one vote".

Moreover, young people can also participate in politics through voting. Some Members have proposed creating seats for the youth in functional constituencies such that youth representatives can express their views in this Council. I think the purpose of enhancing young people's civic participation is to create an environment with equality of power for the youth instead of granting them privileges. I think people are simply mistaken if they think that young people's purpose of participating in society is to gain powers and benefits for themselves. Actually, what young people need is only a fair political and social system. They only hope that society which is dominated by adults will respect and accommodate their views, refrain from labelling them as ignorant, naïve or trouble-making and allow their equal participation in civil society. I think these are only very humble requests.

I support the amendments proposed by Mr KAM Nai-wai, Miss Tanya CHAN and Mr LEUNG Kwok-hung. Regarding Mr KAM Nai-wai's amendment, I agree that it is important to open up the relevant channels. However, young people consider it more important for the authorities to open up a channel for their participation in policymaking. A high-ranking official, who appears all of a sudden in an advertisement, said, "I have heard your views." However, this does not mean that he has taken on board your views. Therefore, even if there were adequate channels for communication, people who express their views would be always in a passive position, unable to realize civic participation. Regarding Miss Tanya CHAN's amendment, I agree that Liberal Studies of the New Senior Secondary School curriculum is a good platform for promoting independent thinking among the youth. However, it is more important for adults to have adequate breadth of mind to accommodate young people's independent thinking. Besides, we should stringently discourage the "harmony" culture in school and refrain from exercising self-censorship. Regarding Mr LEUNG Kwok-hung's amendment, I agree that it is necessary to improve the existing attitude in society towards young people's political commentaries.

Finally, the fourth point in the original motion urges the Government to allocate resources to enhance the quality of the network citizens, and to promote a way of communication based on reasons, mutual trust and mutual respect, thereby

bringing together social wisdom effectively. I consider it equally important to enhance the quality of government officials, and teach them to communicate with young people based on reasons, mutual trust and mutual respect and refrain from indulging in the small circle of the Commission on Youth. It is more appropriate to change the topic of the motion from "Utilizing young people's power of civic participation" to "Removing barriers to young people's participation" because young people already have the motivation and aspiration for social participation, just that they are silenced by the hounding of social criticisms. I hope society can return to young people room for fair social participation and respect their voices and opinions.

President, I so submit.

MR ALBERT CHAN (in Cantonese): President, 99 years and 91 years have elapsed since the 1911 Revolution and the May Fourth Movement respectively. Despite more than 90 years having elapsed since these two important social and political reforms, some young people are criticized or condemned for lacking accomplishment and stirring up violence in staging political movements against the Express Rail Link, the pro-establishment camp and the bogus democratic camp. This really makes great mockery of history. In view of the anti-British and anti-violence spirit of the President and Secretary TSANG Tak-sing in the past, I am sure that you may also find the attitude and jargons adopted by the major mass media, society and political figures childish and ignorant. Being young people, they must promote changes in society. And compared with those senior members in groups with vested interests, young people should absolutely be more sensitive to the problems existing in society.

The objective of the 1911 Revolution was to overthrow a feudal dynasty, while that of the May Fourth Movement which advocated science and democracy was to encourage free thinking. *Kong Yiji* written by Mr LU Xun was about the cannibalistic ethics. Over 70 years have passed in a wink. But surprisingly, Members from various political parties and groupings in this Chamber and elected representatives, especially those from the bogus democratic camp, still condemn young people for caring about society and staging political reforms in 2010. Such an attitude is even more feudal, closed and irrational than the reign of the Beiyang Warlords 91 years ago. Obviously, this may be attributed to the fact that young people have struck their weakness and chided those who are speaking sternly out of a sense of justice or those who did so in the past in this

Chamber for betraying conscience and the rights of Hong Kong people. These people do find this hard to accept, for they have been standing on the moral high ground with praises and support only over the past two decades. They can lead the public, but the public can by no means condemn them.

It is really a very bad timing in history for us to discuss "Utilizing young people's power of civic participation" today. It is because since the democratic camp has joined the communists, I can say that at present, the whole (*Some Members said "Democratic Party"*) That is to say, the bogus democratic camp has joined the communists, as not only the Democratic Party but also other members from the democratic camp have joined the communists. Under the political situation that some members from the pan-democratic camp have joined the communists, our democratic movement has come to a halt. That the Government has put forth the discussion on utilizing young people's power of civic participation during this period of tremendous political pressure and indifference is similar to the "Act Now" campaign, urging these young people to support the establishment, the privileged class and groups with vested interests. This is absolutely not the attitude that young people should have. Young people should make criticisms through their own participation and growth, just like the President who took the lead in the anti-British and anti-violence movements. Therefore, young people should come to their own wakening. They should have their own thinking and should never be influenced by others. Taking those who have attended the training class organized by the DAB as an example, they have suddenly become the politically privileged class after paying a visit to the Mainland and betrayed the rights of the grassroots.

With such a historical background, young people can only rely on themselves. Fortunately, the development of the Internet nowadays allows young people to participate in this campaign directly and promote it themselves. Compared with students in Beijing who promoted the May Fourth Movement by setting fire to Zhaojialou in 91 years ago, the media and approaches adopted by young people now are much more diversified and original.

Next year marks the 100th anniversary of the 1911 Revolution. But democracy has yet to be realized in the Mainland. As for Hong Kong, we are still being manipulated by groups with vested interests since the colonial administration to the SAR Government after reunification. Subsequently, the

bogus electoral mode, that is, the so-called five additional seats, will foster the permanent existence of functional constituencies. It has even distorted public opinions and public sentiments. More ridiculously, some members from the Democratic Party even sing praises of the five additional seats, saying that they can rectify the distortion of public opinions. Indeed, the truth has been completely distorted by these people.

President, it really makes mockery of history for us to conduct this debate today. We believe today's motion will be passed eventually. However, I would like to make an appeal to young people in Hong Kong, hoping that they should not be afraid of power, nor should they be scared by censures and condemnations made by those "bogus democrats". Because they have distorted public opinions, public sentiments and conscience, setting a bad example for young people. We should head in the direction of the 1911 Revolution and the May Fourth Movement (*The buzzer sounded*) The new democratic movement will flourish.

MRS SOPHIE LEUNG (in Cantonese): President, I am actually very grateful that Dr Samson TAM has raised this issue today. President, during the discussion on the constitutional reform package here last week, I had also sung praises of many young people who were besieging the Legislative Council. At that time, I said that the virtual world had not only allowed them to bring their creativity into full play and present their ideas, but also provided room for them to express their opinions freely and build up their confidence. President, I also agree that with the dawning of the network era, young people can do a lot of things in the virtual world that they would not otherwise do in the real world, and the development of the innovative and animation industries has been driven by this as a result. However, this does not mean that they need not understand the real world.

President, I had borrowed a conference room here a couple of weeks ago for a discussion with a group of volunteers on how to encourage undergraduates to know and face the real world in the new era. We found that a lot of difficulties were involved. Eventually, we had conducted several rounds of focus group discussion with some non-volunteers to share with us their views on the work of young people, their general and specific characteristics, as well as the difficulties in communicating with them. President, at that time, we did have a

feeling that it was too numerous to record. In the end, we consolidated all the views put forth by the five focus groups. Our conclusion is that nowadays, young people are willing to live in the virtual world, almost detached from the real one. If their parents or peer groups ask them to face the real world or talk with them, they will simply evade, hide away and ignore them. This is precisely the difficulty encountered by us in dealing with young people, in particular, undergraduates. Indeed, they are not small in number. President, I wish to meet with the presidents or staff of various universities to discuss this issue. However, those who have contacted me all say that this is a common characteristic of young people. Regarding today's question, we can express our opinions with as great creativity as possible. After all, these young people must still live in the real world and come into contact with people. How can we encourage them to do so? This is also an important issue.

After this motion debate, I hope Samson TAM can join us in our meeting with young people again, so as to see the difficulties faced by us now. As a matter of fact, in order to utilize young people's power of civic participation, apart from releasing information to them, it is also very important to see if they can interpret such messages accurately. I am not saying that all students are not up to scratch. I have come across a case in which some students, with the guidance of teachers in their school, can use the information of the Legislative Council as teaching materials for Liberal Studies. They can browse the motions on our homepage, gain a better understanding of the background and then make criticisms. I think they should experience these three stages, namely knowing, understanding and criticizing. They can in no way make criticisms again and again. If we encourage young people to make criticisms arbitrarily, I consider that we are just pushing their life away from the real world.

As for the mentality and mind of government officials, I note that a number of them have joined the discussions on the Internet recently. I consider this a good move, showing that they are not afraid of facing the public and have the breadth of mind to accept criticisms. But the question is, seemingly, it is a culture on the Internet that people tends to rail at others and see the world in simple black and white. I have also found a lot of similar situations in the past two weeks. Of course, I may not intervene in these discussions. However, we should sometimes step into others' shoes, being considerate of those being condemned. Mr LEUNG Kwok-hung has just shared with us his feeling of being condemned. We have heard such expressions by him several times. He

certainly has a lot of reasons to refute such condemnations. But who loves to be chided? Such arguments will simply impress us as a war of utterances of impulse. Nowadays, we no longer talk about IQ or EQ but Spirit Quotient (SQ), that is, the level which our spirit can achieve. I consider it necessary for young people to learn and understand more at this level. We should not provide room for them and encourage them to continue to level criticisms arbitrarily. Worse still, some people who have neither conscience nor sense of righteousness even instigate them to take actions rashly, which I think is very irresponsible.

Earlier on, many people have cited the International Covenant on Civil and Political Rights (ICCPR) of the international covenants on human rights. I wish to point out that Article 19 of the ICCPR provides that everyone shall have the right to freedom of expression. However, it is also stated that the exercise of the right carries with it special duties and responsibilities, including respect of the rights or reputations of others; and the protection of national security or public order (*ordre public*), or of public health or morals. Regrettably, very few people will cite this point. Therefore, I am very worried that the message on the Internet that encourages young people to come forward is one side of the coin only. The Chairman of the Democratic Party, Albert HO, has told me that we should present the whole picture, rather than just advancing lopsided views. I absolutely agree with him. I hope that all of us can look at the cyber world from this perspective. President, I so submit.

SUSPENSION OF MEETING

PRESIDENT (in Cantonese): I now suspend the Council until 2.30 pm tomorrow.

Suspended accordingly at Ten o'clock.

Annex I

COMPANIES (AMENDMENT) BILL 2010

COMMITTEE STAGEAmendments to be moved by the Secretary for Financial Services and the Treasury

<u>Clause</u>	<u>Amendment Proposed</u>
New	By adding – “3A. Articles prescribing regulations for companies Section 9 is amended by repealing “signed by the founder members and”.”.
5(3)	In the proposed section 14A(2)(k)(ii), by deleting “and”.
5(3)	In the proposed section 14A(2)(l)(ii), by deleting the full stop and substituting a semicolon.
5(3)	By adding – “(m) a statement that the company’s memorandum and articles (if any) have been signed in accordance with sections 6 and 12; and (n) a statement that the contents of the copies of the company’s memorandum and articles (if any) delivered under section 15, with or without the part showing the signature and the date of signing as they appear on the original documents, are the same as those of the

memorandum and articles.”.

New By adding –

**“5A. Delivery and registration
of incorporation form,
memorandum and articles**

Section 15(1) is amended by repealing “, certified to be a true copy of the original by a founder member”.

5B. Effect of registration

Section 16(1) is amended by repealing “certified under section 15,”.

10(1) In the proposed section 22(3A), by deleting “in the opinion of the Registrar”.

11(2) In the proposed section 22A(1A), by deleting “in the opinion of the Registrar”.

New By adding –

**“22A. Certificates to be sent by
private company with
annual return**

(1) Section 110 is amended by renumbering it as section 110(1).

(2) Section 110(1) is amended by repealing “signed by a director or the secretary of the company”.

(3) Section 110(1) is amended by repealing “so signed”.

(4) Section 110 is amended by adding –

“(2) A certificate sent for the purposes of subsection (1) in relation to a private company must –

(a) if sent in the form of an electronic record –

(i) be signed by a director or the secretary of the company; or

(ii) contain an acknowledgment, by a person who is authorized by the company to deliver any document under this Ordinance on the company’s behalf and whose authorization has been notified to the Registrar, to the effect that the person is authorized by a director or the secretary of the company to send the certificate; or

(b) if sent in paper form, be signed by a director or the secretary of the company.”.”.

- 24(2) In the proposed section 346(2A)(b), by deleting everything after “if the person” and substituting “so consents, in the form of an electronic record.”.
- 27 By deleting the proposed section 348BA(2) and substituting –
“(2) Without limiting the powers of the Registrar under subsection (1), the Registrar may issue a certificate in the form of an electronic record.”.
- 31 In the proposed section 168BAH(4)(c)(ii), by deleting “a prior” and substituting “any prior”.
- 31 In the proposed section 168BAH(5)(c)(ii), by deleting “a prior” and substituting “any prior”.
- 31 In the proposed section 168BAI(2)(b), by deleting everything after “holder” and substituting “, within 7 days after the date of receiving the request.”.
- 31 By deleting the proposed section 168BAI(3).

Annex II

BUSINESS REGISTRATION (AMENDMENT) BILL 2010

COMMITTEE STAGE

Amendments to be moved by the Secretary for Financial Services and the Treasury

<u>Clause</u>	<u>Amendment Proposed</u>
4(1)	In the proposed section 4(1)(a), by deleting “solely”.
4(3)	(a) In the proposed section 4(3)(a), by deleting “solely”. (b) By adding – “(3B) In relation to an officer of the Companies Registry, subsections (1) and (3) do not apply to any particulars that are provided in an incorporation application or company registration application.”.
9	In the proposed section 7A(4), by adding “as soon as practicable” before “refund”.
14(3)	In the proposed section 16(2)(b), by adding “as soon as practicable” after “refunded”.
25(9)	In the proposed Form 4 – (a) in paragraph (a), by deleting “solely in the performance of any function under the principal Ordinance” and substituting “in the performance of any function under the principal Ordinance (other

than particulars that are provided in an incorporation application or company registration application as respectively defined under the principal Ordinance⁽³⁾”;

(b) in the notes, by adding –

“(3) Delete this phrase in brackets in the case of an officer of the Inland Revenue Department.”.

New

By adding –

**“Revenue (Reduction of Business
Registration Fees) Order 2010**

**31. Amendments to Revenue (Reduction of
Business Registration Fees) Order 2010**

Section 32 has effect only if the date of coming into operation of sections 6, 17 and 18 (“specified date”) is before 1 August 2011, and if so, section 32 comes into operation on the specified date.

32. Reduction of business registration fees

(1) Section 2(1) of the Revenue (Reduction of Business Registration Fees) Order 2010 (L.N. 20 of 2010) is amended by repealing “This” and substituting “Subject to subsection (1A), this”.

(2) Section 2 is amended by adding –

“(1A) In respect of a business registration certificate issued in relation to a simultaneous business registration application deemed to have been made under

section 5A(2)(a) of the Ordinance, this section applies to the prescribed business registration fee payable under section 5A(1)(a) of the Ordinance if the related incorporation application is made before 1 August 2011.”.

(3) Section 2(2) is amended by repealing “payable under item 1(l)(i) or (ii) of Schedule 1” and substituting “under item 1(l)(i) or (ii) of the Table in Schedule 1”.

(4) Section 2(3) is amended by repealing “payable under item 2(a) or (b) of Schedule 2” and substituting “under item 2(a)(i) or (ii) of the Table in Schedule 2”.

(5) Section 2(4) is amended by adding –
““incorporation application” (成立法團申請)
has the meaning given by section 2 of
the Ordinance;”.”.

Appendix I**WRITTEN ANSWER****Written answer by the Secretary for Financial Services and the Treasury to Dr Samson TAM's supplementary question to Question 5**

As regards the number of consortia which had participated in the tender exercises conducted in 2005 and 2010 for the disposal of 46 units at Caldecott Road in one parcel, the Government Property Agency had in 2005 and 2010 arranged for sale by open tender and in one parcel 46 surplus government quarters at Nos. 8 and 10 Caldecott Road, Kowloon, and a total of six and three tenders were received respectively.