

# **OFFICIAL RECORD OF PROCEEDINGS**

**Wednesday, 2 December 2009**

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

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

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

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

THE HONOURABLE ALBERT CHAN WAI-YIP

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

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

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

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

THE HONOURABLE LEUNG KWOK-HUNG

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

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.

THE HONOURABLE TANYA CHAN

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 WONG YUK-MAN

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

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

**MEMBERS ABSENT:**

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

THE HONOURABLE PAUL TSE WAI-CHUN

**PUBLIC OFFICERS ATTENDING:**

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

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

THE HONOURABLE MICHAEL SUEN MING-YEUNG, G.B.S., J.P.  
SECRETARY FOR EDUCATION

THE HONOURABLE STEPHEN LAM SUI-LUNG, G.B.S., J.P.  
SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS

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

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

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

THE HONOURABLE EDWARD YAU TANG-WAH, J.P.  
SECRETARY FOR THE ENVIRONMENT

THE HONOURABLE EVA CHENG, J.P.  
SECRETARY FOR TRANSPORT AND HOUSING

MISS ADELINE WONG CHING-MAN, J.P.  
UNDER SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS

**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>
Bunker Oil Pollution (Liability and Compensation) Ordinance (Commencement) Notice .....	235/2009
Bunker Oil Pollution (Liability and Compensation) (Application Fee for Insurance Certificate) Regulation .....	236/2009

**Other Papers**

- No. 35 — Report of changes to the approved Estimates of Expenditure approved during the second quarter of 2009-10  
Public Finance Ordinance: Section 8
- No. 36 — Construction Workers Registration Authority Annual Report 2008-09
- No. 37 — Annual Report 2008 to the Chief Executive by The Commissioner on Interception of Communications and Surveillance (together with a statement under section 49(4) of the Interception of Communications and Surveillance Ordinance)
- No. 38 — Ocean Park Annual Report 2008-2009

**ADDRESSES**

**PRESIDENT** (in Cantonese): Address. Prof Patrick LAU will address the Council on the Ocean Park Annual Report 2008-2009.

**Ocean Park Annual Report 2008-2009**

**PROF PATRICK LAU** (in Cantonese): President, I am pleased to table the Ocean Park Annual Report 2008-2009 at the Legislative Council meeting today.

The Ocean Park provides all guests with memorable experiences that combine entertainment with education and it has provided millions of guests with a unique experience throughout the years. It is my great pleasure to report to Members today at this meeting that the Ocean Park has achieved its highest-ever attendance of over 4.8 million visitors this year. Not only do we allow guests to appreciate the wonders of nature in the Ocean Park but we also bring fun and joy to guests through various exciting entertainment programmes. The Ocean Park is devoted to introducing new events and activities for visitors, and to strengthening its position as an important tourism symbol in Hong Kong. The world has been through some volatile times in the past 12 months; as an active participant in the global community, it was inevitable that the Ocean Park would experience its fair share of the upside and downside opportunities. Still, the Ocean Park demonstrated its resilience, and laid a good foundation for long-term development in the future.

In this financial year, the Ocean Park achieved attendance of over 4.8 million, which was just 5% off the 5.03 million record for the year prior. In-park revenue was HK\$893.5 million and it had a final surplus of HK\$98.6 million.

What stood out in the past year was how we were able to rise above unprecedented challenges. Among the many issues we addressed were the continued impact from the economic downturn, new visa policies on the Mainland, fluctuating tourist numbers, debilitating typhoons and rainstorms, and the human swine flu outbreak. Thanks to our management for being certain about the changes in the market situation and effectively taking corresponding countermeasures, this enabled the Ocean Park to preserve its strengths. Our sequence of "Big Five" annual events underpins our success and these themed events reinforced the strong appeal we have for our guests, and the Ocean Park continues to be a must-see premier destination in Hong Kong.

We took big steps forward in respect of the \$5.55 billion Master Redevelopment Plan (MRP). One of the milestones is our new Veterinary Centre, the best equipped facility of its kind in Asia. In April, we delivered the

first MRP attraction area — Amazing Asian Animals, which includes the flagship Giant Panda Adventure. The progress of the Ocean Express funicular system built during the same period was satisfactory, and the facility was commissioned in September.

For us, the Mainland is a key source of guests for the Ocean Park, with nearly 50% of our guests hailing from the Mainland. In recognition of the importance of this sector, we opened our Shanghai representative office and made preparations for opening a similar office in Beijing. In addition, we initiated new campaigns in Guangdong to consolidate our advantage in the Mainland tourism market.

As a famous tourist attraction in Hong Kong, the Ocean Park has proactively developed overseas markets and launched overseas marketing campaigns with the Hong Kong Tourism Board. We staged roadshows in India, the Philippines, Korea, Singapore, Malaysia and other markets to give publicity to Hong Kong's appeal.

Looking to the future, we welcome the Town Planning Board's conditional approval for the proposed development of three hotels at the Ocean Park. Our planned hotel developments — Spa Hotel, Ocean Hotel and Fisherman's Wharf Hotel — will bring a world-class resort concept to complete the Park's stunning transformation.

The Ocean Park Academy, Hong Kong — our education arm — offered more than 1 000 conservation courses last year and allowed 38 000 students to experience the wonders of nature. The Ocean Park has a passionate commitment to conservation and it is through the Ocean Park Conservation Foundation, Hong Kong that we channel a variety of regional conservation and research initiatives. In the past year, HK\$7.48 million went to the Foundation to fund 40 conservation, research and education projects. After the 12 May devastating earthquake in Sichuan in 2008, the donations to the Foundation were used to support the rebuilding of panda nature reserves.

The Ocean Park is Hong Kong's People's Park. We connect to the community through more corporate social responsibility programmes than any comparable park in the world, and offer concessionary admission initiatives and the values are equivalent to HK\$52 million. We support social enterprise projects and we are the first theme park to provide a Theme Park F&B Training

Programme; we provided valuable opportunities for 25 young people to develop their talent in the hospitality field. We also highlighted our "Big Five" annual events, which required as many as 1 000 extra seasonal staff. We created 100 and 50 new jobs respectively at Amazing Asian Animals and the Ocean Express.

In conclusion, the Ocean Park made significant contributions to the community, economy and tourism industry in Hong Kong, which was the result of the collaboration and support of our guests from Hong Kong, the Mainland and all over the world, our partners and all our employees. Looking to the future, the widely adored Ocean Park would continue to hold fast to and put into practice our vision of connecting people with nature.

Thank you.

## ORAL ANSWERS TO QUESTIONS

**PRESIDENT** (in Cantonese): Questions. First question.

### Retention or Otherwise of Functional Constituencies of Legislative Council

1. **MR WONG SING-CHI** (in Cantonese): *President, the Consultation Document on the Methods for Selecting the Chief Executive and for Forming the Legislative Council in 2012 published by the Government on 18 November has not dealt with the issue of the retention or otherwise of the Functional Constituencies (FCs) of the Legislative Council. On the contrary, it has proposed to increase the number of seats returned by the FCs. On a radio programme on the following day, the Chief Secretary for Administration even said that universal suffrage was not equivalent to the abolition of the FCs and it would be fair and equal as long as everyone had two votes. The Chief Secretary for Administration even put a counter-question of which provision in the Basic Law required that the FCs had to be abolished to the audience. In this connection, will the Government inform this Council whether:*

- (a) *it has assessed if the Legislative Council elections which are universal as well as equal must include the abolition of all seats returned by the FC elections;*

- (b) *it intends to claim that the seats of the FCs with electorates expanded to cover all the voters in Hong Kong are returned by universal suffrage; and*
- (c) *it will undertake categorically that the Legislative Council returned totally by universal suffrage absolutely cannot include the FC component and that the right to nominate candidates and voting right of voters are also required to conform with the universal as well as equal principle?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): President, my reply for Mr WONG Sing-chi's question is as follows:

- (a) The Hong Kong Special Administrative Region (HKSAR) Government published the Green Paper on Constitutional Development (the Green Paper) in July 2007 to consult the public extensively on the models, roadmap and timetable for implementing universal suffrage for the Chief Executive and the Legislative Council. Regarding the principles which should be complied with in designing a model for implementing universal suffrage, we have set out clearly in the Green Paper the Government's position:
  - (i) Having regard to the constitutional basis and principles of design of Hong Kong's political structure, as well as the concept of "universal suffrage" as generally understood internationally, the concept of universal suffrage should include the principles of "universal" and "equal" suffrage.
  - (ii) As far as an individual jurisdiction is concerned, while conforming to the general international understanding of universal suffrage, it can also develop its electoral system having regard to the particular needs and aspirations of its people, the uniqueness of its socio-economic situation, and its historical realities.
- (b) We have given a full account of the views received in the Report on Public Consultation on Green Paper on Constitutional Development (the Report) published in December 2007, and reflected these views

faithfully to the Central Authorities. Regarding implementation of universal suffrage for the Legislative Council, there are still diverse views within the community on the universal suffrage models and how the FCs should be dealt with:

- (i) There are views that the FC seats should be abolished in one go and replaced by district-based seats returned by universal suffrage, that is, the "one person, one vote" model.
- (ii) There are also views that the FC seats should be retained, but the electoral model should be changed, for example, by allowing the FCs to nominate candidates for election by all voters of Hong Kong, that is, the "one person, two votes" model whereby each voter can cast one vote in the geographical constituency (GC) election, and the other in FC election.
- (c) After considering the report submitted by the Chief Executive, the Standing Committee of the National People's Congress (NPCSC) made a decision on 29 December 2007 (the Decision), making it clear that the Chief Executive and the Legislative Council may be elected by universal suffrage in 2017 and 2020.

From now until 2020, there will be two Legislative Council elections to be held in 2012 and 2016. The community will have sufficient time to discuss the specific model for implementing universal suffrage for the Legislative Council, including how the FCs should be dealt with. We have already made it clear that when universal suffrage for the Legislative Council is implemented in future, the electoral model must comply with the principles of "universality" and "equality", but that there is no need to make a decision at this stage. It would be most appropriate for the Chief Executive returned by universal suffrage in 2017 to work with the Legislative Council formed in 2016 to deal with the issue of the FCs. This Chief Executive, returned by universal suffrage, will have broad public support to lead the Hong Kong community to resolve this controversial issue.

The task of the current-term HKSAR Government is to deal with the methods for selecting the Chief Executive and for forming the Legislative Council in 2012, with a view to furthering democratization of the electoral system, and paving the way for implementing universal suffrage. Although under the Decision of the NPCSC, the half-and-half ratio between members returned by the FCs and members returned by the GCs through direct elections shall remain unchanged for the 2012 Legislative Council, we propose that consideration may be given to increasing the number of Legislative Council seats from 60 to 70. Aside from the five new GC seats, all five new FC seats will be allocated to elected District Council members returned through "one person, one vote" by Hong Kong people. Close to 60% of the seats in the Legislative Council will then be returned by the GCs through direct or indirect elections. This can enhance the democratic elements of the elections substantively.

**MR WONG SING-CHI** (in Cantonese): *President, the Government has indicated in its main reply that the universal suffrage model of the Legislative Council elections must comply with the principles of "universality" and "equality". However, I have used the term "universal as well as equal" in my main question, that is, both the elements of universality and equality are indispensable. If the Secretary is changing the concept of "universal as well as equal" suffrage in my main question into "universal and equal" suffrage, does it mean that the Government only intends to achieve either universal or equal suffrage for the elections of the Legislative Council and claims that the Legislative Council so formed is returned by universal suffrage and hence, the problem is resolved? I hope the Secretary can tell me clearly whether he thinks it is alright for future elections to fulfil only either the universality or equality principle, and not being both universal as well as equal?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): President, I think Mr WONG Sing-chi is probably putting a matter which we can see clearly with normal eyeglasses under the microscope. I have already stated very clearly that when the Legislative Council is to be elected by

universal suffrage in 2020, the electoral system should conform with the principles of "universality" and "equality", that is, both the principles of "universality" and "equality" must be fulfilled.

**MR CHEUNG MAN-KWONG** (in Cantonese): *President, the Secretary mentioned in part (c) of his main reply that the Government would leave the issue of the retention or otherwise of the FCs to be jointly dealt with by the Chief Executive elected in 2017 and the Legislative Council formed in 2016. If the Central Government has already undertaken that the Legislative Council would be elected by universal suffrage in 2020, then the abolition of the FCs would be a gradual and yet certain process and outcome within the next 10 years. Given this outcome of certain abolition, why does the Government not start the process in 2012 by restructuring and merging the existing FCs so that they would be abolished eventually and instead, stall the process until 2016 to start dealing with the issue? Does the Government intend to create an excuse for the FCs so that in 2016, it can say that it would be too hasty to abolish the FCs in four years' time and that it would be a major constitutional change so that the FCs will be allowed to persist in a changed form? Is the Government deliberately stalling the process by "fixing the match" so that the privileges of the FCs can be extended beyond 2020?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): President, I have in fact accounted for that in part (b) of my main reply. When we conducted public consultation on the Green Paper in 2007, there were diverse views within the community on the universal suffrage model for forming the Legislative Council. To date, these different views still persist. Some political parties propose that we should adopt the "one person, one vote" approach to implement universal suffrage for Legislative Council elections, that is, to abolish the FC seats. However, other organizations suggest that we should adopt the "one person, two votes" model, that is, more than 3 million voters will continue to have one vote in the GC election and another vote in the FC election.

While some organizations consider the above electoral model already represents universal suffrage, the pan-democrats point out that the right to nominate candidates for election under this model is still not equal. Hence, Mr CHEUNG Man-kwong, I hope you will understand that there is still contention as

to whether the electoral method of "one person, one vote" or "one person, two votes" should be adopted for implementing universal suffrage, and this contention is still unresolved today. It would be most important for the development of democracy in Hong Kong that we strive to make progress and take a step forward for the election in 2012. From then on, we can continue to make new progress in the democratization of the Legislative Council for the elections in 2016 and 2020 so that the goal of having universal suffrage in 2020 is achieved.

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

**MR CHEUNG MAN-KWONG** (in Cantonese): *President, the Secretary has not answered the most critical point I raised.*

**PRESIDENT** (in Cantonese): Please state it clearly.

**MR CHEUNG MAN-KWONG** (in Cantonese): *No matter what the Secretary has said, my question is about why the Government does not start to deal with the issue from 2012 onwards and postpone the whole thing until 2016? Is this way of handling the issue a deliberate attempt on the Government's part to create a pretext that this is not gradual and orderly because it would be too hasty to do it in four years' time and that eventually, all sorts of reasons will be given to justify the continual existence of the FCs? This is what my supplementary question is really about.*

**PRESIDENT** (in Cantonese): Mr CHEUNG Man-kwong, I think the Secretary has already replied by stating his views. Secretary, do you have anything to add?

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): President, I would like to add by saying that we will endeavour to realize it in 2012 by adopting the gradual and orderly approach. As such,

although under the Decision of the NPCSC, the half-and-half ratio between Members returned by FCs and Members returned by GCs through direct elections shall remain unchanged in 2012, we propose that some progress should be made. As regards the Member's question as to why the issue should be dealt with until 2016 and 2017, our stance is very simple and very clear because the Chief Executive returned by universal suffrage in 2017 will have broad representativeness and public support. It would have the best chance of success for this Chief Executive to lead the Hong Kong community to resolve the issues about how to implement universal suffrage in 2020 and how to deal with the FCs.

**MR TAM YIU-CHUNG** (in Cantonese): *I would like to ask the Government whether it has visited or studied democratic countries in overseas as regards the mainstream electoral methods for universal suffrage they adopt (that is, when universal suffrage is to be implemented)? Whether the Government has conducted such studies or made such visits? If the answer is in the negative, whether it will do so?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): President, we have conducted quite a number of studies previously. Also, I have of course made reference to the studies conducted by the Legislative Council Secretariat. There are many electoral methods adopted by the legislature in different places of the world including unicameral legislatures returned by direct elections and bicameral legislatures. For example, the United States adopts the bicameral system. The United Kingdom and Canada also have bicameral legislatures, both their upper houses have appointed seats. In France, members of the legislature are either returned from direct elections or indirect elections from municipal councils. Hence, different places of the world adopt different electoral methods. We have conducted relevant studies in the past. In order to promote the further democratization of the legislature in Hong Kong and to prepare for the implementation of universal suffrage elections, we will continue to make reference to these studies.

**MR ALAN LEONG** (in Cantonese): *The Secretary must have noticed that Ms LAU Pui-king, a Hong Kong Deputy to the National People's Congress (NPC), has recently stated clearly that universal but unequal elections are in compliance with the principle of universal suffrage. If, on the basis of the Secretary's reply*

*to Mr WONG Sing-chi's question just now, may I invite the Secretary to state clearly in this Chamber that the scenario as depicted by Ms LAU Pui-king does not conform with the principle of universal suffrage election and neither is this the stance of the Secretary and the HKSAR Government?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): President, I can state clearly that no matter what individuals have said on this issue, they cannot represent the stance of the Central Authorities or the HKSAR Government. The stance in relation to "universal" and "equal" suffrage has already been stated very clearly. Since 2007, we have conducted public consultation on constitutional development based on the Green Paper we published and the consolidated views have been incorporated in the Report published subsequently in December. We will implement universal suffrage election for the Legislative Council in 2020, which will proceed in accordance with the Basic Law as well as the principles of "universality" and "equality". Our stance is indeed very clear.

**MS CYD HO** (in Cantonese): *In part (c) of the main reply, the Decision made by the NPCSC on 29 December 2007 is mentioned. In terms of undertaking, the most definite undertaking given by the Central Authorities to the people of Hong Kong is the Basic Law and the process of democratization as stipulated in Annexes I and II of the Basic Law has only three steps, that is, any changes "must be made with the endorsement of a two-thirds majority of all the members of the Legislative Council and the consent of the Chief Executive, and they shall be reported to the Standing Committee of the National People's Congress for approval."*

*I want to ask the Secretary which provision in the Basic Law contains the two steps created or added in 2007, that is, the procedures stipulated in the Decision? Will the sudden inclusion of these two steps which has delayed the democratization of Hong Kong make us worry that other decisions will be forthcoming in 2017 and 2020 that would again delay the process of democratization? How is the Secretary going to lobby us to trust the undertaking of the Central Authorities, apart from telling us to still have "faith" even though we have been cheated time and time again?*

**PRESIDENT** (in Cantonese): Ms HO, I notice that you have asked a number of questions. Can you simply state what is your supplementary question?

**MS CYD HO** (in Cantonese): *President, the matter is after all just about a direction. If additional barriers can be imposed upon the definite undertaking as stipulated in the Basic Law, how can the Secretary ask us to still have faith after we have been cheated so many times?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): President, I can answer Ms Cyd HO's supplementary question. But if one always thinks that one is cheated, then I am sorry I can do nothing about it.

As far as the part about the Basic Law is concerned, I will try to explain. Under Annexes I and II of the Basic Law, there are provisions on how the methods for selecting the Chief Executive and for forming the Legislative Council after 2007 are to be amended. The Basic Law stipulates that, "If there is a need to amend the method for selecting the Chief Executives for the terms subsequent to the year 2007, such amendments must be made with the endorsement of a two-thirds majority of all the members of the Legislative Council and the consent of the Chief Executive, and they shall be reported to the Standing Committee of the National People's Congress for approval." This provision is also stipulated in Annex II. On 6 April 2004, the NPC promulgated its interpretation on Article 7 of Annex I and Article III of Annex II to the Basic Law. According to the interpretation, the Chief Executive shall take the first step by making a report to the NPCSC as regards whether there is a need to make an amendment to the methods for selecting the subsequent Chief Executives and for electing the subsequent terms of the Legislative Council. The second step is for the NPCSC to determine whether there is a need for such amendments. The third step is for the SAR Government to introduce a bill on the amendments for endorsement by a two-thirds majority of all the members of the Legislative Council. The fourth step is for the Chief Executive to give his consent to these amendments. The fifth step is that the amendment resolutions shall be reported to the NPCSC for approval or put on record. This is the interpretation of the Basic Law made by the NPCSC in 2004.

Ms Cyd HO is very concerned about how we subsequently achieve universal suffrage elections in 2017 and 2020. In fact, we have included the

Decision made by the NPCSC in 2007 as Annex I of the public consultation document (that is, pages 42 to 44). The first paragraph of the Decision states that the election of the fifth Chief Executive in the year 2017 may be implemented by the method of universal suffrage; that after the Chief Executive is selected by universal suffrage, the election of the Legislative Council may be implemented by the method of electing all the members by universal suffrage. Hence, the timetable is very clear and this is a decision that is constitutional, lawful and legally-binding. Thereafter, the Decision has specified clearly in the following paragraphs (that is, paragraphs 2 and 3) that at an appropriate time prior to the selection of the Chief Executive by universal suffrage, these five steps would be taken. Paragraph 3 also mentions that at an appropriate time prior to the election of all the Members of the Legislative Council by universal suffrage, these five steps would also be taken. Hence, it is all very clear no matter from the point of view of the constitutional basis, the Decision of the NPCSC as well as the arrangements to proceed with these five steps, and this is not going to change.

**MR WONG TING-KWONG** (in Cantonese): *If the methods for selecting the Chief Executive and for forming the Legislative Council in 2012 are endorsed by a two-thirds majority of all the Members of the Legislative Council, together with the consent of the Chief Executive and approval given by the NPCSC, what will the Administration do to further promote democratization of Hong Kong so as to achieve universal suffrage elections for the Chief Executive and the Legislative Council? If the methods fail to get endorsed, what will the Administration do to continue promoting the democratization of Hong Kong so that Hong Kong will ultimately implement universal suffrage elections?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): President, as regards the supplementary question from Mr WONG, I want to make two points in response. Firstly, although the consultation document deals with the two electoral methods in 2012, we realize that different groups and people in society have hoped that discussion on universal suffrage models can commence as soon as possible. Hence, we have stated in paragraph 1.30 of the consultation document that if we receive any views relating to the universal suffrage models after 2012, we will sum up these views and hand them over to the two terms of HKSAR Governments after the current third term of Government for reference. We believe that by doing so and making good

preparations as such, it will be beneficial to achieving universal suffrage elections in future.

As regards the second part of Mr WONG's supplementary question, that is, what will be the situation if unfortunately, we have to mark time again in 2012? I have to state first and foremost that the HKSAR Government will make every effort, and hope Members here today (from different parties and camps as well as those individual Members) can work together in concerted action to enable Hong Kong take a step forward for democratization in 2012. This will provide a much broader foundation for implementing universal suffrage elections in 2017 and 2020. Not only does the process of democratization itself need progress, the five steps we have to take, that is, the procedures stipulated in Annexes I and II, are relatively complex and high-level constitutional procedures. Nowadays, let us take this course in 2009 and 2010 so that we will be more confident and determined when taking the path to universal suffrage in 2017 and 2020. Mr WONG has asked what the situation will be if no progress can be made. We have already stated that the Chief Executive will be elected by universal suffrage in 2017 and there is no pre-condition that we need to make progress in 2012. But we believe that if progress can be made, it would be very helpful to achieving democracy and universal suffrage elections in the days to come.

**PRESIDENT** (in Cantonese): This Council has spent more than 22 minutes on this question. Now the second question.

### **Relaxation of Restrictions on Old Age Allowance**

2. **MR WONG KWOK-KIN** (in Cantonese): *President, at present, an increasing number of elderly persons in Hong Kong choose to return to their hometowns on the Mainland to spend their twilight years. However, as recipients of the Old Age Allowance (OAA) have to comply with residence requirements, these elderly persons have to return to Hong Kong on a regular basis. Some elderly persons have relayed to me that because of those requirements, not only do they have to make tiring journeys between Hong Kong and the Mainland, but they also have to keep their residence in Hong Kong, which increases their living costs. In this connection, will the Government inform this Council:*

- (a) *since the relaxation of the permissible limit of absence from Hong Kong for OAA recipients in October 2005, of the annual number of elderly persons who have benefited from the measure, and the percentages of the numbers in the total numbers of OAA recipients in the respective years;*
- (b) *whether the authorities will make reference to the existing arrangements under the Portable Comprehensive Social Security Assistance (PCSSA) Scheme and allow elderly persons to continue to receive the OAA while permanently residing on the Mainland; if not, of the reasons for that; and*
- (c) *whether it will consider commissioning non-governmental organizations of Hong Kong operating on the Mainland to verify if OAA recipients residing on the Mainland are still alive; if it will, when such plan will be implemented; if not, of the reasons for that?*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): President, the OAA under the Social Security Allowance (SSA) Scheme provides cash allowance to Hong Kong residents aged 65 or above to meet their special needs arising from old age. The SSA Scheme is a non-contributory social security scheme funded entirely by general revenue. As such, recipients must regard Hong Kong as their place of residence, and are subject to a permissible limit of absence from Hong Kong (absence limit).

Since 1 October 2005, the absence limit under the SSA Scheme has been increased from 180 days to 240 days a year. Recipients are eligible for the absence limit as long as they have resided in Hong Kong for not less than 80 days (Appendix 1) in a payment year. Specifically, a full-year allowance will still be paid to recipients who have been away from Hong Kong for a period no longer than the absence limit. On the other hand, for recipients who have been away from Hong Kong for a period longer than the absence limit, their allowance will be deducted according to their days of absence in excess of the limit. For recipients who have stayed in Hong Kong for less than 90 days in a payment year, allowance will still be paid to them for their period of stay in Hong Kong. The above arrangements apply to all SSA recipients, regardless of where they have been during their absence from Hong Kong. In implementing the relaxation measure, the Government had taken into account the wish of some elderly

persons to spend more time on travelling, visiting relatives or taking up short-term residence outside Hong Kong, while ensuring that public funds are spent on Hong Kong residents who take Hong Kong as their place of permanent residence.

My reply to the various parts of Mr WONG Kwok-kin's question is as follows:

- (a) Since the implementation of the new absence limit on 1 October 2005, the number of OAA recipients who benefited from it in the last three months of 2005, the full years of 2006, 2007 and 2008, and from January to October 2009 was 1 526, 6 200, 7 014, 7 570 and 6 288 respectively, representing 0.33%, 1.24%, 1.38%, 1.46% and 1.21% of the total number of OAA recipients in the corresponding periods. Most of these recipients were able to benefit because their days of absence from Hong Kong originally in excess of the limit were now covered by the new absence limit, resulting in no deduction of their yearly allowance. As for other beneficiaries, even though they were not entitled to a full-year allowance because their days of absence from Hong Kong were still in excess of the new absence limit, they were able to receive an additional 60 days of allowance (that is, the difference between the old and new absence limits) compared to the amount of allowance they were entitled to receive before the absence limit was extended.

- (b) and (c)

The Government introduced the PCSSA Scheme in 1997 to enable elderly recipients who choose to reside permanently in Guangdong Province to continue to receive cash assistance under the Comprehensive Social Security Assistance (CSSA) Scheme. Since 1 August 2005, the PCSSA Scheme has been extended to Fujian Province. The eligibility for the Scheme has also been relaxed to allow elderly persons on the CSSA for at least one year (instead of three years) to participate.

Unlike the CSSA Scheme, the majority of OAA applicants are not means-tested. Thus, OAA recipients are not limited to those in financial hardship. The number of elders on the OAA is also much

higher than that on the CSSA. For the above reasons, direct comparison between the CSSA Scheme and the OAA would not be appropriate.

As explained above, in the light of the purpose and nature of the SSA Scheme, it is necessary to impose a limit on absence from Hong Kong to ensure that public funds are spent on Hong Kong residents who take Hong Kong as their place of permanent residence. At the same time, an absence period is permissible under the Scheme to allow elderly persons to take up short-term residence on the Mainland or in other places. This arrangement serves to strike an appropriate balance between the proper use of public funds and the convenience of OAA recipients.

We are now reviewing this aspect and conducting an in-depth study on the feasibility of further increasing the absence limit.

**MR WONG KWOK-KIN** (in Cantonese): *President, the Government always emphasizes that it adopts a people-based approach to governance. Surely, we acknowledge that Secretary Matthew CHEUNG has all along been working hard and devotedly on labour issues and the welfare of the disadvantaged groups. However, I still have to ask one question. In the main reply, the Government said that at present, residents must stay in Hong Kong for 90 days in order to be eligible for the "fruit grant", so to speak. But this will lead to a problem, that is, elderly persons have to keep their residence in Hong Kong. Since the monthly payment of "fruit grant" is \$1,000, which means only \$12,000 a year, if they have to maintain their residence in Hong Kong, the rent they pay for a year will surely exceed the "fruit grant" payment they receive. In other words, their costs will outweigh their gains.*

*Hence, may I ask the Secretary whether the Government will consider further relaxing the absence limit for receiving the "fruit grant", so that elderly persons do not have to return to reside in Hong Kong, which means they only need to report but do not need to stay here overnight? They may come back once every three or six months, or even once a year to report their presence. Can this arrangement be implemented to help elderly persons so that they do not have to maintain their residence in Hong Kong?*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): Thank you, Mr WONG, for your question. We understand the aspiration of the elderly, we know it full well. And it is exactly because of this that we now act proactively to conduct a serious and in-depth study on the feasibility of further relaxing the restrictions. If further relaxation is feasible, to what extent can it be relaxed? How feasible will it be? We are now conducting the study, and we fully understand the point put forward by Mr WONG.

**DR PAN PEY-CHYOU** (in Cantonese): *President, we know that elderly persons on CSSA residing in Guangdong Province and Fujian Province are eligible to receiving the CSSA payment without returning to reside in Hong Kong. May I ask why the same convenient arrangement cannot be extended to elderly persons receiving the OAA, commonly known as the "fruit grant"? The Government all along gives the argument that this may infringe on human rights. However, I would like to point out that in January 1997, when the Government allowed the extension of the CSSA arrangement to Guangdong Province and Fujian Province, it said that Hong Kong had become part of the People's Republic of China, thus elderly recipients or other people might consider that receiving CSSA in China was different from receiving it overseas. May I ask why this consideration cannot be extended to the "fruit grant" in question?*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): President, I would like to thank Dr PAN for his supplementary question. Actually, I have already explained this in the main reply. Since the two schemes are slightly different, a direct comparison cannot be drawn between them. I have explained it in the main reply that under the OAA scheme, the majority of applicants do not have to undergo a means test. But the CSSA Scheme requires recipients to undergo a rather stringent means test. This is the first difference between the two schemes. Second, it is about the number of recipients. As you have mentioned, there are nearly 500 000 elderly persons receiving OAA and that is quite a large number. But the number of elderly persons receiving CSSA is relatively smaller: the number of elderly persons aged 60 is only 180 000 and the number of elderly persons aged 65 or above is only 160 000. Hence, a comparison between the numbers of recipients of the two schemes can definitely not be drawn. For this reason, we consider that a direct comparison between the two schemes is inappropriate. In fact, Dr PAN's intention is the same as that of Mr WONG, for they both hope that we can consider the cases with a greater

flexibility and offer more room for manipulation. We are considering the issue in this direction and identifying specific measures which we can implement. But we can only implement measures that are practicable.

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

**DR PAN PEY-CHYOU** (in Cantonese): *President, the Secretary has not answered my question. I only want to ask about the justification for adopting such an arrangement for CSSA. The justification he took into account at the time was in fact extracted from the Report on the Review of CSSA Scheme issued in 1996 .....*

**PRESIDENT** (in Cantonese): Are you trying to ask why the same arrangement cannot be applied to the OAA scheme?

**DR PAN PEY-CHYOU** (in Cantonese): *Yes, President.*

**PRESIDENT** (in Cantonese): I believe the Secretary has already answered this. I will see whether the Secretary has got anything to add.

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): President, as I said earlier, a direct comparison between the two schemes is inappropriate, for the recipients of one of the schemes have to undergo a means test, while the majority of the recipients of another scheme do not have to undergo any means tests. This is a major and fundamental difference. Moreover, there is a big difference in the numbers of the recipients of the two schemes. These are the two major reasons for the arrangement.

**MR TAM YIU-CHUNG** (in Cantonese): *President, at the Chief Executive's Question and Answer Session on the policy address this year, I requested the Chief Executive to review the absence limit for the OAA scheme and examine the*

*possibility of lifting that restriction. He told me at the time that he was determined in examining the issue. However, more than one month has passed, may I ask the Secretary what is the progress made so far? Will he inform us of the rough timing for that?*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): Thank you, Mr TAM for your question. Actually, the Chief Executive, I and the Government are deeply concerned about this issue. We are very concerned about it and we really are. We have spent much time to examine the issue in detail and in depth. But the measures to be implemented must be practicable and in compliance with the law. We promise to introduce the measures as soon as possible. If you want a timetable for this, I may boldly tell you that we expect, at the earliest, to give a clear direction to Members in the first quarter of the coming year.

**MR LEUNG KWOK-HUNG** (in Cantonese): *Secretary, do you mind having your salary reduced? Your reply to the question is totally irrelevant. Dr PAN Pey-chyou .....*

**PRESIDENT** (in Cantonese): Mr LEUNG Kwok-hung, please face the President when you ask your question.

**MR LEUNG KWOK-HUNG** (in Cantonese): *President, I would like to tell him through you that he should take a pay cut for the answer he has given to the Member just now. He only said that a comparison could not be drawn between an orange and an apple.*

**PRESIDENT** (in Cantonese): Please ask your supplementary question.

**MR LEUNG KWOK-HUNG** (in Cantonese): *My supplementary question is: Why is an extension not possible? The two things are different. The Member asked him why an extension is not feasible, but he did not answer that. He just said that more recipients were involved and the assessment conducted was*

*different. He has not answered Dr PAN Pey-chyou's supplementary question at all. So I want to ask him now.*

**PRESIDENT** (in Cantonese): Please ask your supplementary question.

**MR LEUNG KWOK-HUNG** (in Cantonese): *May I ask whether he is willing to take a pay cut? In view of the way he is doing his work, he should take a pay cut ..... If I ask him to donate the salary he receives today to the Community Chest or to some old ladies, will he be willing to do so?*

**PRESIDENT** (in Cantonese): Mr LEUNG Kwok-hung, this question is about the OAA scheme. I believe the salary of the Secretary is not related to this.

**MR LEUNG KWOK-HUNG** (in Cantonese): *It is surely related. If the Secretary donates his salary to the Community Chest, this will be distributed to the elderly and the elderly will at least benefit a little from it. His reply is not only an insult to me but to all the elderly in Hong Kong. Buddy, my mother receive this ..... I know from my family background that he is talking nonsense.*

**PRESIDENT** (in Cantonese): Question time is not for Members to .....

**MR LEUNG KWOK-HUNG** (in Cantonese): *My mother had gone to heaven. But buddy, if she heard this reply, she would certainly jump to her feet.*

**PRESIDENT** (in Cantonese): Mr LEUNG Kwok-hung, please be seated.

**MR LEUNG KWOK-HUNG** (in Cantonese): *It is simple. All issues can be discussed in this Council. My question is simple: Is he willing to donate one day's salary as a compensation for the plight suffered by the elderly as an apology? He should not insult the elderly.*

**PRESIDENT** (in Cantonese): Mr LEUNG Kwok-hung, please be seated. All issues can be discussed in the legislature, but we have to follow the Rules of Procedure that no debate should be carried out during the question time. I consider the supplementary question which you have put forward earlier unrelated to the main question, for you are expressing your opinion about the Secretary.

**MR LEUNG KWOK-HUNG** (in Cantonese): *No. Alright then, I will amend my supplementary question. Will he donate five days' salary? I have now put the question in another way. If he donates his salary for five days.....*

**PRESIDENT** (in Cantonese): You ask the Secretary to donate his salary for five days, but how is that related to the OAA scheme?

**MR LEUNG KWOK-HUNG** (in Cantonese): *It is simple. We are now talking about the provision of convenient arrangements on subsidies and allowances for the elderly, but the Secretary said that it was inappropriate to compare the two schemes and he did not give any explanation ..... Dr PAN has asked a good question .....*

**PRESIDENT** (in Cantonese): Mr LEUNG Kwok-hung, you have already expressed your opinion about the Secretary.

**MR LEUNG KWOK-HUNG** (in Cantonese): *He should then donate five days' salary. He should do so.*

**MRS REGINA IP** (in Cantonese): *President, I notice that the Secretary said that since OAA involved public funds, the recipients must be persons taking Hong Kong as their place of residence. But I am rather doubtful about this argument. Though he said that the recipients were spending public funds, I consider it would be justified to require them only to have close ties with Hong Kong, say they are permanent residents of Hong Kong, they have been living in Hong Kong for no less than seven years. Why should the large number of elderly persons, who can*

*indeed move to the Mainland, be requested to make tiring journeys between Hong Kong and the Mainland just for the \$1,000 allowance and solely to comply with the residence requirement? Why should such a fossilized requirement be imposed? May I know whether this argument is still valid today?*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): President, I wish to thank Mrs Regina IP for her question. According to our policy on SSA, recipients must regard Hong Kong as their place of permanent residence, which means they have to reside in Hong Kong for not less than 90 days in a year. This is the policy consideration at the time. The issue raised by Members today is actually about the room for further relaxation of the restrictions. Members hope that the Government may consider this aspect, and we are working exactly in this direction. However, I have to explain clearly the consideration and basis of the existing policy, that is, public funds should be spent on Hong Kong residents who regard Hong Kong as their permanent residence. This is the prevailing consideration, which is also an established and effective approach in handling this issue. I have to explain it clearly so that Members can understand. Now we have to examine whether there is any room for relaxation. It is just that simple.

**MRS REGINA IP** (in Cantonese): *President, I think the Secretary has misled us, for he has already said in his reply earlier that OAA is not a kind of welfare, and no means test is required. He has not answered my supplementary question. Will he explain this again?*

**PRESIDENT** (in Cantonese): I have to repeat that this is not the time for a debate, and so you can only state which part of your supplementary question the Secretary has not answered. If you are dissatisfied or if you disagree with the Secretary's reply, you should follow up the issue on other occasions. Which part of your supplementary question has not been answered?

**MRS REGINA IP** (in Cantonese): *President, the Secretary said that the OAA was not a kind of welfare, but he gave remarks earlier that OAA was a kind of welfare and so on. Indeed, he has not answered my supplementary question. If*

*the OAA is not a kind of welfare, why should recipients be required to take Hong Kong as their place of residence?*

**PRESIDENT** (in Cantonese): I will see if the Secretary has anything to add.

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): President, perhaps Mrs Regina IP has misunderstood my meaning. CSSA is a ..... At present, under the entire welfare system or social security system, we offer CSSA and SSA, and under the SSA scheme, OAA and Disability Allowance are provided. All these are kinds of welfare. Recipients of CSSA must pass the means test. As for OAA, which is under the SSA scheme, in general, citizens aged 65 to 69 have to pass the means test, and Members do know that. But for the elderly above the age of 70 (Appendix 1), they do not have to pass the means test. I have to explain it clearly to Members that this amount is paid by public funds under the welfare protection scheme. It is just that simple.

**MR WONG KWOK-HING** (in Cantonese): *President, according to the Report on the Review of CSSA Scheme issued by the Government in 1996, the two justifications for imposing the absence limit are, and I quote, "(a) many of Hong Kong's elderly residents view Mainland China as their 'home' to which they would wish to return to live out their retirement; and (b) Hong Kong will become part of the People's Republic of China in 1997, and elderly recipients and others might well argue that receiving CSSA payments in China should be seen as different from receiving payments overseas". In the review report issued in 1996, the view that the elderly view the Mainland as their home is acknowledged. Hence, may I ask the Secretary through the President to explain to us the definition of the term "home"? Why are the elderly not allowed to return to the "home" at their hometown to spend their twilight years? Why should their "home" in Hong Kong and their "home" on the Mainland be differentiated in such an arbitrary manner?*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): President, I have stated clearly earlier that we now require recipients of OAA to take Hong Kong as their place of permanent residence, which means they have to reside in

Hong Kong for a reasonable period of time, and we will provide them with allowance paid by public funds. In 1996 and 1997, the policy adopted at the time had taken into consideration the financial difficulties faced by some elderly persons in reality, particularly those on CSSA. A small number of the elderly who had undergone a means test put up such a request, and the Government at the time responded by adopting the arrangement concerned. However, if we look at the figures — I am not trying to mislead Members with figures — actually, Members all know that as at today, only a small number of the elderly, that is around 3 000 of them, have applied for the extension scheme to Guangdong Province and Fujian Province. During the past period, some 700 elderly persons have actually returned to reside in Hong Kong. Hence, Members should understand that if the restrictions on OAA are to be relaxed further at present, many factors must be taken into account. We are definitely examining the issue in a serious, solemn and proactive manner, hoping that practicable methods can be identified to respond to the aspiration of the public while providing convenience to the elderly.

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

**MR WONG KWOK-HING** (in Cantonese): *My question is clear. I asked the Secretary: What is the difference between the elderly persons' "home" in Hong Kong and the "home" at their hometown? The Secretary has not provided the relevant definition.*

**PRESIDENT** (in Cantonese): I consider that the Secretary has already answered the part of your supplementary question which is related to the main question. If your question is about the general definition of "home", it may not necessarily be related to the main question.

**MR WONG KWOK-HING** (in Cantonese): *President, since I have quoted the definition of "home" used by the Government in the review report issued in 1996 earlier, the question I now put is therefore justified. I hope you will allow the Secretary to answer this again.*

**PRESIDENT** (in Cantonese): Regarding the report issued in 1996, the Secretary has explained repeatedly earlier why certain conclusions therein are not applicable to the present situation.

Members, this Council has spent more than 20 minutes on this question, but since a number of Members are concerned about this question and that we have spent some time to discuss the content of the question, I will now allow a Member to ask the last supplementary question.

**MR LEE CHEUK-YAN** (in Cantonese): *Having heard the earlier replies of the Secretary, as well as the Chief Executive's response to Mr TAM Yiu-chung's question the other day that the limit will be relaxed, I think the elderly in Hong Kong may indeed be misled by those remarks. For the Chief Executive only said that he would examine the possibility of further relaxation rather than ruling out such a possibility. This involves changing the nature of the entire OAA scheme and the purposes it serves. The purpose is crystal clear. Recipients must be Hong Kong residents residing in Hong Kong, and they are not allowed to take long-term residence on the Mainland. However, the Secretary has to understand that many elderly people tell us they want to spend their retirement on the Mainland, why? Because many of them have to live on the \$1,000 OAA. When it is impossible for them to make a living with that amount in Hong Kong, but is possible on the Mainland .....*

**PRESIDENT** (in Cantonese): Please come to your supplementary question direct.

**MR LEE CHEUK-YAN** (in Cantonese): *The Secretary keeps telling us that to solve the problem in Hong Kong ..... A retirement system has now been put in place in Hong Kong, which is supported by three pillars, and one of the pillars is OAA. May I ask the Secretary: Since the nature of the scheme is about retirement, why should the authorities examine whether they reside in Hong Kong or not? May I ask him whether he will consider the issue from the perspective of providing retirement protection, so that all the people of Hong Kong, irrespective of their place of residence, are eligible for OAA for their retirement?*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): President, I thank Mr LEE for his question. I have made it very clear earlier that in the review now underway, we will seriously and proactively examine whether there is any room to further relax the restrictions on the so-called exemption for staying in Hong Kong or absence limit (Appendix 1). We do so exactly to respond to the concerns raised by Members, that is, we should allow more flexibility. However, the measures concerned must be practicable and in compliance with the law. Only if these principles can be observed will we adopt the measures. Hence, we are working on this. I hope I can revert to Members as soon as possible.

**PRESIDENT** (in Cantonese): Third question.

### **Retail facilities Under Hong Kong Housing Authority**

3. **MR VINCENT FANG** (in Cantonese): *President, it has been learned that in recent years, The Link Management Limited (The Link Management) has kept increasing substantially the rents of the shops in its shopping arcades and the stalls in its markets, resulting in many small business tenants who had operated for many years closing their business. Some of the small business tenants have indicated that they hope to continue to operate by renting the shops and stalls under the Hong Kong Housing Authority (HA). In this connection, will the Government inform this Council:*

- (a) *of the rent levels and changes in rents, as well as the letting rates of shops, under the HA in the past three years; whether or not the HA will make reference to the practice of establishing the Business Opportunity Centre (BOC) in 2003 and simplify the procedure for letting out its shops and stalls, as well as giving priority to shop tenants of The Link Management in taking up the tenancies;*
- (b) *given that a surveyor firm which has been appointed by the HA as the leasing adviser of the retail section of the Yau Tong Phase 4 development project is at the same time the sole leasing agent and valuer of some of the shopping arcades under The Link Management, whether or not the authorities have assessed if there is any conflict of interest in that situation; whether or not the adviser is*

*responsible for determining the rents of the shops concerned; if so, how the HA prevents the adviser from determining the rents according to the rent levels of the shopping arcades under The Link Management; and*

- (c) *whether or not the HA is still implementing the strategy of divesting its properties; if so, of the details; if not, whether or not the HA plans to improve the operating environment of its existing shopping arcades and markets, so as to enhance their competitiveness?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese):

President, retail facilities (including markets) of the HA are normally let by tender for a fixed term of three years. According to the policy of the HA, renewal rents are adjusted according to the market level upon expiry of the existing tenancies. At present, there are about 2 000 shops and 1 000 stalls under the HA. They are mainly situated in shopping arcades in 23 public housing estates, covering a total floor area of around 170 000 sq m.

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

- (a) The HA has all along maintained the rents of its commercial facilities at a reasonable level, taking into account factors such as comparable rental statistics, the physical characteristics of the premises and changes in the population and environment of the public housing estates where the premises are located. Sitting shop tenants may express their views on the business environment and factors affecting the rent levels, so that the HA can take them into account in determining the renewal rents. The average renewal rents for commercial facilities were \$270 per sq m, \$274 per sq m and \$290 per sq m as at the end of March in 2007, 2008 and 2009 respectively, showing a relatively stable trend. The letting rates of commercial facilities were 93%, 95% and 95% as at the end of March in 2007, 2008 and 2009 respectively.

Although the BOC set up by the HA in 2002 ceased operation in mid-May 2005 following the HA's divestment of the majority of its commercial facilities, the HA has been actively providing interested parties with suitable venues for business operation. At present,

around 100 vacant shops and stalls under the HA are available for rental by commercial tenants through open tender and simplified leasing modes introduced by the then BOC, such as "Open Instant Tender" and "Walk-in Application on a First-come-first-serve Basis". Besides, the HA offers extra rent-free periods in letting out long-standing vacant shops and stalls to increase their attractiveness.

As I mentioned just now, as the HA's commercial facilities are leased by open tender, the public is welcome to take up the tenancies concerned. Interested parties can obtain updated information on the premises for rental through the website of the Housing Department (HD), estate offices and newspapers or by calling the HD for enquiry.

- (b) The assessment and determination of the rents of commercial facilities (including the Yau Tong Phase 4 development project, hereinafter referred to as "Yau Tong Phase 4") under the HA are carried out by the HD's in-house Estate Surveyors by making reference to various factors, including comparable rental statistics, the physical characteristics of the premises for rental and changes in the population and environment of the public housing estates concerned. In appointing a surveying consultancy firm as the leasing adviser of Yau Tong Phase 4, the HA intended to draw in the experience of the private sector in the design of shopping arcades and trade mix, as well as keeping abreast of the latest trends in the retail market. This would facilitate the operation of Yau Tong Phase 4 in a market-led approach. This firm will only provide consultancy services in relation to the leasing mode, development strategy, overall design, marketing and publicity of Yau Tong Phase 4. It will not take part in rent-fixing or represent the HA in contacting potential shop tenants directly. It is therefore unlikely that the appointment will give rise to any conflict of interest.
- (c) At present, the HA has no plan to further divest its properties. The HA will continue to formulate conversion and improvement programmes in the light of the potential of the existing commercial facilities and customers' needs and organize more promotional activities to improve the business environment of these venues.

**MR VINCENT FANG** (in Cantonese): *President, regarding part (c) of the Secretary's main reply, I remember the HA made an undertaking in selling its assets to The Link Real Estate Investment Trust (The Link REIT) that subsequent to the listing of the latter, if the HA had any plan of selling its assets within 10 years, the assets must first be sold to The Link REIT. May I ask the Secretary whether or not this undertaking is still in effect? If it is not, then it will certainly be most desirable. However, in case it is, will the HA consider adopting the share-exchange approach in selling its assets to acquire some share rights of The Link REIT, so that the Government can monitor the present operation of The Link REIT?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): President, as I have mentioned in part (c) of the main reply, we have no plan now of further divesting the HA's properties for sale. Regarding the right of first refusal referred to by Mr Vincent FANG just now, it is contained in the relevant agreement on the right of first refusal entered into back then (that is, in 2005) and it remains in force at present. That said, we have no plan now whatsoever to sell the HA's properties in its shopping arcades.

**MR TOMMY CHEUNG** (in Cantonese): *President, the Secretary pointed out in part (b) of the main reply that conflict of interest probably did not exist. However, I find it difficult to imagine that there is a complete absence of conflict of interest. President, may I ask the Secretary whether it is the case that the HA, when appointing the surveyor firm, has already been aware of its engagement by The Link Management (The Link)? Or, is it the other way round? Or, is it that the surveyor firm is appointed by the HA after its engagement by The Link? The Hong Kong public will find it difficult to believe that there is only one surveyor firm in Hong Kong that knows how the work relating to the HA and The Link can be undertaken. In my view, there is something inappropriate in this regard, so I hope the Secretary can explain the sequence of engagement.*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): President, to my understanding, the surveyor firm is engaged by The Link after its appointment by the HA. However, since this firm only provides consultancy services in relation to the leasing mode, development strategy, overall design,

marketing and publicity of Yau Tong Phase 4 and will not have any direct discussion with shop tenants on the issue of rent, there exists no conflict of interest.

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

**MR TOMMY CHEUNG** (in Cantonese): *President, although the Secretary mentioned "after" in her reply, in her view, there is no conflict of interest. The contract entered into with this surveyor firm should probably be cancelled.*

**PRESIDENT** (in Cantonese): Mr CHEUNG, you are putting forward your views. Just now, you asked the Secretary about the sequence of engagement and I believe the Secretary has given an answer.

**MS MIRIAM LAU** (in Cantonese): *President, the Secretary has emphasized that renewal rents are adjusted according to the market level. As mentioned in part (a) of the main reply, the HA will take into consideration a number of factors before the renewal rents are determined and shop tenants will have the opportunity to express their views to the HA. However, generally speaking, the HA still plays the leading role in determining the renewal rents. In the private market, if a landlord and a shop tenant agree to adopt the market rent level in the renewal of the latter's tenancy but fail to see eye to eye, they will engage an independent surveyor to determine the rent. Why can the HA not adopt this practice, which is more open and enlightened, but decides to assume the leading role and forces shop tenants to accept its practice?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): President, our present system for determining rents has actually been operating smoothly. On the one hand, it is our established practice to set tenancies at three years, which is a relatively stable and long period. Moreover, we have to be careful and determine rents in accordance with the principle of commercial operation and the market level because the resources will eventually be channelled back to the HA. Our operating surplus is utilized to assist the HA in

building public rental housing (PRH) flats, so as to help those members of the public who are unable to afford rents for private rental housing flats. In the course of determining rents, shop tenants may provide information to us. If they hold that there are factors worthy of our consideration, including other facilities available, facilities nearby and the rent level at that time, we are more than willing to consider those factors. Our current letting rate reaches 95% and as we are aware, shop tenants are generally satisfied with our overall system and the situation at present.

**DR PRISCILLA LEUNG** (in Cantonese): *President, Members have learned that the rents charged by The Link have increased by almost 40% at the highest. One of the reasons for the increase is The Link's adoption of a lavish style in the decoration of its shopping arcades. However, is this in line with the needs of its target consumers from the PRH estates and the survival of the shops in its shopping arcades? Although the Government at first agreed with the listing of The Link REIT, shop operators now feel that they are encountering grave difficulties and find their business difficult to survive. Has the Government considered the question of what else can be done or what should be done to monitor The Link? In my view, the current practice fails to tie in with the sentiments of the Hong Kong public and amounts to an unscrupulous mode of management.*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): President, I believe Members also understand that since the listing of The Link REIT, there have been no Government representatives on its Board of Directors. In my view, most importantly, The Link also has to face its market. That is to say, if it is detached from the market, it will be impossible for its shops to be leased out. Neither should it neglect the needs of the residents and the groups it serves. As for the HA, it will not adopt a lavish style in the decoration of its shopping arcades under its development because we have always adopted a functional and cost-effective design. Although we have made improvements to the facilities in our shopping arcades, for example, conducting resurfacing works and improving their lighting systems, upon the completion of such works, we will also determine the market rent by taking into account various factors, including the local operating conditions and population.

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

**DR PRISCILLA LEUNG** (in Cantonese): *Regarding the present situation of The Link REIT and the grave difficulties encountered by shop tenants operating business in the shopping arcades under The Link, I hope the Secretary can give an answer to the question of what else can be done by the Government to improve the present situation of those shop tenants?*

**PRESIDENT** (in Cantonese): Dr LEUNG, I believe your follow-up question has deviated from your earlier supplementary question.

**DR PRISCILLA LEUNG** (in Cantonese): *However, the Secretary has not given an answer.*

**PRESIDENT** (in Cantonese): Dr LEUNG, please state the part which has not been answered by the Secretary.

**DR PRISCILLA LEUNG** (in Cantonese): *The Secretary has only mentioned that the HA .....*

**PRESIDENT** (in Cantonese): Which part of your supplementary question has not been answered by the Secretary? You need only repeat the part that you think has not been answered and that will be enough.

**DR PRISCILLA LEUNG** (in Cantonese): *In my view, she has not given any answer to the question of what else can actually be done if the authorities can look further into the situation. Or, the answer is that nothing can be done about it.*

**PRESIDENT** (in Cantonese): Dr LEUNG, you are not repeating your earlier supplementary question.

**DR LEUNG KA-LAU** (in Cantonese): *President, the reason for the HA to sell its shops to The Link REIT back then was that the former wished to focus on building PRH flats and withdraw from the commercial management of its shops. However, now that the HA has already built an extra 1 000-odd to 3 000-odd shops, that means the HA needs to manage these new shops at present. Given the implementation of such a policy back in that year, why does the HA not put these shops on sale? Is that because the policy of the HA and that of the Government have changed or the HA thinks that there is something wrong with The Link REIT and is therefore unwilling to sell its shops to The Link REIT for the second time?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): President, at present, the HA certainly has in hand some commercial projects for development. Some of those projects were abandoned during the listing of The Link REIT, probably due to a lack of appeal in their operation and location. We have also undertaken commercial development projects of a larger scale in recent years. At the present stage, the HA holds that it is able to manage and carry out those projects by itself. As I have said just now, we have no plan now to divest or sell the existing properties of the HA.

**MR RONNY TONG** (in Cantonese): *I wish to ask the Secretary this: To date, has the Government carried out any assessment of the present operation of The Link to ascertain if the latter has operated in a manner that is in complete contravention of the Administration's housing policy, given its total failure to provide residents with reasonable services that are able to meet their needs arising from the living environment?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): President, I believe that The Link will provide facilities according to its principle of commercial operation. As I have said just now, it cannot possibly be detached from the market because if this happens, many shops will become

vacant and it will be impossible for the shops to be leased out. Moreover, this will also go against its interests. Certainly, we from the Government will closely monitor its operation in all aspects.

The Panel on Housing of this Council often invites representatives of The Link to its meetings, so that it may listen to Members' views. All along, The Link has made adjustments to its practice, be it concerning the determination of rents or its management style in other areas, for example, whether or not to outsource its services. I believe The Link should continue to listen to the voices from the public.

**MR RONNY TONG** (in Cantonese): *President, I did not ask about The Link operational decisions or principle of operation. My supplementary question is about whether or not the Government has so far carried out any assessment to ascertain if The Link has operated in a manner that has deviated from the Government's housing policy.*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): President, generally speaking, the strategies and goals of the listing of The Link REIT still remain the same and that is, to operate its existing properties — namely, the properties divested by us back then for the purpose of listing, according to the principle of commercial operation.

**MR IP KWOK-HIM** (in Cantonese): *Have the authorities drawn any comparison between the shops under The Link and those under the HA in terms of rent levels and the terms and conditions contained in the tenancy agreements? If it is found after comparison that there is a big difference in these aspects, in such circumstances, will the authorities actively consider making constructive suggestions or advice to The Link, so as to narrow the gap between the rent levels of shops under its management and those operated by the HA?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): President, estate surveyors of the HD have also carried out market comparisons. However, in determining the rents of our shopping arcades or stalls, we will

compare the rents of our properties and those properties in competition with ours. The reason for so doing is mainly to assist us in ascertaining the rent levels in the market. As I have explained earlier, the HA is duty-bound to properly manage our resources because the surplus generated by the leasing of these shops will be utilized as the HA's operating resources.

As for comparing the rent levels, as I have said just now, The Link cannot be completely detached from the current market because if this happens, that means it is not operating under commercial principles.

**MR IP KWOK-HIM** (in Cantonese): *President, the Secretary has not answered my supplementary question. Has she given any constructive advice to The Link to narrow the gap in rents between these two types of shops?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): President, broadly put, if we hear any comment on the operation of The Link or its rent levels, we will reflect it to The Link when we have the opportunity to discuss with it the relevant issues.

**MR LEUNG YIU-CHUNG** (in Cantonese): *President, Dr LEUNG Ka-lau asked the Secretary earlier about the original policy adopted by the HA, that is, on what ground the shops were sold to The Link REIT. The reply given by the Secretary is that the ability of the HA to operate shopping arcades has now elevated. In fact, this has also been reflected by the continuous increase in its operating revenue. Since the past sale of the HA's shopping arcades to The Link REIT was not founded on mismanagement on the part of the HA and given the effective operation of the HA at present, as well as the favourable operating environment, will the authorities consider a repurchase and undertake the operation itself? In so doing, it will first, supplement the revenue of the HA and, second, alleviate the difficulties encountered by shop tenants, in addition to providing greater convenience to local residents in their life.*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): President, at the present stage, we have no plan or thoughts whatsoever of buying

back The Link REIT. From the perspective of the HA's use of its resources, if we are to spend any resources on a repurchase, this will definitely affect the existing resources of the HA.

**PRESIDENT** (in Cantonese): Mr Tommy CHEUNG, this is the second supplementary question you are raising.

**MR TOMMY CHEUNG** (in Cantonese): *President, I wish to follow up the question put to the Secretary just now about the surveyor firm. Given that this surveyor firm accepts the engagement by The Link afterwards, in awarding contracts in the future or regarding this incident, will the Secretary give serious thoughts to specifying that the surveyor firm concerned may not further accept any contract of engagement offered by another company of a similar nature? I find it difficult to accept the fact that the HA can tolerate this situation, which has enabled the surveyor firm to accept two offers of engagement. The surveyor firm concerned certainly feels happy, but I believe The Link must have reasons for the engagement. Consequently, should the Secretary take stringent measures to prevent similar incidents from occurring again?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): President, I have heard the views of Mr Tommy CHEUNG. However, if we stipulate in the contract that the surveyor firm concerned may only get business from the HA but may not accept the offers of engagement from other companies, that is, a surveyor firm may only accept one contract of engagement from us, such a stipulation may give rise to some difficulties. Nevertheless, I have heard the Member's views.

Concerning this contract, as I have explained just now, since the surveyor firm will not directly participate in the leasing of shops and the determination of rents, we hold that there exists no conflict of interest. Certainly, if we need to engage similar consultancy firms in the future, we will be mindful of whether or not there is anything in the contracts that can be further improved. We will pay close attention to this.

**PRESIDENT** (in Cantonese): Fourth question.

### **Regulation of Sales Practices of Properties**

4. **MS STARRY LEE** (in Cantonese): *It has been reported that in October this year, a special unit at 39 Conduit Road, a residential development project in Mid-levels West, was sold at an "astronomical price" of over \$71,000 per sq ft, breaking world records. Yet, there have been comments querying that since the buyer of that unit has also bought four lower floor units at the same time, it is doubtful whether the developer has transferred the property prices of the lower floor units to that of the special unit, so that the price per square foot of that unit is much higher than that of an ordinary unit, so as to mislead prospective buyers. Regarding the regulation of sales practices for properties, will the Government inform this Council:*

- (a) *of the total number of cases in the past three years in which developers had to shoulder criminal or civil liabilities for releasing misleading information, committing misrepresentation or fraudulent acts during the sale of properties, as well as the details of the cases;*
- (b) *which government department is currently responsible for handling complaints about developers selling properties using misleading practices, and what legislation regulates such kinds of activities; whether the authorities will investigate if the aforesaid transaction involved releasing misleading information; if they will, of the details; if not, the reasons for that; and*
- (c) *whether the authorities will consider setting up an organization similar to the Securities and Futures Commission to investigate and monitor developers' sales practices for properties, so as to maintain a healthy development of the residential property market and prevent small investors from bearing unnecessary risks and losses; if they will, of the details; if not, the reasons for that?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): President, the Government is committed to maintaining healthy development of the private residential property market, safeguarding the reasonable rights of

consumers, and ensuring that consumers have access to accurate and comprehensive property information, in particular information on private uncompleted first-hand residential properties.

To enhance clarity of information on flat prices and transactions of uncompleted first-hand residential properties, the guidelines of the Real Estate Developers Association of Hong Kong (REDA) require that developers should make public the first price list containing not less than 20 flats or 20% of the total number of flats on offer at the first batch of sale, whichever is the higher, at least one day prior to the commencement of sale. Moreover, developers should make public the price lists for subsequent batches of flats prior to putting them up for sale for prospective flat buyers' information.

According to the Lands Department's (LandsD) Consent Scheme (Consent Scheme), developers are required to register a duly signed Agreement for Sale and Purchase (ASP) of uncompleted first-hand residential properties, approved for pre-sale under the Consent Scheme in the Land Registry (LR) within one month after signing the Preliminary Agreement for Sale and Purchase (PASP). The public may inspect the transaction details, including the date of signing the ASP, name of the vendor and buyer, particulars of the transacted flat and the transaction amount.

In view of the recent sales tactics in relation to some uncompleted first-hand residential properties and the confusing market information on property transactions, the Transport and Housing Bureau reached an agreement with the REDA on 20 November 2009 to require developers to, with effect from 1 December 2009, provide in their websites and sales offices transaction information of the ASPs of uncompleted first-hand residential properties approved for pre-sale under the Consent Scheme within five working days after signing the PASPs, so that the public will know about the actual market information as early as possible. Information required includes the particulars of the transacted flat, date of signing the ASP and the transaction amount. The Government will closely monitor the implementation of the new measure.

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

- (a) The police have maintained statistics on the total number of prosecution and convicted cases of fraudulent acts in relation to

property transactions, but do not have further breakdown on those cases.

For uncompleted first-hand residential properties approved for pre-sale under the Consent Scheme, developers have to comply fully with the requirements of the Consent Scheme. When the LandsD has spotted irregularities which are in breach of the Consent Scheme requirements, it will require the developers to take rectification measures as appropriate. Generally, developers will take rectification measures immediately. For cases involving severe breach of the Consent Scheme requirements, the LandsD would issue warning letters to the developers concerned on possible withdrawal of the pre-sale consent. According to LandsD's record, two warning letters were issued under the Consent Scheme in the past three years, and the developers concerned had subsequently taken rectification measures.

- (b) At present, there are various pieces of legislation regulating misrepresentation or fraudulent acts which mislead the market. They are also applicable to misrepresentation or fraudulent acts in the course of property transactions. Under the Theft Ordinance (Cap. 210), committing a fraudulent act is a criminal offence, and the offender may be liable to prosecution. Under the common law, where a misrepresentation amounts to fraud, the person who makes the misrepresentation may be sued by the victims for damages. Also, pursuant to the Misrepresentation Ordinance (Cap. 284), a person who makes a misrepresentation inducing another person to enter into a contract may be legally liable for damages.

The police will investigate fraudulent acts of criminal nature and, when there is sufficient evidence, take prosecution actions against the persons concerned under the Theft Ordinance or other relevant ordinances. Upon receipt of complaints against developers on alleged fraudulent acts, government departments (such as the Transport and Housing Bureau) and relevant organizations (such as the Estate Agents Authority and the Consumer Council) may refer the complaints to the police for necessary action.

Regarding misrepresentation, the Consumer Council will take follow-up actions, including mediation, upon receipt of complaints from consumers and having regard to the particulars of the cases. If there are strong justifications in support of a case, and the case may have far-reaching implications on consumers, the Consumer Council would advise the complainant to apply to the Consumer Legal Action Fund for assistance in taking legal action.

Regarding the residential development project in Mid-levels West as mentioned in the question, the developer is required under the Consent Scheme to register the duly signed ASPs in the LR within one month from the signing of the PASPs concerned. The LR's record shows that the developer has so far completed registering the ASPs of 25 units sold in the LR. The transaction amount of the 25 units sold tallied with the prices as shown on the price lists made public by the developer earlier on.

On the basis of the aforementioned information, there is at present no evidence to indicate that the developer sold properties using misleading practices. However, we will continue to closely monitor developments.

- (c) As I have mentioned above, the new measure of requiring developers to provide in their websites and sales offices transaction information of the ASPs concerned within five working days after the signing of the PASPs concerned will help the public obtain accurate market information as early as possible. This will greatly enhance the transparency of the transactions of uncompleted first-hand residential properties and minimize the presence of misleading information in the market.

At present, we have no intention to set up an organization similar to the Securities and Futures Commission to investigate and regulate the sales practices of developers.

We will continue to monitor the implementation of the measure closely. When necessary, we will further enhance the measure to respond flexibly and in a timely manner to the market and public needs. That said, if the existing measures and arrangements cannot

achieve the expected effect, we do not rule out the possibility of adopting more severe administrative or legislative measures to tackle the problems.

**MS STARRY LEE** (in Cantonese): *President, developers can in fact use a lot of tactics, including selling the flats at a high price before buying them back or getting related or associated persons involved in a series of false transactions. Regarding the example I have mentioned just now, it is suspected to be a transaction for making up the price difference. In the main reply, the Secretary has said that the Government has no intention to set up an organization similar to the Securities and Futures Commission (SFC) to regulate the sales practices of developers. In part (b) of the main reply, she has also mentioned that the transaction amount of the 25 units sold tallied with the prices as shown on the price lists made public by the developer earlier on. I would like to ask the Secretary: Does she consider that the existing system is so comprehensive and perfect that there is no need to take one step forward to regulate the sales practices of developers? Regarding the example I have cited, does the Secretary personally think that there is any room for investigation? Does she think that it is necessary to enable the public to have a further understanding of the genuineness of the transaction?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): President, in respect of regulation, we will certainly keep an eye on the situation. As I have said in part (c) of the main reply, we will continue to closely monitor the implementation of the measure and do not rule out the possibility of adopting more severe administrative or legislative measures to tackle the problems when necessary.

At present, we have adopted a multi-pronged approach, including the LandsD's Consent Scheme, the REDA's own regulatory mechanism, the regulation on estate agents by the Estate Agents Authority and the publicity and education efforts by the Consumer Council. During the enhancement process, we have, as we did in the past six months, implemented many different measures, including the requirement of specifying the saleable areas and measures for enhancing transparency on this occasion. We will continue to monitor the effectiveness of these measures.

The Member has also mentioned her worry about the sales practice of the so-called "bundled sale". As I have said in the main reply just now, the ASPs and transaction amount of the 25 units sold tallied with the prices as shown on the price lists. That said, we will certainly keep an eye on the situation as a whole. As far as the whole procedure is concerned, the deeds of assignment are supposed to be completed by March. But we will closely follow up these 25 transactions to see what will happen from now until the completion of the deeds of assignment. Follow-up actions will certainly be taken if necessary.

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

**MS STARRY LEE** (in Cantonese): *The Secretary has not answered the case concerning the residential development project in Mid-levels West. Does she consider that investigation and follow-up actions are necessary in view of the doubt cast by the public?*

**PRESIDENT** (in Cantonese): In my opinion, the Secretary has answered your question.

**MISS TANYA CHAN** (in Cantonese): *Despite various measures which seem to be effective as mentioned by the Secretary, there are lots of grievances over the past few years. Will the Secretary consider the enactment of legislation? In fact, a White Bill entitled the Sales Descriptions of Uncompleted Residential Properties Bill was submitted to the Legislative Council in 2000. In this Bill, some requirements were laid down. Of course, improvement has been made to the existing sales guidelines. But the basic difference between the relevant requirements in the Bill and the sales guidelines is that the developers have to shoulder legal responsibility and even incur criminal liability. Under certain circumstances, flat purchasers may be entitled to revoke the ASP. But the Bill was withdrawn in 2001. May I ask the Secretary whether she will reconsider enhancing the Bill and re-introducing it to the Legislative Council in view of the numerous complaints about the first-hand residential properties made by the public?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): President, as I have said when answering Ms Starry LEE's question, we have adopted a multi-pronged approach, including the Consent Scheme, a very important means through which regulation can be imposed and it is an effective option according to our observation. The reason is that apart from issuing a warning, we may also withdraw the Scheme, which may cause a great loss to the developer, if we consider that there are any irregularities. In retrospect of the operation in the past, if we are worried or think that there is any non-compliance, rectification action will be taken immediately by the developer as long as we have pursued the case. So, we will closely monitor the situation.

As I have said in the main reply, we will not be complacent about the current measures and will monitor the specific implementation of these measures. For instance, the recent measures for transparency enhancement are well received by the market and some new residential development projects took the lead to comply before 1 December. These measures, which see a positive response from the market, are found to be very helpful to consumers. We will continue to improve the existing measures. However, we will certainly not rule out the possibility of adopting other administrative or legislative means if the existing measures fail to achieve the desired results.

**MR LEE WING-TAT** (in Cantonese): *President, we all know that there are several characteristics concerning the property at 39 Conduit Road. First, most buyers have purchased the units through the so-called BVI companies (offshore companies), thus concealing their identities; second, the top floor unit and several units at the middle floors are purchased by the same buyer and the price difference between the former and the latter ranges from as much as 100% to 150%; and third, as the Government is also aware, many people and companies behind the transaction may be associated with the Henderson Land Development Company Limited. I would like to ask the Secretary a question: If a prima facie case is established such that the sale of units in the property project may have completed in the form of a so-called bundled sale, thereby having a possibility of breaching the Theft Ordinance or Misrepresentation Ordinance as mentioned by the Secretary in paragraph (b) of the main reply, under what circumstances will the Secretary conduct further data collection or investigation? Or will no action be taken on the ground that information provided by the Development Bureau is fully accepted as true?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): President, as I have said just now, we are also very concerned about the problem. We will closely follow up these 25 cases until the completion of the deeds of assignment. It all depends on the next few months as the deeds of assignment will probably be completed by March. Regarding data collection, follow-up actions will be taken meticulously and seriously at the present stage and in the next few months.

**MR ALBERT HO** (in Cantonese): *In fact, I believe the SFC would have actively conducted an investigation should there be so many dubious transactions found in the stock market. However, in respect of the property market, the Administration has only indicated that it will monitor the situation in the hope that the sector will exercise self-discipline and more information will be disclosed although there are so many suspected fictitious transactions and even market manipulation conducts. Such an attitude is not effective because the truth will never be revealed if the authorities do not look into the sources of the funds involved. I would like to ask the Secretary: In view of the widespread concern and queries arising from the transactions of these flats, can she tell us whether the criteria she has adopted are the same as those adopted for the regulation of the stock market? Besides, in case problems have occurred, will an investigation be conducted only when a complaint has been lodged or the case has been reported to the police? Will the Bureau or the department concerned take the initiative to liaise with the relevant law-enforcement agencies, including the Commercial Crime Bureau, so as to conduct an investigation?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): President, it will lead to a very fundamental change if the private residential property market is regulated in the same way as the stock market. At present, our residential property market is highly open and transparent. People of any nationality and companies incorporated in any place of the world can purchase properties in Hong Kong. So, there is no restriction as to how properties should be purchased by companies. If regulation on the property market is modified into something similar to that of the stock market, it will be, as I have mentioned just now, a very fundamental change.

Regarding whether or not we will take the initiative to conduct an investigation, we will, subject to the Consent Scheme, also conduct surprise

checks through the Estate Agents Authority, apart from random checks and similar activities. So, we will closely monitor and pay attention to the situation of some property development projects. As I have said earlier, we will continue to follow up some cases and no effort will be spared in this aspect if we have any doubt.

**MR JAMES TO** (in Cantonese): *President, as pointed out in part (b) of the main reply, legislation against fraudulent acts will be invoked when somebody has suffered loss. However, it is not specific, direct or easy at all to prove that someone has suffered loss due to astronomical prices or the so-called acts of market manipulation. President, we from the Democratic Party have conducted a detailed study and we hope that the Government can tell us whether or not our proposal will be considered.*

*We have investigated into the documents for the pre-sale of the uncompleted first-hand residential properties in which stamp duty is paid and found that each transaction is conducted on an individual basis rather than interrelated to each other. Secondly, we have asked the Commissioner of Inland Revenue a question concerning the Inland Revenue (Amendment) (No. 3) Bill 2009 about the following situation: If I have intentionally reported a higher price resulting in a higher stamp duty, I have committed a criminal offence even though I merely wish to pay more tax to the Government because under the Inland Revenue Ordinance, the provision of false information is regarded as a criminal offence. I would like to ask the Government a question: Will this enable an investigation to be conducted in a more direct way in accordance with the relatively straightforward criminal provisions under the Inland Revenue Ordinance and the Stamp Duty Ordinance rather than relying on the legislation concerning fraudulent acts which will require a more onerous burden of proof?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): President, I do not quite understand the payment of stamp duty ..... because the false reporting of property prices with an intention to ..... I would like Mr TO to clarify his supplementary question. Does he mean that regulation can be imposed through the Inland Revenue Ordinance? Could Mr James TO explain that clearly?

**MR JAMES TO** (in Cantonese): *President, my question is very simple. If I deliberately report a higher price for a flat and as the price is made higher, it will result in more tax revenue collected by the Government. Theoretically, no one will suffer any loss because I have not deceived the Inland Revenue Department and have paid more tax. However, this is not permissible because at the meeting of the Bills Committee on Inland Revenue (Amendment) (No. 3) Bill 2009, the Commissioner of Inland Revenue ..... in the past two days, I asked her a question in a direct way and came to realize that: According to the Inland Revenue Ordinance and the Stamp Duty Ordinance or other similar provisions, a person who has provided false information to the Commissioner of Inland Revenue or Collector of Stamp Revenue will commit a criminal offence even though he has paid more tax. The Inland Revenue Ordinance has also been violated even though no fraud has been committed. Can the Government investigate the case from such a perspective?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): President, I believe it is inappropriate to comment on an individual case here. If the Commissioner of Inland Revenue considers that the case should be followed up and looked into in accordance with the existing legislation, I believe she will pursue the matter in a proactively manner.

**MR RONNY TONG** (in Cantonese): *President, I really do not understand — the Secretary for Justice is also present — President, the ingredients of foods or medicines are regulated by the law and criminal liability will arise should there be any problem with the ingredients. If I wish to buy a pair of shoes at size 8 but the shopkeeper gives me a pair of shoes at size 6, I think I am certainly legally entitled to lodge a complaint. Why is the Government particularly lenient to property developers, especially when no regulation in law is imposed in this aspect? Can the Government explain the principles or reasons why no legislation is enacted for regulatory purpose?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): President, as I have explained just now, regulation is imposed through a multi-pronged approach. Of course, if we think these measures are not effective, we will see what other administrative or legislative means can be adopted. However, looking back at the past year, we have done a lot of concrete work, including the determination of salable area. Now we are trying to

enhance the transparency and even request that certain facilities be meticulously detailed in the sales brochures. All these are areas of improvement. We will continue to closely monitor the implementation of these measures and the actual operation.

**PRESIDENT** (in Cantonese): Fifth question.

### **Impact of Influenza Epidemic on Income of School Bus Drivers**

5. **MS LI FUNG-YING** (in Cantonese): *President, it has been reported that under the impact of Influenza A (H1N1) epidemic, all primary schools and kindergartens in Hong Kong suspended class between June and September this year before the commencement of the new school year, resulting in a substantial reduction in the income of school bus drivers. According to the findings of a survey conducted by the school bus trade in mid-October this year, 30% of the school bus drivers and employees experienced a substantial reduction of 50% in their income between May and August this year, and over 60% of the school bus drivers also indicated that they remained underemployed after the commencement of the new school year in September. There were even school buses being recalled by banks because the bus owners defaulted in repayment of instalments. Some members of the trade have relayed to me that since the outbreak of the influenza epidemic, schools have persistently requested that the hygiene level of school buses be enhanced. At present, the drivers must thoroughly clean their buses three times a day and the related cleaning expenses impose severe hardship on the trade. In the face of the imminent outbreak of the influenza peak season, will the Government inform this Council:*

- (a) *whether the Government will consider adopting short-term measures to provide assistance to such school bus drivers and employees who are facing hardship, so as to help them tide over the difficult times; if it will, of the details; if not, the reasons for that;*
- (b) *whether the Government will adopt measures to help the school bus trade when all schools in Hong Kong suspend classes again under the impact of influenza epidemic; if it will, of the details; if not, the reasons for that; and*

- (c) *given that the authorities stated in July this year that they would provide again an additional one-off grant of \$3,000 to each secondary school, primary school and kindergarten in Hong Kong to subsidize them for purchasing epidemic-prevention equipment and necessities, whether the Government will consider the proposal of the school bus trade and provide a grant for purchasing cleaning items to each non-franchised public bus which has been granted approval by the Transport Department to provide student service; if it will not, of the reasons for that?*

**SECRETARY FOR EDUCATION** (in Cantonese): President,

- (a) The Financial Secretary announced a package of relief measures in May 2009 to provide assistance to those sectors that are most seriously affected by the Human Swine Influenza (HSI) epidemic. These measures include waiver of business registration fee, waiver of the licensing fees for student service vehicles, as well as waiver of passenger service licences and passenger service licence certificates for private buses used for student service. The waiving of the various fees for one year would provide appropriate support to the school bus sector. In fact, after commencement of the 2009-2010 school year, no school has been advised to suspend classes due to the HSI outbreak since mid October.
- (b) The Education Bureau takes the students' health as the first and foremost consideration in making a decision on class suspension. Class suspension is a mitigation measure to reduce the chance of HSI transmission among students in schools. In addition, schools can thoroughly clean the school premises during class suspension period to maintain environmental hygiene. For students' health sake, the Bureau and the Department of Health (DH) will advise individual schools to suspend classes only when situation warrants.

Based on the latest guidelines from the Centre for Health Protection (CHP) of the DH, for schools having an outbreak of the HSI, the CHP would investigate the situation and advise the schools

concerned on whether there is a need to suspend classes. Normally, the period of class suspension would last for seven days.

According to the DH, Hong Kong may be hit again by the HSI in the winter season. The Government will closely monitor the development of the epidemic and consider the need of adopting appropriate measures having regard to the impact of the epidemic on the Hong Kong economy and different business sectors.

- (c) At present, schools are registered in accordance with the Education Ordinance and monitored by the Bureau. The Bureau will provide different forms of subsidies to eligible schools and ensure the proper use of these resources. Having considered the spread of the HSI, the Bureau has earlier provided a one-off additional grant of \$3,000 to each school twice for purchasing equipment and materials to prevent communicable diseases, such as thermometers, masks and cleansing materials, and so on, in order to facilitate schools to adopt appropriate mitigation measures to reduce the spread of the HSI in the school campus and maintain a hygienic environment for the conduct of learning and other activities in schools.

As for school bus services which belong to private business under commercial operation, they do not fall within the ambit of the Government's direct subsidies. As such, the Government would not disburse a grant to school bus service providers and other commercial organizations providing services to schools for procurement of cleansing stuff.

**MS LI FUNG-YING** (in Cantonese): *President, the Secretary's answer today has really disappointed the industry once again. The Secretary said that no school had to suspend classes from October to now as a result of the impact of the HSI, and under the latest guidelines, even if classes were to be suspended, the period of suspension would only last for seven days. The Secretary has really taken it lightly, if it is so unfortunate that some day a school is affected and classes have to be suspended for seven days again, those vehicle owners who provide school bus services will immediately face difficulties in repaying the instalments of their vehicles, and the livelihood of the drivers will also be*

*adversely affected. Is it because they are smaller in number, so the Secretary would sit by and look on with folded arms? How many people would have to be affected and how many days would classes have to be suspended before the Government will consider that there is a need to give them a helping hand?*

**SECRETARY FOR EDUCATION** (in Cantonese): President, I have mentioned in the main reply that the Financial Secretary announced a package of relief measures in May this year, including waiver of the licensing fees for student service vehicles, as well as waiver of passenger service licences and passenger service licence certificates. The measures will last for one year, and they have been put into effect from 1 July this year. For that reason, the one-year measures have covered the period of impact of the outbreak on the trade, as well as the possible impact within this year.

Of course, we do not know how hard the HSI outbreak will hit us in future; I hope the situation will not be too severe. However, if the situation is so severe that many business sectors are affected, I have expressed in the main reply that if necessary, the Government would consider the need of adopting appropriate measures having regard to the impact of the epidemic on the entire economy. However, we believe that the existing measures should be adequate to deal with such a situation, including the present situation.

**MR CHAN KIN-POR** (in Cantonese): *President, in fact, the influenza is constantly mutating, and a second or third wave outbreak is very likely to happen, an outbreak of influenza pandemic may even take place on a yearly basis. In this case, the impact on school bus owners and drivers will be immense. May I ask the Government, when it sees that this will last for a longer period of time, will a long-term policy be formulated, so that school bus owners and drivers can be better prepared for the operation of the business they are engaging in? As the influenza may occur consistently, will the Government formulate a long-term policy?*

**SECRETARY FOR EDUCATION** (in Cantonese): I would like to talk about that according to the past experience, the impact of influenza on society was extensive, but over the years, large-scale suspension of classes had not been caused by a pandemic outbreak, thus no serious impact had been caused to the school bus trade. Just now I have also emphasized that if individual schools are

affected, according to our current guidelines, classes have to be suspended for seven days, that is to say, it will not cause an across-the-board impact on the trade, and the situation will only occur in individual schools. According to the information I have at hand, not many schools had to suspend classes in the past. There are almost 1 000 schools in Hong Kong, but according to the information I have at hand, only a few dozens were affected. Therefore, different schools will be affected at different times. At present, of course it is impossible to estimate the impact on individual school bus owners or operators, but according to factual evidence in the past, the impact should not be too serious.

**DR PAN PEY-CHYOU** (in Cantonese): *In fact, I can see that the Government's existing measures mainly aim at operators, such as introducing a waiver of licensing fees, but the labour sector is concerned most about the drivers, that is, those people employed to drive school buses. May I ask the Government whether there is any way to provide them with some actual financial support or subsidies? This is what I am concerned the most.*

**SECRETARY FOR EDUCATION** (in Cantonese): President, if my understanding of Dr PAN's supplementary question is correct, he is referring to the relationship between employers and employees. If the two parties have an employer-employee relationship, the employer should pay the employees their salaries. As to how salaries should be paid after the outbreak, I think that is governed by labour laws and regulations.

**PRESIDENT** (in Cantonese): Dr PAN, which part of your supplementary question has not been answered? Please state it clearly.

**DR PAN PEY-CHYOU** (in Cantonese): *All right, what I am concerned the most is that the Secretary said that employers will pay the salaries, but employers may simply lay off their drivers or terminate their employment contracts. In this case, the Employment Ordinance cannot resolve their livelihood problems.*

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

**SECRETARY FOR EDUCATION** (in Cantonese): I now realize that this is where the focus of the problem lies. However, as I have said earlier, we have no experience in the past, and that is, a large-scale outbreak has caused a serious impact on the trade and employees are laid off. I have the information at hand, which shows that according to the past situation, the extent of an impact varied, as not just one school was affected for a particularly long period of time. Our guidelines have already prescribed a suspension period of seven days. Therefore, I consider individual trades should be able to withstand that, because not only one school or one school bus driver was affected for a substantial period of time.

**MS MIRIAM LAU** (in Cantonese): *President, of course, it is still unknown whether the scale of the future outbreak is large or small. However, regardless of the scale of the outbreak, it will still cause an impact on some members of the trade. Just now the Secretary said that classes would be suspended for seven days or a short period, and only a small number of schools would be affected. To the Secretary, of course it is not a problem, no matter classes are suspended for seven days, a month or a few months, there will be no problems at all. However, for the people affected, class suspension means that they may have no income. Therefore, I hope the Government will sympathize with the trade from this point of view.*

*I believe that it will be difficult for the Government to provide subsidies, so it is very concerned about the provision of subsidies, and it is even reluctant to procure cleansing materials for the trade. In this particular case, may I ask the Government if it will consider dealing with this extraordinary matter with extraordinary methods by providing interest-free or low-interest loans to some or all of the affected caterers or school bus operators and so on — though their numbers are not certain — so as to help them tide over the difficulties?*

**SECRETARY FOR EDUCATION** (in Cantonese): President, I think we are only making some assumptions. I have mentioned in the main reply that in case of an outbreak, the Government will observe the situation closely and provide assistance as appropriate. What is assistance as appropriate? That will depend on the prevailing circumstances and conditions. We should bear in mind that as I have mentioned in the main reply just now, the Financial Secretary has proposed to provide assistance to alleviate pressure in this regard, including waiver of

business registration fee and vehicle licensing fees. In case of a recurrence of such similar situations, I believe we will make similar considerations or introduce similar measures in response.

**MR IP WAI-MING** (in Cantonese): *The Secretary has just been repeating the measures proposed by the Financial Secretary in part (a) of the main reply. However, I hope the Secretary should understand clearly that these school bus drivers and nanny van service are a very important part of Hong Kong's education sector. In fact, even if we have to suspend classes due to the influenza outbreak, they have always been making contributions to society.*

*The Motor Transport Workers General Union of the Federation of Trade Unions also has a school bus and nanny van section, apart from some drivers who are employed, many of these school bus and nanny van drivers are the so-called "one-vehicle" owners and they use their own vehicles to make a living. Even if classes are only suspended for one week, it will still impose a very heavy burden on them. We would expect that in case of an influenza pandemic outbreak in future, school closure will occur frequently. I hope the Government is not dealing with the matter and helping them merely in one stroke by waving the licensing fees for one year through the Financial Secretary.*

*My supplementary question is, as part (c) of the main reply has stated that the Government has already provided subsidies to schools to carry out epidemic prevention work, will the Government consider increasing the relevant subsidies and specifying schools to provide some of the subsidies to school bus drivers and employees in the trade?*

**SECRETARY FOR EDUCATION** (in Cantonese): President, as I have said earlier, Bureau's subsidies are provided to schools, because schools are registered in accordance with the Education Ordinance, we need to take care of the health of students in schools. As for the school buses or other business operators, especially school bus service operators, I consider that we should bear in mind that they charge a monthly fee instead of charging a daily fee in a piecemeal manner. Moreover, according to the experience I gained in the discussion with school principals in the past, even if that happens, they will not refund the fees to parents and they will charge the fees as usual. Of course, we should try to

understand each other as we are facing the same predicament. I consider that the solution to this problem — first, we should not assume what would happen — but if there is a major outbreak, and a large number of people are affected, the Government will be duty-bound to take all aspects in to consideration.

**MS LI FUNG-YING** (in Cantonese): *President, the Secretary has repeatedly said that consideration will be taken after the outbreak has taken place, that is, consideration will be taken only after a large-scale outbreak has taken place, touch wood. Nobody wants trouble, so as the saying goes: one should always take precautionary measures. Should we not take this opportunity to do more cleaning work and pay more attention to hygiene in order to avoid an outbreak? For this reason, may I ask the Secretary whether he will reconsider the views raised by the trade and finance the preventive efforts by providing cleansing materials or taking other specific measures?*

**SECRETARY FOR EDUCATION** (in Cantonese): I appreciate very much what Ms LI Fung-ying has said, that is, we must take precautionary measures. We all know that the entire community is taking precautionary measures. For example, when we use elevators, we would see a notice stating that the lift will be cleaned once every two hours. A lot of things are carried out with concerted efforts, now that the entire city is making an effort to clean up for the sake of taking preventive measures. All of us must make an effort; we should not depend on government funding in everything. I think we have achieved fairly good results, and I hope that we can keep up with it.

**PRESIDENT** (in Cantonese): Last oral question. Mr LEE Wing-tat will raise this question on behalf of Mr Fred LI.

### **Waivers of Lease Conditions Granted in Respect of Car Parking Facilities Divested by Hong Kong Housing Authority**

6. **MR LEE WING-TAT** (in Cantonese): *President, some of the car parks under The Link Management Ltd (The Link) have been granted waiver of government lease conditions by the Lands Department (LandsD) to lease some of the monthly parking spaces in these car parks to non-residents of the relevant housing estates (non-residents). It has been disclosed earlier that The Link has*

*not applied for renewal upon the expiry of the waivers concerned, but has continued to lease these parking spaces to non-residents. In this connection, will the Government inform this Council:*

- (a) of the car parks with monthly parking spaces leased to non-residents when The Link Real Estate Investment Trust (The Link REIT) was listed at the end of 2005, together with a breakdown of the number of such parking spaces by car park as well as the expiry dates of the various waivers; the car parks the waivers of which had expired and The Link had applied for their renewal and, among such applications, which ones have been approved and the annual waiver fees payable;*

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

- (b) of the car parks with monthly parking spaces currently leased to non-residents, together with a breakdown of the number of such parking spaces by car park, as well as the amount of waiver fees which have not yet been settled by The Link; and*
- (c) given that some non-residents have pointed out that when they rent the parking spaces, staff of the car park management companies had induced them to state that they are "residents" without asking them to submit any documentary proof, so as to pass on the liability to them, whether the authorities have looked into such situations; assessed whether the non-residents who falsely claimed to be residents, the management companies which allegedly have induced the non-residents to do so and The Link has committed an offence; what measures the authorities have put in place to regulate and prevent such activities?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): Deputy President, the demand by public rental housing residents for parking spaces in some Hong Kong Housing Authority car parks was low. In order to make effective use of the parking spaces, before the listing of The Link REIT in November 2005, the Hong Kong Housing Authority had applied to the Town

Planning Board for planning permits and the LandsD for waivers to lease these parking spaces to non-eligible persons other than the residents, occupiers and their bona fide guests and visitors (hereinafter collectively referred to as "non-residents"). After its listing, if The Link REIT wishes to lease its parking spaces to non-residents when the waivers are no longer effective, it has to apply to the LandsD for short-term waivers.

With input from the LandsD, my reply to the three-part question is as follows:

- (a) According to The Link REIT's Offering Circular for public listing, as at 31 March 2005 there were about 10% (or 5 000) non-residents among the more than 50 000 monthly tenants of the car parking facilities to be divested. Given the changing economic environment and The Link REIT's business considerations, there may have been changes to the 2005 figures I mentioned just now since the listing of The Link REIT.

As advised by the LandsD, before the listing of The Link REIT at the end of 2005, 111 short-term waivers had been granted by the LandsD to the Hong Kong Housing Authority (HA) to lease parking spaces in the car parks concerned to non-residents. 82 of the waivers are no longer effective and 29 are still effective.

The Link REIT has submitted applications for short-term waivers for 24 car parks, and eight of the applications have subsequently been withdrawn. Of the 16 applications, one has been rejected and 15 are being processed by the LandsD. It takes time to process the applications, including waiting for The Link REIT to obtain planning permits, studying the information provided, formulating the provisions in the waivers, and calculating the waiver fees to be paid if waivers are granted.

- (b) Since early September this year, the LandsD has discussed with The Link REIT the issue of leasing parking spaces to non-residents. The LandsD reiterated that if there was any violation of the user restriction on the car parks, the Government would take lease enforcement action and seek payment of the waiver fees.

Subsequently, The Link REIT wrote to the LandsD on 28 October this year, offering to pay a sum of around \$7.15 million as retrospective waiver fees for previously leasing the parking spaces to non-residents without valid waivers. Valuers of the LandsD are examining the details to determine whether the retrospective waiver fees proposed by The Link REIT are reasonable. The Link REIT will be informed once there is a decision.

- (c) The LandsD will require The Link REIT to provide details of the 15 applications I mentioned just now and to pay the waiver fees for the period of leasing the parking spaces to non-residents. The Link REIT has to ensure the information provided is accurate and to submit details of the rental income for the leasing period which are certified true by a certified public accountant. As regards car parks for which no applications for waiver have been submitted, The Link REIT has to ensure that they comply with all the lease conditions, including leasing the parking spaces to eligible persons only.

If the LandsD finds that the information provided by The Link REIT is inaccurate or there is violation of lease conditions, it will seek legal advice and take appropriate follow-up action. The LandsD will not exclude the possibility of taking legal action when necessary.

**MR LEE WING-TAT** (in Cantonese): *Deputy President, I assume this follow-up question of mine is also counted as one raised by Mr Fred LI, that is, as far as queuing up is concerned, right?*

*Deputy President, may I ask, in part (c), with regard to those queries, certain staff from the management of the car parks under The Link REIT encouraged non-tenants, in furnishing relevant documents, to claim that they are tenants. To this end, the Secretary has stated in his reply that the matter will be followed up if that is known to be the case. However, very often, I hold that in dealing with these real estate companies — The Link REIT is also a real estate company — if you do not carry out undercover operation, it would not be aware of the significance of the matter, that is, you will not be able to find out any information. May I ask the two Bureaux — since both Secretaries are here —*

*whether undercover operation at times will be considered to ..... get to learn that whether currently, action is taken in accordance with the regulations, rather than they ..... in paying the so-called waivers, can pay less by giving false information?*

**DEPUTY PRESIDENT** (in Cantonese): Which Secretary is going to answer?

**SECRETARY FOR DEVELOPMENT** (in Cantonese): I can only give a reply to Mr LEE Wing-tat's follow-up question in the light of the enforcement of the land lease.

On land lease enforcement, we would generally focus on cases in which land use has been changed, that is, enforcement work concerning leases that have been exempted for conversion from their original uses to some other uses will be conducted by the LandsD. But, like other topics which we have discussed, such as those relating to public space or public facilities in private development projects, Members have, in those discussions, an understanding that there are numerous such leases which we have to deal with. Taking the example of a complaint received from a client, the practice we generally adopt is to follow up with the matter on receipt of the complaint, or carry out a sudden inspection with the limited resources we have. Therefore, for the time being, we do not intend to adopt the approach of undercover operation as proposed by Mr LEE, in particular because part (c) of the question seems to involve non-residents who claim themselves to be tenants of a housing estate. So the LandsD may not be able to carry out enforcement actions in this aspect.

**MR ALAN LEONG** (in Cantonese): *Deputy President, if Secretary Carrie LAM asks any directly elected Member whose constituency consists of public housing estates, she would know that there are numerous such cases. I would like to provide some information to the Secretary; in fact, I hope to follow up on this aspect as well.*

*Deputy President, in the last paragraph of part (c) of the main reply, it has been pointed out that "if the LandsD finds that the information provided by The Link REIT is inaccurate" — hence, could it be pointed out specifically what*

*measures have been adopted by the Government to enable it to be aware of those inaccuracies? Could you please explain?*

**SECRETARY FOR DEVELOPMENT** (in Cantonese): Deputy President, in fact, as I have said in reply to Mr LEE's question just now, we are very pleased to receive enquiries or reports from the public. If such a situation does exist, we (staff from the LandsD) will undertake an investigation. If it is found that there is a violation of the lease conditions, enforcement actions will be undertaken in accordance with the lease conditions.

**MR TOMMY CHEUNG** (in Cantonese): *Deputy President, in fact, not just Members of geographical constituencies but these complaints have also been received by functional constituency Members like us. I would like Mr Alan LEONG to know about it.*

*Deputy President, I would like to ask either Secretary that, in fact, if certain acts of dishonesty have really been done by The Link REIT ..... I appreciate as well that there is no way for Secretary LAM to carry out an undercover operation. I can well appreciate this.*

*However, may I ask ..... in fact, the amount involved is not much, why not refuse the waiver directly? That would put the matter straight. Why would it be good if it is not given the waiver? It is because then it will come under restrictions that it can only lease the parking spaces to public housing tenants. There are plenty of parking spaces available in the public housing estates, while only a few tenants lease them, so the leasing price will fall. However, at the least, these facilities were initially constructed for use by the public housing residents, why should they be leased casually for use by other people? Hence, may I ask the Secretary whether considerations can be made for not granting the waivers directly? I see that there have been applications for operating elderly homes on premises currently used for restaurant purposes, resulting in confusion in the shopping arcades. I do have strong views on that.*

*Secretary, what has been done should be left as it is. Now can we do it in a direct manner and not grant any further waivers when applications for renewals are received? No matter if these premises in public housing estates*

*are used as shopping arcades or car parks, they are meant for use by the residents of the public housing estates, then they should continue to be used by residents of the public housing estates.*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): Deputy President, perhaps I would answer from the perspective of the public housing residents and see if the Secretary for Development has anything to add or not.

The situation which I would like to mention is that previously, the utilization rate with certain car parks was indeed quite low, hence, to make a better use of the resources, we thought that those parking spaces could be leased to non-residents. Certainly, included in the LandsD's conditions for approval was the estate residents' priority to use the parking spaces. Therefore, if the number of parking spaces cannot meet the needs of the residents, the LandsD is entitled to terminate the waivers unilaterally with a notice of no less than one month, which would in fact serve to protect the interests of the residents.

**SECRETARY FOR DEVELOPMENT** (in Cantonese): Deputy President, perhaps I would add to the response made regarding Mr CHEUNG's question.

In theory, we are not bound to exercise these waivers. However, the spirit of enforcing the land lease is land should be used in an optimal manner. If certain restrictions regarding the lease have been made, but since optimal land use is to be upheld with the changes of time or public demand, as the landlord, the LandsD will lift the restrictions in the lease to allow a better use of the land in question. This is the spirit with which we handle the lands. However, each time when we receive applications for waiver of the lease conditions, we will consult the relevant departments and bureaux. For example, an application for waiver and approval for use by non-residents concerning a car park in a public housing estate intended originally for the use of the residents has been received, when we consult the Housing Department (HD), if it thinks that the interests of the residents living originally in the public housing estate would be affected and no approval should be granted, then due respect would definitely be given to the view put forward by this department which is most influential.

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

**MR TOMMY CHEUNG** (in Cantonese): *Deputy President, both Secretaries have answered why that would be done, and they have explained .....*

**DEPUTY PRESIDENT** (in Cantonese): Please state the part which has not been answered.

**MR TOMMY CHEUNG** (in Cantonese): *..... I am going to say now ..... she has just explained that leasing could be made with vacant parking spaces are available; however, what I meant is that they can formulate a policy .....*

**DEPUTY PRESIDENT** (in Cantonese): This is another supplementary question. Please wait again for your turn to raise the question.

**MR TOMMY CHEUNG** (in Cantonese): *No, I am following up with my question. I am asking her if she could .....*

**DEPUTY PRESIDENT** (in Cantonese): Mr Tommy CHEUNG, I will allow you to wait for your turn to raise your question.

**MR TOMMY CHEUNG** (in Cantonese): *..... No, she has not answered my question. My question was: Why not formulate a policy of not granting it any waivers? For that affects public housing residents .....*

**DEPUTY PRESIDENT** (in Cantonese): Mr Tommy CHEUNG, this is not the supplementary question you have asked just now.

**MR TOMMY CHEUNG** (in Cantonese): *This was the supplementary question I asked earlier. The practice affects the value of the parking spaces leased by the public housing residents, and this problem can be addressed by not allowing any applications for waivers.*

**DEPUTY PRESIDENT** (in Cantonese): Mr Tommy CHEUNG, I will allow you to wait for your turn again to raise your question.

**MR ALAN LEONG** (in Cantonese): *I would like to follow up the reply given by Secretary Carrie LAM earlier. Mr Fred LI and I have raised the relevant problem, and it has also been pointed out by Mr Tommy CHEUNG that numerous complaints of this type have been received even by functional constituency Members. In view of this, is the Secretary still going to deal with the matter with a negative approach and conduct an investigation only upon the receipt of complaints? Much public money would indeed be wasted with such an approach for we are talking about the leasing of parking spaces for some \$1,000 per month. With so many parking spaces around — there were 5 000 parking spaces leased by non-residents at the time when The Link was listed. Deputy President, may I ask the Secretary whether the authorities will still not consider an alternative but adopt the negative approach as usual even with so much information available to us?*

**SECRETARY FOR DEVELOPMENT** (in Cantonese): Deputy President, I do not hold that we take a negative approach in managing our lands; rather, the approach we take is indeed a pragmatic one. In fact, the number of leases is so large, with differences existing perhaps in each lease; hence, it would be unrealistic for us to make a pre-emptive move by taking the leases along for inspection every day.

However, Members are highly concerned about the issue. If I may, let me quote the content of the letter which The Link sent to the LandsD on 28 October after the incident was revealed by the media. In the letter, it was mentioned that since October 2009, among the car parks managed by The Link, apart from one (we have the address of the estate) which encountered difficulties in arranging for termination of the leases of non-residents, there was no further leasing of parking

spaces to non-residents. For other cases, we are taking action to recover the waiver fees. Therefore, if Members have with them sufficient information as such, I would be extremely pleased to receive complaints from them and to follow up with the matter instantly.

**DEPUTY PRESIDENT** (in Cantonese): Mr Tommy CHEUNG, please repeat the supplementary question you have raised earlier.

**MR TOMMY CHEUNG** (in Cantonese): *Deputy President, may I ask the Secretary again why a policy is not formulated. I know that there should be optimal use of land; but why is a policy on this not formulated by the Housing Authority or the HD? Given that the issue on waivers poses tremendous difficulties for the management; the difficulty of monitoring by having undercover operation, and it also involves the issue of integrity, if The Link is required by the Bureau or the HD to lease the parking spaces under its management to public housing tenants, The Link will naturally have to reduce the leasing fees to attract residents when there are numerous parking spaces but few residents lease them. However, currently, the authorities allow The Link to lease the parking spaces to non-residents, this is in a disguised manner, exploiting the rights of public housing residents to use the parking spaces at a cheaper rate.*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): Deputy President, we are now talking about the issue of parking spaces under The Link's management; as to the relationship between the HA and The Link, I believe it is absolutely clear to Members that since the listing of The Link, the HA has played no further role in its mode of operation. However, if we have information that there is a demand for parking spaces by residents of public housing estates but that supply falls short of demand, we will liaise closely with the LandsD. And as I have said earlier, to protect the interest of public housing residents in the leasing of parking spaces, the LandsD may unilaterally terminate the waivers with a notice of no less than one month.

**MR ALAN LEONG** (in Cantonese): *I would like to propose for a change in topic and ask about part (b) of the main reply. After the incident was revealed, The Link, at its own initiative, surrendered \$7.15 million as retrospective waiver*

*fees payable to the LandsD. It has been pointed out in the main reply that "valuers of the LandsD are examining the details to determine whether the retrospective waiver fees proposed by The Link REIT are reasonable."*

*Deputy President, may I ask the Secretary: What information she has to determine whether or not that is reasonable, especially in the light that integrity of The Link is in doubt?*

**SECRETARY FOR DEVELOPMENT** (in Cantonese): Valuation of land is a professional task, the calculation of waiver fees is actually a branch of land valuation. Therefore, whenever changes or waivers of the restrictions existing originally in the land leases are to be made, the concept we hold is to base the waiver fees on the amount of the appreciation in land value upon the lifting of the restrictions. To my understanding, the sum of \$7.15 million proposed to be paid by The Link is calculated in line with its views. In short, it has calculated how the profits made during this period from leasing the parking places without the waivers or consent should be shared with the Government after deducting the operating expenses. As for our valuers, they may hold a different attitude towards the calculation work — and we are now discussing that.

**DEPUTY PRESIDENT** (in Cantonese): Oral question time ends here if Members have no further supplementary question to this question.

## **WRITTEN ANSWERS TO QUESTIONS**

### **Utilization of Convention and Exhibition Facilities**

7. **MR IP KWOK-HIM** (in Chinese): *President, it has been reported that there is a significant difference in the occupancy rates between the Hong Kong Convention and Exhibition Centre (HKCEC) and the AsiaWorld-Expo (AWE) and at the meeting of this Council on 4 November this year, the Secretary for Commerce and Economic Development indicated that the Government had always encouraged and facilitated the AWE and the HKCEC to adopt the "one show, two locations" approach, that is, staging an exhibition at the two venues at the same time. Yet, the mega jewellery fair held in September this year, which*

*adopted the "one show, two locations" approach for the first time, was promoted by the trades themselves. Moreover, the trades have also proposed that the Hong Kong Trade Development Council (TDC) collaborates with them in jointly promoting the "one show, two locations" approach. In this connection, will the Government inform this Council:*

- (a) of the actual work progress made in encouraging and facilitating the AWE and the HKCEC to stage major exhibitions using the "one show, two locations" approach, and whether it has drawn up a work schedule;*
- (b) what specific measures the authorities have put in place to support the proposed collaboration between the trades and the TDC in jointly promoting the "one show, two locations" approach and facilitate the collaboration between the trades and the TDC; if they have no specific measures, of the reasons for that; and*
- (c) whether it has assessed if the Phase 3 development plan of the HKCEC will aggravate the vacancy problem of the AWE, resulting in more public funds being wasted?*

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

(a) and (b)

To enhance utilization of the exhibition facilities in Hong Kong, the Government has been encouraging the TDC, the HKCEC and the AWE to collaborate on exhibition projects. Nevertheless, successful implementation of the "one show, two locations" approach requires close co-ordination between exhibition venues and organizers. Hence, an exhibition using this approach will stand a better chance of success if only one organizer is involved. The Hong Kong Jewellery and Gem Fair 2009 held concurrently at the HKCEC and the AWE last September was a good example.

The staging of an exhibition by an organizer and the approach to be adopted is a commercial decision made on the basis of market needs and it would be inappropriate for the Government to interfere with

these decisions. However, we could provide assistance, for example, we could provide support as far as possible in traffic and transportation arrangements to facilitate and encourage exhibition organizers to adopt the "one show, two locations" approach. We have conveyed our views to the TDC and have requested it to assist in promoting the organization of exhibitions using the "one show, two locations" approach. In addition, the Hong Kong Tourism Board will also strengthen publicity for these exhibitions.

- (c) The Government has not made any decision on whether the proposed HKCEC Phase 3 expansion project should proceed. The preparatory work is still under way. We will conduct a public consultation at an appropriate time when there is a concrete proposal. When deciding on the matter, we will consider various factors, including public opinions, the overall development of the convention and exhibition industry, market demand (taking into account the additional 100 000 sq m of exhibition space to be provided by AWE Phase 1 and Phase 2 and the timing of their availability) and whether the expansion project will benefit Hong Kong's economy, and so on.

As the HKCEC Phase 3 development involves complicated issues which will take time to address, there will be no immediate impacts on the AWE. The AWE has been in operation for four years only; it has good prospects and possesses plenty of room for further development. The Government, as a shareholder of the AWE, will actively encourage and facilitate its utilization through, for example, exploring how to leverage on its advantages of proximity to the airport and the Mainland market. We will also advise the AWE to co-operate with exhibition organizers and the TDC to organize exhibitions using the "one show, two locations" approach.

### **Making Use of Vacant Spaces in Public Hospitals for Additional Medical Facilities**

8. **MR ANDREW CHENG** (in Chinese): *President, in his policy address delivered recently, the Chief Executive has proposed that the Government "will consider making use of the vacant space in public hospitals for additional medical facilities". In this connection, will the Government inform this Council:*

- (a) *of the names of public hospitals where vacant space is currently available and the area of the vacant space in each of these hospitals;*
- (b) *whether the authorities have decided which vacant spaces in public hospitals will be used for the purpose of additional medical facilities; if they have, of the details; what criteria the authorities have adopted for making such decisions, and whether the medical facilities concerned will be provided for use by private hospitals; and*
- (c) *whether it has, before putting forward the aforesaid proposal, consulted patient groups, the District Councils concerned and residents in the vicinity of those hospitals?*

**SECRETARY FOR FOOD AND HEALTH** (in Chinese): President, we will consider making use of the vacant space in public hospitals for additional medical facilities. Generally, hospitals will reserve certain vacant space during the planning stage for meeting service demand under different situations, such as deployment of facilities for provision of daily service, routine repair and maintenance of facilities, as well as coping with outbreak of public health and emergency incidents. My replies to Mr CHENG's enquiries are as follows:

- (a) According to the Hospital Authority (HA), there are currently unused vacant spaces in individual hospitals, such as the Queen Elizabeth Hospital, Yan Chai Hospital and Castle Peak Hospital, and so on. The HA has initially planned to demolish and/or redevelop these spaces for other purposes, such as staff quarters and offices, or for provision of temporary services when other works are underway in the hospital.
- (b) and (c)

The HA has an established mechanism to plan for the development of its services and facilities in the light of a number of factors, such as service utilization, demographic changes and the change of service demand in different districts. The Government is now considering and identifying suitable vacant spaces in public hospitals for additional medical facilities. We have maintained close

communication with patient groups and relevant local organizations on the public health care services. We will consult the stakeholders if we have specific plan in future for conversion of vacant space in certain public hospital for additional medical facilities.

### Measures to Solve Problem of Wide Platform Gaps at MTR Stations

9. **MR TAM YIU-CHUNG** (in Chinese): *President, it has been reported that recently quite a number of members of the public took a wrong step while using the train services of the MTR Corporation Limited (MTRCL), resulting in injuries as their feet were caught in the gap between the MTR station platform and the train compartment. In this connection, will the Government inform this Council whether it knows:*

- (a) *the current number of MTR stations in which the MTRCL has installed plastic fillers at the edge of the platforms, and the reduction in the width of the gaps between those platforms and the train compartment after installation of the plastic fillers;*
- (b) *the number of accidents in each of the past three years involving passengers' feet being caught in the gap between the MTR station platform and the train compartment; and among such cases, the number of those which occurred at platforms already installed with plastic fillers;*
- (c) *the current progress of the trial of the Mechanical Gap Filler (MGF) System being carried out by the MTRCL; and whether the MTRCL plans to install the system at all those stations where the platform gaps are relatively wide; if so, of the details; if not, the reasons for that; and*
- (d) *if the MTRCL plans to increase the number of staff at the eight at-grade/above-ground MTR stations where automatic platform gates (APGs) have not yet been retrofitted, as well as at other stations with wide platform gaps, so as to step up efforts to maintain order and safeguard the safety of passengers; if so, of the details; if not, the reasons for that?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Chinese): President, for the various parts of the question, our reply is set out below:

- (a) The railway lines currently operated by the MTRCL include the Kwun Tong Line, Tsuen Wan Line, Island Line, Tung Chung Line, Tseung Kwan O Line, Disneyland Resort Line, East Rail Line, Ma On Shan Line, West Rail Line and the Airport Express, totalling 84 MTR stations and 215 platforms. For the Light Rail, there are 68 stops with 159 platforms. The MTRCL has already installed platform gap fillers at the edge of 253 platforms to narrow the gap between the platform and the train compartment (gaps have been narrowed down by varying widths between 24 mm and 100 mm). The MTRCL has also installed flash lights in a row at the edges of four other platforms. The flash lights not only narrow the platform gaps down by 30 mm but also help passengers pay more attention to the gaps. As the remaining platform gaps are relatively narrow, no retrofitting of platform gap fillers or flash lights is necessary.
- (b) At present, the total annual patronage of the MTR network stands at 1.4 billion. The number of incidents in each of the past three years involving platform gaps in the MTR system (including the pre-merger East Rail Line, West Rail Line and Light Rail) are as follows:

<i>Year</i>	<i>Total number of incidents</i>	<i>Of which took place at platform equipped with platform gap fillers</i>
2007	199	66
2008	204	70
2009 (Up to end of Oct)	155	66

- (c) The design of the existing station platforms in the railway system is safe. At locations where the gap between the platform and the train is relatively wide, the MTRCL has already taken measures, including installing platform gap fillers to narrow the gap and making public

announcements on platforms and in train compartments in Cantonese, Putonghua and English to remind passengers to mind the platform gaps. The MTRCL also conducts education activities from time to time to raise the safety awareness of the public. Moreover, flashing lights have been installed at the edge of all curved platforms on the East Rail Line so that passengers can pay special attention to the gaps between the platforms and the trains.

The pre-merger Kowloon-Canton Railway Corporation, in studying the feasibility of retrofitting APGs at platforms along the East Rail Line, considered that as gaps are relatively wide at some stations with curved platforms, installing APGs may instead cause sight line obstructions to the wide platform gaps. Therefore, the MTRCL has to first conduct a trial on the MGF System. The Corporation has no plan to install MGFs in other railway lines.

The MTRCL's trial of the MGF System at Lo Wu Station has ended in October 2009. The MTRCL is now collating and analysing test data to assess the system of its performance and implication on train service. It is estimated that the comprehensive review will be completed in late 2009 or early 2010.

- (d) The MTRCL has decided to retrofit APGs at eight at-grade and above-ground stations, namely Kwai Fong, Kwai Hing, Tsuen Wan, Kowloon Bay, Ngau Tau Kok, Kwun Tong, Chai Wan and Heng Fa Chuen Stations. Retrofitting works will be completed within 2011, one year ahead of schedule. As mentioned in part (c) above, the MTRCL has adopted measures to narrow the platform gaps and remind passengers to mind the platform gaps. In addition, the MTRCL is already deploying about 500 staff during peak hours at all station platforms<sup>(1)</sup> to patrol and help passengers with boarding and alighting, and to maintain order.

(1) As regards the Light Rail, the MTRCL arranges for staff to patrol a group of stops.

**Development of a Carbon Emissions Trading Platform**

10. **MS AUDREY EU** (in Chinese): *President, Hong Kong Exchanges and Clearing Limited (HKEx) conducted consultation this summer on the business feasibility of developing a carbon emissions trading platform in Hong Kong. In this connection, will the Government inform this Council whether:*

- (a) it has found out from the HKEx the result of the above consultation; if so, of the details; if not, the reasons for that;*
- (b) it has assessed the impact of developing such a platform in Hong Kong on the economy; and*
- (c) it has estimated the amount of greenhouse gas (GHG) emissions which can be reduced by developing such a platform in Hong Kong?*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Chinese): President, my reply to the question is as follows:

- (a) The consultation on certified emission reduction (CER) futures ended on 31 August 2009. The HKEx is studying the views received during the consultation and has planned to issue a consultation conclusion report before the end of 2009.
- (b) The impact of developing a trading platform for CER futures in Hong Kong on the economy depends on the amount of trading of CER futures to be attracted to this new platform, which in turn depends largely on the development of the international co-operation framework and target for reduction in GHG emissions, and whether key players of the CER futures market, particularly the Clean Development Mechanism project participants and financial intermediaries, see any competitive advantage of making use of a new trading platform in Hong Kong. On the former, the first commitment period of the Kyoto Protocol will expire in 2012 and the post-Kyoto arrangement is being discussed. On the latter, the HKEx is studying the views received during the consultation.

- (c) The Environment Bureau has advised that according to the report of the Intergovernmental Panel on Climate Change established under the United Nations, a well-designed carbon emissions trading system can establish carbon price and provide incentive for mitigation action. As a result, establishing a carbon emissions trading platform can facilitate market participants to conduct trading in a more effective manner and provide information like price level to the market in a transparent manner. The impact of establishing a carbon emissions trading platform on the amount of GHG emissions is affected by the design and operations of the emission reduction mechanism which includes, *inter alia*, how the emission credits are generated, their market price, and the international arrangements on reducing GHG emissions. Such being the case, it is not feasible at this stage to give an assessment on the impact of establishing a CER futures trading platform in Hong Kong on local or global level of GHG emissions.

### Assistance for Participants of Working Holiday Scheme

11. **MR IP WAI-MING** (in Chinese): *President, it has been reported that in mid-October this year, a young man from Hong Kong who went to Australia under the Working Holiday Scheme (the Scheme) to broaden life experience encountered a car accident there and was paralysed. His family members had approached the Labour Department (LD) and the Immigration Department (ImmD) for assistance, but in vain. Yet, upon referrals made by newspapers, the departments followed up the case immediately, and this incident had aroused grave public concern. In this connection, will the Government inform this Council:*

- (a) *of the time the LD and the ImmD first received the request for assistance, as well as what their response was and the reasons for that; the dates when these departments formally follow up the case and the details;*
- (b) *of the total number of young people from Hong Kong who were approved to participate in the Scheme since its implementation in 2001 and, among them, the number of those who had sought*

*assistance from the Government during their participation in the Scheme;*

- (c) where young people from Hong Kong encounter accidents or need assistance during their stay overseas under the Scheme, of the government department in Hong Kong from which these people can approach for assistance, apart from seeking the assistance of the local Chinese embassies/consulates, as well as the government department responsible for following up such cases; and*
- (d) whether it has ever suggested to Hong Kong young people participating in the Scheme to take out insurance before departure; whether it has plans to require future participants to do so; if it has, of the details; if not, the reasons for that?*

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

- (a) The family of the injured working holidaymaker first called the Assistance to Hong Kong Residents Unit (AHU) of the Hong Kong ImmD for assistance on 22 October 2009. On the same day, immediately after receipt of the call, the AHU contacted and liaised with the Office of the Commissioner of the Ministry of Foreign Affairs of the People's Republic of China in the HKSAR and the Chinese Embassy in Australia (the Embassy). The Embassy in turn got in touch with the holidaymaker's family in Australia, visited the holidaymaker on 25 October 2009, and liaised with the local authorities and hospital and provided necessary assistance to the family. Besides, the Acting Director of the Hong Kong Economic and Trade Office (HKETO) in Sydney paid a visit to the hospital on 31 October 2009 to console the holidaymaker and his family and see what assistance could be offered. Throughout, the AHU and the relevant government departments have been maintaining close contact with the family and the medical service agent in Australia in order to provide the necessary assistance.

The LD could not identify any record of call from the holidaymaker's family. Notwithstanding this, after the incident was made known to the LD on 28 October 2009, the LD liaised with the ImmD, the

Australian Consulate-General in Hong Kong and the HKETO in Sydney for the necessary follow-up.

- (b) Up to 30 October 2009, some 9 450 Hong Kong youths had travelled to Australia, New Zealand, Ireland and Germany under the Scheme. According to the relevant HKETOs, so far there were two cases (including the present case) of request for assistance. The LD has not received any similar requests so far this year. The LD and the ImmD do not have the breakdowns of statistics of requests for assistance for past years and thus cannot provide the relevant figures.
- (c) Generally speaking, in case of accidents, Hong Kong residents (including working holidaymakers) abroad may approach the relevant Chinese Embassy or Consulates for assistance, or call the 24-hour hotline of the AHU of the ImmD at (852)1868. The Chinese Embassy or Consulates and the AHU will provide assistance as appropriate according to the circumstances of the cases, such as issuing travel documents, contacting families, referring local lawyers, doctors and/or interpreters, and liaising with the local authorities, and so on. Where circumstances warrant, the AHU would liaise with other government departments (for example, the Social Welfare Department) of the HKSAR for further assistance.
- (d) The Government has been careful in designing the details of the Scheme to ensure protection to the working holidaymakers. However, given the varying circumstances of different countries, some terms (including eligibility) may differ among countries, taking account of the prevailing circumstances and requirements of the country concerned. At present, under the agreements with New Zealand, Ireland, Germany and Japan, applicants are required to take out insurance plans throughout their stay, otherwise they would not be issued with working holiday visas.

For the agreement with Australia, there is no similar provision requiring the applicants to take out insurance policy during their stay. In fact, owing to domestic considerations, all other similar agreements on the Scheme signed by Australia do not impose any requirement on insurance. In 2007, the LD had a thorough discussion with the Australian counterparts on the possibility of making medical insurance a compulsory requirement. This year,

the LD has revisited the issue with the Australian authorities, but they were of the view that the provisions in the agreement with Hong Kong should align with those that Australia had concluded with other countries. However, the Australian authorities have now on the Scheme's website and application form reminded applicants to take out suitable medical insurance to cover possible costs incurred in Australia. The LD has also posted similar advice on its website.

### **Road Traffic Arrangements for Public Processions**

12. **MR ANDREW LEUNG** (in Chinese): *President, all along, many members of the public, groups and organizations in Hong Kong had expressed their wishes and views by way of organizing and participating in processions or assemblies, and where necessary, the police and the Transport Department (TD) will implement temporary traffic measures such as road closures as well as re-routing of buses and minibuses. In this connection, will the Government inform this Council:*

- (a) *of the number of notices of no objection issued by the police in respect of public processions in the past three years; among such cases, the number of those with temporary traffic measures implemented; the respective numbers of those in which such measures were implemented between 9 am to 6 pm on Monday to Friday, those which caused traffic congestion as well as those which involved closures of major roads in Central; and*
- (b) *what existing channels are available to members of the public to make prior enquiries about the aforesaid temporary traffic measures, so as to avoid the crowds taking part in the processions/assemblies and the areas with traffic congestion?*

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

- (a) In the past three years (from 1 January 2007 to 31 October 2009), the police issued 1 831 notices of no objection in respect of public processions, of which 633 involved public processions held in Central. The police will adopt different levels of temporary traffic

measures including road closure, and re-routing of buses and minibuses with due regard to the actual situation and need of individual public processions or assemblies. If extensive road closures, traffic diversions and re-routing of public transport services are required, the police will discuss with the TD to formulate temporary traffic arrangements to ensure that public processions or assemblies can be held smoothly, and the effect on the public can be minimized.

According to the TD's record, 43 public processions held in the above three-year period involved temporary road closures and/or re-routing of public transport services, 10 of which involved roads in Central. The public processions held in the above period did not require any temporary road closure during the period from 9 am to 6 pm on Monday to Friday. The above figures do not include intermittent lane closures implemented by the police in connection with public processions or assemblies.

- (b) To facilitate the public, as a general rule, the TD will publish details of the temporary traffic and transport arrangements required for public processions or assemblies including road closure, traffic diversion and re-routing of public transport services through the TD notices or traffic advice published before the events in Chinese and English newspapers. The TD will also issue press releases to the media and request their assistance in disseminating the information. In parallel, such notices or traffic advice will be uploaded onto the TD's website for public inspection. Members of the public may also obtain such information through the 1823 Call Centre.

When there are public processions or assemblies that necessitate temporary road closure, traffic diversion and re-routing of public transport services of a greater scale, the TD will convene a press briefing before the event to explain the arrangements concerned. In addition, during the course of such events, the TD will provide the public with real-time traffic news about the prevailing traffic conditions through TV and radio. If necessary, the police and the TD will implement immediate traffic management and diversion measures to minimize the impact of the events on the overall traffic situation and operation of public transport services.

**Capital Investment Entrant Scheme**

13. **MR JAMES TO** (in Chinese): *President, under the Capital Investment Entrant Scheme (the CIE Scheme), if investors invest not less than \$6.5 million of capital in real estate or financial assets, they and their dependants will be allowed to stay and reside in Hong Kong. In this connection, will the Government inform this Council:*

- (a) *whether it has assessed the impact of investors investing capital in real estate and financial assets under the CIE Scheme on the prices of real estate and the disparity between the rich and the poor in Hong Kong, as well as the number of jobs created in Hong Kong by the capital concerned to date; if so, whether it will release the assessment results; if such an assessment has not been made, what criteria the authorities adopt for assessing the impact of the CIE Scheme on Hong Kong;*
- (b) *whether it knows if the governments of the United States, the United Kingdom, Canada, Australia and Singapore have implemented similar entrant schemes; if they have, of the differences between these schemes and the CIE Scheme of Hong Kong in terms of the investment amounts required, the permissible investment classes as well as other additional conditions; and*
- (c) *whether it will, in response to factors such as development of the real estate and financial markets in Hong Kong, attractiveness of making the relevant investments in Hong Kong as well as inflation, regularly review the requirements and effectiveness of the CIE Scheme (including the minimum investment amounts and whether investors whose applications have been rejected will still choose to invest in Hong Kong, and so on); if it will, of the details?*

**SECRETARY FOR SECURITY** (in Chinese): President,

- (a) The Capital Investment Entrant Scheme (the CIES) has brought Hong Kong some HK\$36.6 billion of investment since October 2003, within which HK\$10.4 billion was investment in properties. This amount is less than 1% of the total trading volume in the

property market in the same period (around HK\$2.2 trillion<sup>(1)</sup>) and thus has no significant impact on the prices of real estates. In fact, prices of real estates depend primarily on factors such as demand and supply, interest rates and the investment environment.

As at 22 November 2009, a total of 5 604 principal applicants have been granted Formal Approval to come to Hong Kong under the CIES. Assuming that each approved applicant represents one household arriving in Hong Kong, this would amount to just 0.2% of Hong Kong households. Hence, the impact on the disparity between the rich and the poor is limited.

The CIES will directly or indirectly benefit various local sectors, especially the construction and decoration work industry, property agencies, financial and business services, and so on. At the same time, investors and their dependants contribute to local consumption and related economic activities whilst in Hong Kong. We believe these activities create job opportunities. Owing to lack of statistics, the Government is not able to conduct any detailed quantitative assessment in this regard.

- (b) The United Kingdom, Canada, Australia and Singapore have similar investment immigration schemes (that is, an investor can apply for immigration through making investment, without having to start or participate in a business). The United States does not operate such schemes. When the CIES was introduced in 2003, the Government had made reference to similar schemes overseas.

The following table summarizes the general requirements of such schemes in different places:

<i>Country/ region</i>	<i>Investment Threshold</i>	<i>Investment class</i>	<i>Additional conditions</i>
Australia	AUD1.5 m (approximately HK\$10.8 m)	Non-transferrable and non-redeemable government securities	Net assets of at least AUD2.25 m (approximately HK\$16.2 m)

(1) This figure is the total consideration for sales and purchase agreements of building units from 2004 to 1st half of 2009.

<i>Country/ region</i>	<i>Investment Threshold</i>	<i>Investment class</i>	<i>Additional conditions</i>
Canada	C\$400,000 (approximately HK\$3 m)	Non-transferrable zero-interest government promissory notes	Personal net worth of at least C\$800,000 (approximately HK\$5.9 m), and not less than two years of business experience
Singapore	S\$2 m (approximately HK\$11.3 m)	Approved funds or residential property for self-occupation (up to 50% of the investment amount can be invested in the latter)*	At least three years of entrepreneurial experience
The United Kingdom (UK)	£750,000 (approximately HK\$9.7 m)	Government bonds, or share capital or loan capital in active UK-registered companies	Applicant must own, or have money under his control and disposable in the UK amounting to no less than £1 m (approximately HK\$13 m)
Hong Kong	HK\$6.5 m	Real estate, securities, bonds, certificates of deposits, subordinated debts, and collective investment schemes	/

Note:

\* If no investment is made in residential property, the threshold is S\$1.5 m (approximately HK\$8.5 m).

- (c) The Government will review the CIES from time to time, with a view to improving its attractiveness to investors. We believe that Hong Kong's appeal to potential immigrants hinges on various factors including the business/employment opportunities, living standard, cost of living, tax system, and so on.

The annual application figure jumped from 465 in 2004 to 2 997 this year (up to 22 November), indicating the attractiveness of the CIES to investors. As at 22 November 2009, a total of 53 applications have been refused. The main reason was that the applicants did not satisfy the relevant asset requirements. We do not have information as to whether these unsuccessful applicants have invested in Hong Kong.

**Sale of Government Properties by Public Auction**

14. **MR ABRAHAM SHEK** (in Chinese): *President, the Government Property Agency (GPA) has recently put up 10 luxury apartments for sale by public auction, with eight of them successfully sold. In August this year, another 10 luxury apartments were also put up for sale by the GPA through public auction and all of them were sold. In addition, four other government properties had been sold by the GPA. The revenue from these three auctions totalled \$462 million. In this connection, will the Government inform this Council:*

- (a) whether any target has been set for the revenue from the sale of government properties this year; if so, of the actual revenue to date and the anticipated revenue; if not, the reasons for that;*
- (b) what criteria the GPA has adopted for selecting the properties to be put up for sale in the market by public auction; apart from property prices, what other factors will be taken into consideration; and*
- (c) whether it has formulated any plan for selling government properties by public auction in the coming year; if so, of the details; if not, the reasons for that?*

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Chinese): President, my reply to the question regarding the GPA's sale of government properties by public auction since August 2009 is provided below.

The government properties sold by the GPA by public auction in question are surplus non-departmental quarters (NDQs) and certain properties vested in the Government through litigation.

Regarding NDQs, the demand for these quarters has been dropping as civil servants joining the Government on or after 1 October 1990 are no longer eligible for NDQs with the introduction of new civil servant housing benefit schemes. The Government's established policy is to dispose of these surplus NDQs. Pending sale, these NDQs units are let to private tenants at market rental as a short-term arrangement.

As regards the properties vested in the Government through litigation, the Government, having examined the physical condition and nature of these properties, considers that they are not suitable for the Government's use and hence arrangements have been made to put them up for sale in the open market.

The Government will handle the sale of surplus government properties with prudence, having regard to the principle that normal market activities are not to be disrupted. We have as yet no definite plan to sell other surplus government properties. We will review the approach and strategy for the sale of surplus government properties in the light of the experience gathered from each sale exercise. Hence, we have neither set any target nor made any revenue estimate for the sale of surplus government properties.

### **Enhancement of Emergency Ambulance Services**

15. **MS MIRIAM LAU** (in Chinese): *President, a serious vehicle accident which happened in Tseung Kwan O on 9 November this year resulted in 36 casualties among the passengers. It was reported that at first only five ambulances were dispatched to the scene after the accident. Some of the injured did not receive immediate treatment after admission to the hospital even though they were in unstoppable bleeding, and an injured person with "fractured bones" even had to wait for two to three hours to receive treatment. Some family members of the injured are of the view that the incident has revealed that there is room for improvement on the rescue operations in respect of large-scale unexpected incidents and the medical services in Tseung Kwan O District are seriously inadequate. In this connection, will the Government inform this Council:*

- (a) *whether it has plans to review within a short period the co-ordination mechanism put in place between the Hospital Authority (HA) and the Fire Services Department (FSD) as well as the other relevant government departments in dealing with serious accidents, so as to improve the efficiency of rescue operations; if it has, of the specific plan; if not, the reasons for that;*
- (b) *of the respective ratios of the numbers of in-patients and emergency services attendances to the numbers of relevant health care*

*personnel at Tseung Kwan O Hospital (TKOH) in each of the past three years; whether it has plans to enhance the emergency rescue services at that hospital including increasing its manpower before the completion of the expansion project for TKOH in 2012; if so, of the specific plan; if not, the reasons for that; and*

- (c) *whether it will review the ambulance deployment mechanism in Tseung Kwan O District and increase the number of ambulance depots and ambulances on duty in that district; if it will increase such numbers, of the earliest time for implementing the relevant arrangements?*

**SECRETARY FOR SECURITY** (in Chinese): President,

- (a) The FSD and the HA have been working in accordance with an established co-ordination mechanism in the triage, on-the-spot rescue operations and conveyance of injured persons to hospitals in large-scale incidents. According to the existing mechanism, in the event of accidents with many casualties, the ambulance personnel at scene will determine the priority of on-the-spot treatment and conveyance by triage according to the conditions of the injured. If necessary, the ambulance incident officer at scene would request the HA to send medical control officer(s) and medical team(s) to help provide treatment to the injured at the scene. The duty officer of the Major Incident Control Centre of the HA will also activate immediately the nearby hospitals with Accident & Emergency (A&E) services to prepare for receiving the injured, so that the injured persons can be provided with timely treatment after being sent to hospitals. In addition, a mobile casualty treatment centre (MCTC) will be dispatched to the scene for reinforcement. Doctors of the medical team(s) may use the equipment on the MCTC for providing first-aid treatment to the injured at the scene.

In the serious traffic accident in Tseung Kwan O on 9 November, the FSD and the HA have activated the aforementioned co-ordination mechanism. After the traffic accident, the FSD has dispatched 24 ambulances in total to convey casualties to five hospitals. Injured patients are provided with timely treatment on arrival at the

hospitals. The HA has also dispatched a medical team to assist in treating the injured at the scene.

The HA and the FSD review the above co-ordination mechanism from time to time to ensure that injured patients receive proper treatment.

- (b) The ratio of health care personnel to the number of in-patient discharges and deaths and the ratio of health care personnel to the number of attendances at the A&E Department of TKOH in the past three years are as follows:

<i>Year</i>	<i>Ratio of doctors (excluding doctors of A&amp;E Department) to the number of in-patient discharges and deaths</i>	<i>Ratio of nurses (excluding nurses of A&amp;E Department) to the number of in-patient discharges and deaths</i>	<i>Ratio of doctors to the number of attendances at A&amp;E Department</i>	<i>Ratio of nurses to the number of attendances at A&amp;E Department</i>
2006-2007	1:21	1:8.8	1:473	1:230
2007-2008	1:17	1:7.5	1:462	1:236
2008-2009	1:18	1:7.9	1:466	1:270

Note:

As the condition of each patient and complexity of each case varies, the workload of health care staff cannot be assessed simply by looking at the ratio of the number of health care staff to the number of patient attendances.

The HA and TKOH have in place an established mechanism for co-ordination and handling of unexpected disasters and incidents. After the emergency response mechanism is activated, the hospital will deploy health care and supporting staff on duty in other clinical departments to the A&E Department to assist in providing emergency services. The hospital will also inform health care staff of the A&E Department and other specialties who are on call to return to the hospital at once to provide assistance. The HA Head Office will also activate the relevant response and patient triage measures accordingly. The existing arrangements are effective in providing emergency services to people in need. The HA Head Office and its hospitals will continue to keep their disaster

management measures under review and conduct the relevant drills from time to time.

Before the completion of the whole expansion project of TKOH in 2013, the HA will enhance the services of the Kowloon East Cluster and TKOH based on the demand for health care services in the district. In 2009-2010, TKOH will open 36 additional surgical beds and recruit additional health care staff to strengthen its emergency and other services. The HA and the Kowloon East Cluster will continue to closely monitor the service utilization of TKOH with a view to making suitable adjustment to the services in the light of the needs of the district.

- (c) In order to provide timely emergency ambulance services to patients and the injured, the current dispatch system of the FSD would automatically dispatch ambulance(s) which can handle the concerned call within the shortest timeframe. In the circumstances of large-scale incidents, the FSD would not only dispatch ambulances stationed at that area, but also dispatch immediately those in the vicinity to provide support. With the increasing demand for emergency ambulance services in Tseung Kwan O District, the FSD has increased the number of ambulances on-duty at Po Lam Ambulance Depot since June this year from four shifts to five shifts during daytime, and two shifts to three shifts during night time. On the other hand, additional resources have been granted to the FSD to create 121 new ambulancemen posts in 2009-2010. The newly recruited ambulancemen will undergo six-month induction training by batches. When they complete their training, the FSD would increase the number of ambulance personnel in areas with greatest service demand, including Tseung Kwan O District.

### **Generic Code of Practice on Television Advertising Standards**

16. **MR LEE WING-TAT** (in Chinese): *President, according to the information provided by the Broadcasting Authority (BA), an advertisement for the property development "Lake Silver" of a property developer was broadcast in May this year on the television channels of Asia Television Limited, Television Broadcasts Limited, Hong Kong Cable Television Limited and now Broadband*

*TV of PCCW Media Limited respectively. The advertisement was presented in a surrealistic manner using artistic presentation and computer-aided graphics. Graphically, there were shots of natural sceneries like forests and lakes, showing that the property is located in a bay area surrounded by green bushes. The BA considered the advertisement untruthful and misleading, and gave an advice to those television stations. In this connection, will the Government inform this Council:*

- (a) whether it has assessed if the above four television stations have contravened the Generic Code of Practice on Television Advertising Standards; if the assessment result is in the affirmative, whether it knows the justifications for the BA to merely give an advice instead of imposing fines or other punitive measures under the law; and*
- (b) of the number of complaints received by the authorities in the past three years about untruthful and misleading television advertisements; and, among such complaints, the number of those involving advertisements of property developers, the contents of such advertisements and the follow-up actions taken by the BA?*

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Chinese): President, the BA is an independent statutory body established under the Broadcasting Authority Ordinance (Cap. 391). It is responsible for the regulation of the broadcasting industry in Hong Kong. To secure broadcasting standards, the BA issues codes of practice which are prepared through a process of open public and industry consultation.

Hong Kong is committed to upholding the freedom of expression. The BA also adheres to this principle and there is no pre-censorship of broadcasting materials. Complaints made to the BA regarding allegations that a licensee may have contravened the BA's code of practice will be investigated in accordance with the provisions stipulated in the relevant ordinance and the BA's established procedures. In case of a breach of the relevant code of practice, the BA will, having regard to the severity and nature of the breach, the representations submitted by the licensee, and the record of non-compliance of the licensee, decide on the appropriate sanction to be imposed on the concerned licensee, including the issue of advice, request for apology, warning, or financial penalty.

Turning to the specific questions:

- (a) Regarding television advertisements for the property development in question, the BA processed the complaint in accordance with the established procedures. The BA noted that the advertisement mainly featured computer-aided graphics. However, the ending shot of the advertisement showed that the property was surrounded by natural landscape and greenery, which did not show the existence of other property developments in the vicinity. This information was shown in the location plan in the relevant property development information provided by the developer.

Having regard to the submissions and representations made by the four television stations, the BA considered that as the ending shot of the advertisement displayed a full view of the concerned property, viewers would expect that it was a realistic depiction of the property. As such, the ending shot was misleading, and the four television stations had not exercised reasonable diligence in ascertaining the truthfulness of the advertisement as a whole. The relevant information was available from the relevant property development information provided by the developer, which showed that there were other property developments in the vicinity. The BA therefore decided to advise the television stations which broadcast the advertisement in question to observe more closely the relevant provisions in the Generic Code of Practice on Television Advertising Standards. In making the decision, the BA had duly considered the nature and severity of the breach involved and the licensees' records of non-compliance. The BA announced the decision and published the considerations that led to the decision on this complaint in its press release issued on 2 November 2009.

- (b) In the past three years (that is, from 1 November 2006 to 30 October 2009), the BA processed 3 744 complaint cases, of which 92 cases (or 2.5% of the total number of cases) were related to untruthful and misleading television advertisements. Among these cases, there were four complaint cases in respect of television advertisements related to property developments, including the aforesaid television advertisement. Three were unsubstantiated and no sanctions were imposed.

**Provision of Services and Assistance for Inmates**

17. **MR LEUNG KWOK-HUNG** (in Chinese): *President, some inmates and discharged inmates have relayed to me that the Correctional Services Department (CSD) have exploited the interests of inmates and neglected their basic needs. In this connection, will the Government inform this Council:*

- (a) *of the quantities of blankets and warm clothing distributed by the CSD to each inmate at present when the cold weather warning is in force;*
- (b) *whether at present, the CSD provides at the various penal institutions for adults the same education facilities, school hours and teaching staff as those provided at the institutions for minors; if so, of the respective numbers of teaching staff and adult inmates receiving education at present, broken down by the names of the institutions; if not, the reasons for that; of the numbers of adult inmates who took university courses in the past five years and, among them, the number of those who received subsidy from the Prisoners' Education Trust Fund for the relevant costs;*
- (c) *whether at present, the detainees and prisoners currently receive only eight sheets of toilet paper a person per day; whether it has assessed if the toilet paper distributed by the CSD is sufficient for use by those detainees and inmates who do not have an additional supply of tissue paper (limited to 10 packs totalling 70 sheets per month) from their relatives and friends; whether it will immediately increase the quantity of toilet paper to be distributed; if so, when it will be implemented; if not, of the reasons for that;*
- (d) *of the total number of detainees and prisoners in the various institutions at present; whether each inmate is required to carry out work at the prison workshops or other locations as arranged by the CSD, and the number of inmates who are working at present, broken down by the amount and level of their monthly wage; if not, of the current number of inmates who do not accept work arrangement and the reasons for that; and*
- (e) *of the market value of the products and services provided by the CSD to the various government departments and the Hospital Authority in each of the past five years?*

**SECRETARY FOR SECURITY** (in Chinese): President,

- (a) In accordance with Rule 28 of the Prison Rules (Cap. 234A), every prisoner shall be provided with blankets adequate for warmth and health. At present, the CSD provides every prisoner with five blankets in winter. When the Hong Kong Observatory issues the Cold Weather Warning or when there is a sudden change in weather, additional blankets will be provided to prisoners as appropriate. As for clothing, the CSD provides every prisoner with a complete outfit of clothing adequate for warmth and health in accordance with Rule 26 of the Prison Rules. Individual prisoners who need additional blankets or clothes may make requests to the Medical Officer or the CSD staff. The Department will deal with such requests on a case by case basis.
- (b) At present, no day-time educational courses are provided in the adult institutions of the CSD. Adult prisoners who wish to pursue studies may do so after work. Staff of the CSD's Education Unit will provide academic guidance and advice to those who wish to receive education voluntarily, as well as help them enrol in suitable courses and apply for relevant subsidies.

The number of prisoners who took university courses and the number of prisoners who were granted subsidies in the past five years are shown below:

	2004	2005	2006	2007	2008
Total number of prisoners who took university courses	124	136	160	201	151
Number of prisoners who were granted subsidies* for their university courses	60	92	113	99	81

Note:

\* The subsidies came from "Prisoners Education Trust Fund", "The Jockey Club Inmates' Education Subsidy Scheme", "New Life Foundation", "Prisoners' Education Subsidy Fund" and The Open University of Hong Kong.

- (c) Convicted prisoners are regularly provided with toilet paper in fixed quantities: one roll every three weeks for the male and two rolls each month for the female. As for unconvicted persons remanded in the CSD's reception centres, having regard to their high mobility and that most of them would use the daily commodities supplied by their family and friends, in order to avoid wastage, each of them is provided with eight sheets of toilet paper per day. Nonetheless, either convicted prisoners or persons on remand can make a request to the CSD's duty officers for additional toilet paper should they have such a need.
- (d) According to the CSD's statistics, as at 20 November 2009, the number of unconvicted adults detained in correctional institutions was 1 346, while that of convicted adult prisoners was 7 792.

In accordance with Rule 38 of the Prison Rules, all convicted adult prisoners are required to engage in work as arranged by the CSD, unless they have been certified by the Medical Officer of the CSD as unfit for work on medical grounds. According to the figures of November 2009, 7 247 convicted adult prisoners were arranged to work and 509 prisoners were not. The latter included prisoners who were unable to engage in work due to health reasons, and newly convicted prisoners who were attending induction courses and therefore have yet to start working. Unconvicted adults remanded in correctional institutions may take up work on a voluntary basis. According to the figures of November 2009, about 40 unconvicted persons on remand engaged in work voluntarily.

Prisoners engaged in work are paid according to their job grades. The grades and the respective amounts of earnings, as well as the number of adult prisoners at different wage levels (as at November 2009) are tabulated below:

<i>Grade</i>	<i>Weekly amount of earnings (\$)</i>		<i>Number of prisoners</i>	
	<i>Apprentice</i>	<i>Skilled</i>	<i>Apprentice</i>	<i>Skilled</i>
Basic <sup>#</sup>	18.8		509	
A	35.44	50.86	151	616
B	41.97	63.54	515	783

<i>Grade</i>	<i>Weekly amount of earnings (\$)</i>		<i>Number of prisoners</i>	
	<i>Apprentice</i>	<i>Skilled</i>	<i>Apprentice</i>	<i>Skilled</i>
C	47.74	76.21	166	889
D	60.77	101.36	123	1 439
E	73.65	127.11	98	1 858
F	86.11	152.62	5	604

Note:

# Prisoners who are unable to carry out work due to health reasons, and newly convicted prisoners who are attending induction courses and therefore have yet to start working belong to the basic level.

- (e) The estimated commercial value of products and services provided by the Correctional Services Industries (CSI) between 2004 and 2008 is as follows:

<i>Year</i>	<i>Estimated commercial value of CSI products and services<sup>^</sup> (\$ millions)</i>
2004	463
2005	462
2006	444
2007	455
2008	441

Note:

<sup>^</sup> The Industries and Vocational Training Section of the CSD provides products and services to government departments and public organizations on a cost recovery basis. As only direct production costs such as material and transportation costs are recovered, no additional revenue will be generated for the CSD. The "commercial value" of products and services set out above is for reference only. It represents the approximate expenditure to be incurred by the relevant departments for acquiring the same products and services through external procurement, but not the costs charged by the CSD.

## **Feminization of Poverty**

18. **MS EMILY LAU** (in Chinese): *President, it is pointed out in a research that nearly three times as many women as men fall into "relative poverty" and, according to the Social Welfare Department's information, as at September 2009,*

*there were 290 077 Comprehensive Social Security Assistance (CSSA) cases with 481 128 recipients in total. In addition, there were 421 035 and 69 496 persons receiving Higher Old Age Allowance (Higher OAA) and Normal Old Age Allowance (Normal OAA) respectively. In this connection, will the Executive Authorities inform this Council:*

- (a) whether they had, in the past three years, collected data by nature of case and age respectively on the male-to-female ratio of CSSA recipients; if they had, of the details; if not, the reasons for that, and when they will consider collecting such data;*
- (b) whether they had, in the past three years, collected data on the male-to-female ratio of Higher OAA and Normal OAA recipients; if they had, of the details; if not, the reasons for that, and when they will consider collecting such data;*
- (c) of the respective numbers of CSSA and OAA applications not meeting the seven-year residence requirement in each of the past five years; whether they had compiled statistics on the male-to-female ratio of such applicants, as well as among such applications, the number of those for which approval had been granted with discretion; if they had, of the details; if not, the reasons for that, and when they will consider collecting such data;*
- (d) given that a research has shown that the phenomenon of "feminization of poverty" emerged worldwide, whether the authorities had, in the past five years, conducted research on the issue of feminization of poverty in Hong Kong; if they had, of the relevant indicators for measuring poverty and other details; if not, the reasons for that; and*
- (e) whether they have analysed the data in (a) to (d) and considered the direction of welfare policy in the light of the differences between male and female; if they have, of the details; if not, the reasons for that?*

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

- (a) The number of CSSA recipients for the past three years, broken down by case nature, age and gender, is at Annex I.
- (b) The number of Old Age Allowance (OAA) recipients for the past three years, broken down by the type of allowance and gender, is at Annex II.

It should be noted that OAA is a cash allowance provided to Hong Kong residents aged 65 or above, with the aim of helping them meet special needs arising from old age. As recipients of the Higher OAA are not subject to means tests, there is no direct correlation between the receipt of OAA and the economic situation of these recipients.

- (c) Since 1 January 2004, applicants for CSSA and OAA 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. Hong Kong residents aged below 18 are exempted from these residence requirements. As for adult applicants, CSSA may be granted at the discretion of the Director of Social Welfare (DSW) to a person who does not satisfy the residence requirements in exceptional circumstances.

Between January 2004 and September 2009, altogether 6 240 CSSA cases were exempted from the seven-year residence requirement. As the gender of the applicant is not a relevant factor considered by DSW in exercising his discretion, the Social Welfare Department does not have statistics on the number of applications by gender.

In addition, as there is no discretionary arrangement for the approval of OAA, the relevant figures are not available.

- (d) and (e)

All along, the Government has been implementing poverty alleviation measures and welfare services to assist the needy as appropriate, having regard to the actual circumstances. Abiding by

the principle of gender equality, the Administration will ensure that welfare policies and programmes are not discriminatory against male or female, and that every Hong Kong resident, irrespective of gender, will have equal access to social welfare resources.

In view of the above, the Government has not conducted any study specifically on "feminization of poverty", or any analysis on the male-to-female ratio of CSSA or OAA recipients.

## Annex I

Number of CSSA recipients by case nature, age and gender <sup>(1)</sup>

Case nature <sup>(2)</sup>	Age	2006			2007			2008		
		Male	Female	Total	Male	Female	Total	Male	Female	Total
Old Age	Below 15	4 240	3 912	8 152	3 863	3 501	7 364	3 509	3 184	6 693
	15-59	7 182	15 117	22 299	7 049	14 258	21 307	6 810	13 401	20 211
	60 or above	84 459	86 993	171 452	84 503	87 187	171 690	83 876	86 471	170 347
	Total	95 881	106 022	201 903	95 415	104 946	200 361	94 195	103 056	197 251
Permanent Disability	Below 15	1 756	1 604	3 360	1 594	1 424	3 018	1 495	1 373	2 868
	15-59	11 796	10 072	21 868	11 567	9 900	21 467	11 434	9 811	21 245
	60 or above	1 105	1 001	2 106	1 140	970	2 110	1 093	932	2 025
	Total	14 657	12 677	27 334	14 301	12 294	26 595	14 022	12 116	26 138
Ill health	Below 15	4 346	4 115	8 461	3 989	3 869	7 858	3 704	3 496	7 200
	15-59	18 641	16 101	34 742	18 299	15 895	34 194	17 809	15 354	33 163
	60 or above	1 950	1 311	3 261	1 909	1 343	3 252	1 839	1 347	3 186
	Total	24 937	21 527	46 464	24 197	21 107	45 304	23 352	20 197	43 549
Single Parent	Below 15	21 977	20 858	42 835	20 288	19 381	39 669	18 880	18 048	36 928
	15-59	13 760	39 052	52 812	13 585	37 882	51 467	13 477	36 553	50 030
	60 or above	1 003	1 013	2 016	1 011	915	1 926	1 009	862	1 871
	Total	36 740	60 923	97 663	34 884	58 178	93 062	33 366	55 463	88 829
Low earnings	Below 15	10 397	10 297	20 694	9 453	9 326	18 779	8 398	8 226	16 624
	15-59	17 286	21 004	38 290	16 250	19 740	35 990	14 466	17 393	31 859
	60 or above	3 833	1 763	5 596	3 663	1 639	5 302	3 339	1 521	4 860
	Total	31 516	33 064	64 580	29 366	30 705	60 071	26 203	27 140	53 343
Unemployment	Below 15	9 481	9 623	19 104	7 569	7 601	15 170	6 750	6 788	13 538
	15-59	29 172	23 206	52 378	24 856	19 486	44 342	23 284	17 833	41 117
	60 or above	1 863	1 253	3 116	1 707	1 065	2 772	1 571	969	2 540
	Total	40 516	34 082	74 598	34 132	28 152	62 284	31 605	25 590	57 195

Case nature <sup>(2)</sup>	Age	2006			2007			2008		
		Male	Female	Total	Male	Female	Total	Male	Female	Total
Others	Below 15	2 818	2 546	5 364	2 893	2 675	5 568	2 948	2 683	5 631
	15-59	1 431	2 045	3 476	1 415	2 019	3 434	1 516	1 959	3 475
	60 or above	116	113	229	130	113	243	109	105	214
	Total	4 365	4 704	9 069	4 438	4 807	9 245	4 573	4 747	9 320
Total	Below 15	55 015	52 955	107 970	49 649	47 777	97 426	45 684	43 798	89 482
	15-59	99 268	126 597	225 865	93 021	119 180	212 201	88 796	112 304	201 100
	60 or above	94 329	93 447	187 776	94 063	93 232	187 295	92 836	92 207	185 043
	Total	248 612	272 999	521 611	236 733	260 189	496 922	227 316	248 309	475 625

Notes:

- (1) Figures in this Annex indicate the number of recipients as at the end of the year.
- (2) The nature of a case is categorized by the principal reason for which the household concerned receives CSSA. The household may comprise members of different ages.

## Annex II

### Number of OAA recipients by the type of allowance and gender <sup>Note</sup>

Type of OAA	2006			2007			2008		
	Male	Female	Total	Male	Female	Total	Male	Female	Total
Higher OAA	172 192	216 277	388 469	178 327	222 500	400 827	184 780	229 667	414 447
Normal OAA	34 612	41 744	76 356	32 085	37 604	69 689	32 399	36 204	68 603
Total	206 804	258 021	464 825	210 412	260 104	470 516	217 179	265 871	483 050

Note: Figures in this Annex indicate the number of recipients as at the end of the year.

## Complaints About Water Seepage in Private Buildings

19. **MR ALBERT CHAN** (in Chinese): *President, I have received many complaints from members of the public about water seepage from the walls or ceilings of their residential premises. Although they have lodged complaints repeatedly with and requested assistance from the Water Supplies Department and the Joint Offices (JOs) set up by the Food and Environmental Hygiene Department (FEHD) and the Buildings Department (BD), the situation has not improved, which adversely affects their living environment. In this connection, will the Government inform this Council of:*

- (a) *the respective numbers of complaints about water seepage in residential premises received by the above departments and JOs in the past three years, and the number of such cases referred to other departments or JOs for follow-up action;*
- (b) *the number of cases referred to in (a) in which the causes of water seepage were found, and whether the authorities have assisted the complainants in solving the problem; if not, the reasons for that; and*
- (c) *what new measures the authorities have put in place to help residents solve the problem of water seepage in residential premises?*

**SECRETARY FOR DEVELOPMENT** (in Chinese): President, the Ombudsman pointed out in the "Direct Investigation Report on Handling of Water Seepage Complaints" (the Ombudsman Report) released in early 2008 that "Seepage is basically a matter of building management and maintenance for property owners. However, if it causes public health nuisance, building safety risks or wastage of water, Government has a statutory responsibility to intervene." The Government agreed with this view. The FEHD and the BD established a JO in mid-2006 to handle water seepage problems which the Government has a responsibility to intervene.

Regarding the three parts of the questions, my reply is as follows:

- (a) The JO provides "one-stop" service to the public and co-ordinates the work of the FEHD, the BD and Water Supplies Department in handling water seepage complaints. The JO effects internal co-ordination and communication and centralizes the handling of water seepage complaints from the public. As such, the Office does not have to further refer the complaints to other departments for follow-up action.

The JO does not separately maintain statistics for residential buildings. Nevertheless, we believe the vast majority of water seepage complaints are from residential buildings. The table below shows the statistics of all water seepage complaints received by the JO in the past three years:

<i>2007</i>	<i>2008</i>	<i>2009</i> <i>(January to October)</i>
17 405	21 717	18 196

- (b) Other relevant statistics in respect of the years included in the table in part (a) are as follows:

	<i>2007</i>	<i>2008</i>	<i>2009</i> <i>(January to October)</i>
Cases for which the need for JO's action is confirmed <sup>Note</sup>	7 025	9 564	8 296
Cases in which the causes of water seepage were found	3 246	4 476	3 984

Note:

The JO has prescribed standards and requirements for the investigation of sources of water seepage. Some water seepage complaints received do not involve public health nuisance, building structural safety or wastage of water, and hence do not fall within the scope of follow-up action under the statutory authority of the JO. There are also cases where the complaints are falsified, seepage has stopped or complainants have withdrawn their complaints such that the JO would not continue with the investigations.

If the JO's investigation result reveals that a water seepage problem involves public health nuisance, building structural safety or wastage of water, the JO and relevant government departments will take enforcement action under the Public Health and Municipal Services Ordinance (Cap. 132) (PHMSO), Buildings Ordinance (Cap. 123) or Waterworks Ordinance (Cap. 102), so as to assist the complaint to follow up with a view to curbing the sources of water seepage.

- (c) The Government's objective of establishing the JO is to, through the provision of "one-stop" service, handle more effectively water seepage problems which the Government has a responsibility to intervene. The JO reviews its modus operandi from time to time, with a view to improving efficiency and assisting the public to resolve water seepage problems more effectively. Based on the results of the interim review concerning the modus operandi of the Office and the recommendations in the Ombudsman Report, the JO has implemented various improvement measures, including issuing

clearer internal guidelines for investigation, establishing milestones to monitor the progress of various stages of investigation, issuing clearer internal circulars for deciding whether to exercise power of entry under the PHMSO, enhancing information processing and communications within the various units of the JO, and so on. The JO has also issued clearer guidelines and performance milestones to the consultants it hired for investigation of water seepage and standardized the format of documents. It will also formulate criteria and guidelines for the Office to take over from consultants the investigation of cases that are with serious delay. The JO will continue to review its operation in order to further improve its services to the public.

### **Consideration of Applications for Planning Permission by Town Planning Board**

20. **MR KAM NAI-WAI** (in Chinese): *President, in February this year, the Court of Appeal of the High Court ruled in a court case involving an application for planning permission in respect of a project at Seymour Road of Mid-Levels West that given section 13 of the Town Planning Ordinance (the Ordinance) (Cap. 131) which stipulates that approved Outline Zoning Plans (approved plans) shall be used by all public officers and bodies as standards for guidance in the exercise of any powers, the Town Planning Board (TPB), when considering applications for planning permission, did not have the power to have regard to any and all planning considerations which it believed would assist it to reach the right decision in the public interest. The TPB had to exercise discretion within the parameters of the approved plan in question, or it would be acting ultra vires. In this connection, will the Government inform this Council:*

- (a) *whether it has examined if the various approved plans can effectively restrict the development densities after the handing down of the aforesaid judgment; if it has, of the result; if not, the reasons for that, and whether it plans to conduct such an examination;*
- (b) *given that some members of the public are worried that the TPB has been "rendered powerless" because it can no longer vet and approve applications for planning permission on the basis of public interest,*

*whether the authorities have assessed the impact of the aforesaid judgment on the TPB performing its functions; and*

- (c) *given that traffic, visual impact, air ventilation, and so on, have all along been the major factors for consideration by the TPB in vetting and approving applications for planning permission, whether the Government has reviewed the powers and functions of the TPB after the handing down of the aforesaid judgment; if so, whether it has considered amending the Ordinance by making public interest a factor which the TPB must consider when vetting and approving the relevant applications?*

**SECRETARY FOR DEVELOPMENT** (in Chinese): President, the TPB had an in-depth discussion in March this year of the judgment handed down by the Court of Appeal referred to in the question. After considering the unique planning background of the case and the advice of the Senior Counsel, the TPB was of the view that the judgment would not have any significant implications on the planning system and the TPB's operation and functions. It therefore decided not to appeal to the Court of Final Appeal on this case. In addition, the TPB held that there was no need to amend the existing Ordinance because of the judgment. It will continue to consider applications under Section 16 of the Ordinance in accordance with the requirements of OZPs. The Notes and Explanatory Statement of OZPs, as well as the relevant TPB Guidelines, as they are, have provided clear planning intentions, criteria and guidance for assessing planning applications. The Government agrees with the views above of the TPB.

- (a) It is the routine work of the TPB to prepare OZPs of such areas of Hong Kong as the Chief Executive may direct, with a view to the promotion of the health, safety, convenience and general welfare of the community. In this regard, the TPB has been examining the existing OZPs from time to time and will continue to do so. It will propose amendments to the Chief Executive in Council if necessary to achieve the aforementioned purpose. The judgment in question was given in respect of a rather unique residential zone with its own planning background and justifications. The Planning Department has proceeded to review this type of zoning, which is few in number, and will amend, where necessary, the Notes and Explanatory

Statement applicable to this type of zoning, for the processing of relevant planning applications by the TPB in future.

(b) and (c)

As mentioned above, the Government agrees with the TPB's view that the Court of Appeal's judgment will not have any significant implications on the planning system and the TPB's operation and functions. In processing each planning application, the TPB will, before making a decision, continue to have regard to the Notes and Explanatory Statement of the OZPs, the TPB guidelines, as well as the relevant planning considerations such as the planning intention of the statutory plan, the compatibility of land uses, the impact of the development and public opinions, to fulfil the objectives of the Ordinance. The Government therefore considers that there is no need to amend the Ordinance.

## **MOTIONS**

**DEPUTY PRESIDENT** (in Cantonese): Motions. Proposed resolution under the Interpretation and General Clauses Ordinance to amend the Building (Minor Works) (Fees) Regulation.

I now call upon the Secretary for Development to speak and move her motion.

## **PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE**

**SECRETARY FOR DEVELOPMENT** (in Cantonese): Deputy President, I rise to move the motion printed on the Agenda to amend the Building (Minor Works) (Fees) Regulation (the Fees Regulation).

First of all, I would like to thank Mr CHAN Kin-por, Chairman of the Subcommittee on Building (Minor Works) (Fees) Regulation (the Subcommittee), and the other nine members of the Subcommittee for scrutinizing and discussing in detail the contents of the Fees Regulation, as well as giving us

much useful advice. The Subcommittee has also invited deputations from the industry to join the discussion and make suggestions. Having thoroughly considered the comments of the Subcommittee, the authorities propose to amend the Fees Regulation, in order to further improve the relevant provisions.

The Fees Regulation is among the last batch of subsidiary legislation to be introduced by the Administration under the legislative proposal for the implementation of the minor works control system. The Fees Regulation is technical in nature, which aims to stipulate the levels of fees for registration and those for the relevant applications for registered minor works contractors under the Building (Minor Works) Regulation passed in May this year.

The proposed fee structure is determined according to the Government's established principle of full-cost recovery and with reference to the existing arrangements for registered general building contractors stipulated in the Building (Administration) Regulations.

The Subcommittee raised concern over the possible financial burden on minor works practitioners, in particular, the small-scale Class III individual practitioners, in applying for registration. Members had made particular suggestions and urged the Administration to consider further assisting these small-scale practitioners in their registration, so as to address the needs of the industry and enable the smooth implementation of the new system. We accept the comments of the Subcommittee and propose the relevant amendments to further improve the arrangements for the charging of fees.

Under the Building (Minor Works) Regulation, a more convenient review mechanism was instituted in response to the request made by the Subcommittee during the scrutiny period. An unsuccessful applicant may make a request to the Buildings Department (BD) for referring the application concerned to the newly established Registration Committee to scrutinize the case again. The Subcommittee was of the view that minor works contractors were all small-scale operators and thus the review mechanism should facilitate the users as much as possible. Consequently, with a view to further improving the review mechanism, we propose that amendments be made to sections 8, 17 and 21 of the Fees Regulation by including a new provision in each section stipulating that if the Building Authority substitutes the original decision to which the request for review relates with another decision, the Authority must refund the fee paid in respect of the request.

The Subcommittee also pointed out that the authorities should pay attention to the fact that the registration fee for practitioners with formal qualifications is only \$155 whilst that for those who depend solely on their experience is \$305. The latter are mostly practitioners who have been working in the industry for years and are at an older age. The difference in fees between the two groups may not be conducive to the registration of these experienced, elderly practitioners as contractors.

The policy objective of the Administration is to encourage and facilitate as many practitioners as possible to register under the new minor works control system upon its implementation. In view of this, we propose to introduce a limited early-bird concession for those practitioners without any formal qualifications to encourage them to register. Under this administrative measure, during the first 12 months of the registration period, the BD will provide a subsidy of \$150 to each applicant whose first-time application under any minor works item solely relies on his experience. In other words, such applicants will only need to pay \$155 for registration, which will be the same as those applicants applying in accordance with their qualifications. We trust that the above proposal will facilitate the registration of practitioners without formal qualifications and encourage them to come forward to submit applications early.

The minor works control system will be an economical and convenient statutory channel for members of the public to carry out small-scale building works. The registration system will also enhance the standard of the industry and the overall level of building safety in Hong Kong.

If the Fees Regulation is passed, we will commence the registration of minor works contractors as soon as possible and then formally implement the minor works control system. The BD is proactively preparing for the relevant publicity and administrative work, including a large-scale public education programme to promote the system concerned to members of the public and the industry. The BD will also continue to maintain close liaison with the industry and minor works practitioners to provide necessary assistance and support during the registration stage and upon the implementation of the system.

Deputy President, the Fees Regulation has been scrutinized in detail by the Subcommittee. We have adopted the comments of the Subcommittee and made corresponding amendments. The amendments concerned are supported by the Subcommittee. We hope Members can support the Fees Regulation, so that the

minor works control system can be implemented in Hong Kong as early as possible.

I move that the resolution be passed. Thank you, Deputy President.

**The Secretary for Development moved the following motion:**

"RESOLVED that the Building (Minor Works) (Fees) Regulation, published in the Gazette as Legal Notice No. 178 of 2009 and laid on the table of the Legislative Council on 14 October 2009, be amended –

(a) by renumbering section 8 as section 8(1);

(b) in section 8, by adding –

"(2) If the Building Authority substitutes the decision to which the request relates with another decision under section 26(8)(a)(ii) of the Minor Works Regulation, the Authority must refund the fee paid for the request.";

(c) in section 17, by adding –

"(3) If the Building Authority substitutes the decision to which the request relates with another decision under section 26(8)(a)(ii) of the Minor Works Regulation, the Authority must refund the fee paid for the request.";

(d) in section 21, by adding –

"(3) If the Building Authority substitutes the decision to which the request relates with another decision under section 26(8)(a)(ii) of the Minor Works Regulation, the Authority must refund the fee paid for the request."."

**DEPUTY PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Development be passed.

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

**MS LI FUNG-YING** (in Cantonese): Deputy President, since the Government proposed in the year 2003-2004 to amend the Buildings Ordinance, I have participated in the Bills Committee concerned. Thereafter, I took part in the scrutiny of the Buildings (Amendment) Bill 2007, which was proposed in the year 2007-2008, and have served as a member of the Subcommittee on Building (Minor Works) Regulation and the Subcommittee on Building (Minor Works) (Fees) Regulation in 2009. While serving there, I was deeply impressed by the performance of various stakeholders of the industry, particularly that of the minor works concern groups representing small-capital business operators and self-employed practitioners. In the course of enacting legislation, they held the attitude of being accountable for the interests of the industry and public safety and discussed unceasingly with the relevant government departments the feasibility of various details contained in those pieces of legislation, in addition to achieving a balance between the interests of the business associations, societies and trade unions representing various trades in the industry. Besides, they actively advanced their views in the meetings of the relevant Bills Committee and Subcommittees, thereby relaying their views to the officials. This has demonstrated to the fullest the professionalism of the industry.

In addition, I wish to express my appreciation to the Development Bureau for its willingness to take on board the views of various parties in dealing with the Building (Minor Works) Regulation and the Building (Minor Works) (Fees) Regulation (the Fees Regulation). In particular, in the course of scrutiny, the Development Bureau has actively replied to the views put forward by the industry and members of the relevant Subcommittee on the Fees Regulation. The authorities have agreed, among other things, to put in place a mechanism for refunding the application fee for review paid by an applicant should his application for review is allowed, and to introduce an incentive spanning one year to encourage experienced practitioners to apply for registration at the earliest opportunity. Furthermore, the authorities are willing to provide training programmes free of charge to individual operators engaged in Class III minor works. The Development Bureau is able to readily accept good advice and, having taken on board the views of the industry, put in place measures that facilitate the implementation of the Fees Regulation.

The concern which I expressed in the meetings of the Subcommittee and some of the demands of representatives of the industry have certainly not been addressed on all counts. For example, contractors operating in the capacity of non-natural persons have to pay a fee for successful registration, in addition to an application fee. Not only is this arrangement complicated, but it will also impose a heavier burden on contractors. Moreover, the absence of a fee-review mechanism in the Fees Regulation will give rise to further worries in the industry in the future. The training programmes offered to authorized signatories of contractors engaged in Classes I and II minor works are short of any supporting measure and incentive. Besides, the free-of-charge training programmes provided to individual operators engaged in Class III minor works and training providers running such programmes are insufficient. In this connection, the networks of community groups, such as trade unions and business associations are unable to be given a full play. I hope the authorities can give further thoughts to these issues in reviewing the implementation of the Fees Regulation in the future.

Deputy President, during our scrutiny of the Building (Minor Works) Regulation, the Secretary for Development has remarked that the authorities will issue bilingual practice notes in Chinese and English setting out examples of various scenarios and illustrations with descriptions to facilitate compliance by the industry, thereby ensuring a smooth implementation of the minor works control system by the end of this year. Moreover, the authorities have undertaken to conduct extensive publicity and public education programmes, with a view to enriching practitioners' understanding of the implementation details of the control system. The authorities have also undertaken to follow up the insurance arrangements with the insurance industry. Besides, the authorities have promised to remind building owners in publicity campaigns to take out insurance for their building works and the authorities will adopt more flexible administrative measures for the convenience of practitioners' registration, so as to pre-empt discontent in the practitioners. However, the views reflected by the industry have revealed a failure of the authorities to fully honour these undertakings. In view of the imminent passage of the Fees Regulation, the Bureau concerned had better step up its effort and carry out its undertakings to ensure the smooth implementation of the minor works control system. Deputy President, I so submit.

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

(No Members indicated a wish to speak)

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

**SECRETARY FOR DEVELOPMENT** (in Cantonese): Deputy President, I am very grateful to Ms LI Fung-ying for advancing her many views on, and lending support to, our work in promoting minor works of buildings over all these years.

Like the enforcement of many important initiatives and bills, the question of how to put in force the bills scrutinized in detail by this Council and the measures we have devised remains a great challenge. We deeply understand that we need to make greater efforts in undertaking our work in the future and maintain ongoing co-operation and communication with the relevant stakeholders of the industry.

In fact, Ms LI's earlier description of our discussions spanning two to three years on minor works on this occasion and that of the attitude adopted by stakeholders of the industry reveals that she has given foremost consideration to the overall interests of society and her attitude is characterized by collaboration and mutual care. I can say this has highlighted the relationship and culture of co-operation advocated in the construction industry in recent years. We need to exercise mutual care and understand the problems we are facing. The construction industry was among the first to bear the brunt of the financial crisis last year and its unemployment rate has since then remained on the high side. To date, our spirit of co-operation has borne fruit and we notice a continuous decline in the unemployment rate of the construction industry. For these reasons, on the technical issues relating to the enforcement of the Fees Regulation raised by Ms LI just now, as well as the areas of work that we undertook earlier to make continuous improvements of, we will definitely give serious thoughts to identifying ways to follow up these matters, with a view to enforcing the Fees Regulation on an ongoing basis and stepping up our efforts in this regard.

Thank you, Deputy President.

**DEPUTY PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by the Secretary for Development be passed. 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.

**DEPUTY PRESIDENT** (in Cantonese): Proposed resolution under the Ozone Layer Protection Ordinance to approve the Ozone Layer Protection (Products Containing Scheduled Substances) (Import Banning) (Amendment) Regulation 2009.

I now call upon the Secretary for the Environment to speak and move his motion.

## **PROPOSED RESOLUTION UNDER THE OZONE LAYER PROTECTION ORDINANCE**

**SECRETARY FOR THE ENVIRONMENT** (in Cantonese): Deputy President, I move that the motion, as printed on the Agenda, be passed.

In 1993, the Government implemented the Ozone Layer Protection (Products Containing Scheduled Substances) (Import Banning) Regulation (the Regulation) so that Hong Kong can contribute to the recovery of the ozone layer in fulfilment of its obligations under the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol).

The ozone layer protects all life on earth against harmful ultraviolet radiation. Back in the 1970s, scientists discovered a large-scale depletion of the

ozone layer, resulting in what is commonly referred to as "ozone hole" in the atmosphere, due to excessive human consumption of ozone depleting substances. To further expedite the recovery of the ozone layer, the Parties to the Montreal Protocol (the Parties) approved at the 19th Meeting held in Montreal in September 2007 an amendment to accelerate the phasing out of hydrochlorofluorocarbons (HCFCs) for the Non-Article 5 Parties to the Montreal Protocol — to curtail by 2010 the consumption of HCFCs by 75% of the baseline level of 1989 instead of the original 65%; and to advance the completion of the phasing out from 2030 to 2020.

The Montreal Protocol, extended to Hong Kong by the United Kingdom in 1987, requires our compliance with the requirements applicable to the Non-Article 5 Parties. Under the Memorandum to the United Nations Secretariat from the Ministry of Foreign Affairs of the Central People's Government on 6 June 1997, the Hong Kong Special Administrative Region will continue to comply with the relevant requirements after the re-unification in 1997.

To meet the new requirements of the above amendment to the Montreal Protocol, we must further reduce the local consumption of HCFCs. Having made reference to the practices of other advanced countries and considered the views of local suppliers and other stakeholders, we now move the Ozone Layer Protection (Products Containing Scheduled Substances) (Import Banning) (Amendment) Regulation 2009 (Amendment Regulation) which seeks to ban the import of all products using HCFCs by phases from 1 January 2010. This will reduce the consumption of HCFCs for the operation of such products in future so as to meet the accelerated timelines to phase out HCFCs under the amendment to the Montreal Protocol. It will also obviate the problem of insufficient supply of HCFCs for servicing the existing equipment.

The proposals under the Amendment Regulation have fully taken into account the views of related trades. For instance, we recognize the additional time needed by some air conditioner suppliers to set up the production lines for HCFC-free room air conditioners following the financial tsunami. Without prejudice to our compliance with the requirements under the Montreal Protocol, we have agreed to defer the banning of import of split type and window type room air conditioners containing HCFCs for half a year to 1 July 2010 and 1 July 2012 respectively. Also, we have taken heed of the suggestion of the trade to

use the same definition of the Energy Efficiency (Labelling of Products) Ordinance for "room air conditioners".

In the Amendment Regulation, we also propose to amend the definition of "controlled product" to keep in line with the resolution at the 11th and the 12th Meetings of the Parties in 1999 and 2000 respectively that Non-Article 5 Parties should develop and implement a strategy for the management of chlorofluorocarbons (CFCs), including options for an eventual ban against CFC-containing Metered Dose Inhalers (MDIs).

In 2002, we drew up and submitted to the Ozone Secretariat of the Montreal Protocol our strategy and target to phase out all CFC-containing MDIs by 1 January 2010 in tandem with other advanced countries. In this connection, the Hospital Authority (HA) and the Department of Health (DH) have also launched since 2004 a voluntary programme to phase out CFC-containing MDIs, and considerable achievements have been made. At present, CFC-free MDI dose accounts for about 90% of the total local consumption. The proposed Amendment Regulation will ensure that we can complete the phasing out of CFC-containing MDIs, and it is supported by the HA, the DH, medical profession and suppliers.

We would also like to take this opportunity to amend related provisions of the Regulation to extend the ban on the import of controlled products from countries of origin not being a Party to the Montreal Protocol to all countries. The aim is to prevent Hong Kong from becoming a dumping ground of these products from the Parties. Moreover, the Amendment Regulation extends the definition of "portable fire extinguisher" to ban the use of certain ozone depleting substances as fire extinguishing agents as their alternatives are available. Although some of these substances, such as the other fully halogenated CFCs and bromochloromethane, are now rarely used for fire extinguishing purposes, such a possibility cannot be ruled out in future. We therefore propose to include them in the ban for the sake of completeness.

To deter smuggling of non-compliant controlled products into the local market, we propose increasing the penalty for an offence to import non-compliant controlled products from a maximum fine level of \$200,000 to \$1,000,000 and the maximum length of imprisonment from six months to two years. This is to bring the relevant penalty provisions in line with that for an offence to import ozone depleting substances without a licence under the principal Ordinance.

The Amendment Regulation has been vetted and supported by the Subcommittee on Ozone Layer Protection (Products Containing Scheduled Substances) (Import Banning) (Amendment) Regulation 2009. Although not directly relevant to this Amendment Regulation, we note that Members are concerned about the possible uncontrolled release of the used HCFCs during disposal of old air-conditioners. To minimize Members' concern and the impact on the atmosphere, we would encourage recycling and re-use of these HCFCs. We have consulted with the trade and are drawing up a code of good practice to help the trade recover HCFC-22 from retired air-conditioners. We would also prepare a leaflet to help increase the public's awareness on recycling of HCFCs from retired air-conditioners. In addition, we are also examining the feasibility of introducing a mandatory producer responsibility scheme on waste electrical and electronic equipment under the Product Eco-Responsibility Ordinance. Subject to public consultation in the future, we would consider whether the proposed scheme could cover air conditioners.

Deputy President, Hong Kong has been working in concert with the international community and staying at the forefront of the region's efforts in restoring the ozone layer. The Amendment Regulation will enable us to continue and enhance our efforts in reducing emission of ozone depleting substances into the atmosphere and hence protecting the environment. With these remarks, I commend the Amendment Regulation to Members.

Thank you, Deputy President.

**The Secretary for the Environment moved the following motion:**

"RESOLVED that the Ozone Layer Protection (Products Containing Scheduled Substances) (Import Banning) (Amendment) Regulation 2009, made by the Secretary for the Environment on 17 June 2009, be approved."

**DEPUTY PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for the Environment be passed.

**MS AUDREY EU** (in Cantonese): Deputy President, in my capacity as Chairman of the Subcommittee on Ozone Layer Protection (Products Containing Scheduled Substances) (Import Banning) (Amendment) Regulation 2009 (the Subcommittee), I now report on the deliberations of the Subcommittee.

The Subcommittee supports in principle the Ozone Layer Protection (Products Containing Scheduled Substances) (Import Banning) (Amendment) Regulation 2009 (the Amendment Regulation) to facilitate the banning of products containing scheduled ozone depleting substances (ODSs) (these products include inhalers, aerosol products and portable fire extinguishers) in phases from 1 January 2010 to 1 January 2020 so as to enable Hong Kong to fulfil its international obligation under the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol).

At present, the only type of ODSs that can still be imported to Hong Kong for local consumption is hydrochlorofluorocarbons (HCFCs). As a matter of fact, virtually all HCFCs are used as refrigerants. To ensure compliance with the accelerated phasing-out programme under the Montreal Protocol, the Amendment Regulation proposes to ban the import of refrigeration, air-conditioning and other products containing HCFCs as refrigerants. Taking into account the need for more time to allow suppliers to prepare for sourcing and importing HCFC-free room air-conditioners, the Administration decided to defer the banning of split type and window type room air-conditioners to 1 July 2010 and 1 July 2012 respectively, after consultation with the trade.

Some deputations are concerned that unlike split type and window type room air-conditioners, other types of air-conditioners would be phased out by 1 January 2010 and such an arrangement may cause confusion to the trade and the public. In this connection, the Subcommittee has examined the feasibility of deferring the deadline for other types of air-conditioners to 1 July 2010 in tandem with those split type room air-conditioners. The Administration explains that during consultation, the trade has only expressed concern that suppliers need more time to set up production lines for HCFC-free room air-conditioners and not other types of air-conditioners. The Administration therefore holds the view that the phasing-out programme should only be reviewed if there is a problem in the trade-wide supply of HCFC-free air-conditioners. Moreover, if this is only a problem of individual suppliers, the extension will be unfair to other complying suppliers.

In view of the ozone depleting property of HCFCs, the Subcommittee has stressed the need to ensure proper disposal of air-conditioners containing HCFC to prevent the release of these chemicals to the atmosphere. As the recycling of HCFC would require technical know-how, the Administration's input is therefore essential. According to the Administration, it will consider whether the proposed mandatory producer responsibility scheme on waste electronic equipment would cover air-conditioners, subject to the outcome of public consultation later this year. Due consideration will also be given to handling HCFC recovered from air conditioners collected under the scheme in an environmentally-sound manner. Meanwhile, the Administration has consulted the trade and is finalizing a code of good practice to help the trade recover HCFCs from the existing air conditioners. The Administration will also prepare a leaflet to help increase public awareness in this respect.

The Subcommittee will not propose any amendments to the Amendment Regulation.

Deputy President, I will now state my personal views on the Amendment Regulation.

Some 30 years ago, scientists already discovered that emission by human beings of man-made chemicals, in particular chlorofluorocarbon (CFC) or HCFCs that we are talking about today, will deplete the ozone layer. The emission of these chemical compounds to the atmosphere will accelerate global warming and deplete the ozone layer so that ultraviolet light will travel directly to earth surface, causing damage to the ecology. In the 1980's, an ozone hole was found over the Antarctic illustrating the serious damage caused to the ozone layer. As a result, the Montreal Protocol was signed in 1987 to phase out the consumption and production of ODSs.

In the 22 years since then, the implementation of the Montreal Protocol has generally been satisfactory. As at 2006, 96% of ODSs have been banned all over the world and it is expected that ozone density will restore to pre-1980 levels by around 2050. It is also expected that the ozone hole over the Antarctic will disappear between 2065 and 2075. Hence, the Montreal Protocol has been hailed as an example of remarkable international co-operation on environmental protection. Mr Al GORE, former Vice-president of the United States, has also

cited the Montreal Protocol as an example of the co-operation of mankind to make concerted efforts in resolving the global crisis of climate change.

The Amendment Regulation is mainly targeted at HCFCs. As I have said just now, virtually all HCFCs are used in Hong Kong as refrigerants and HCFC-22 accounts for 98.3% of the total HCFC consumption. HCFC-22, as commonly known in the trade, is in fact chlorodifluoromethane which is mainly used in refrigeration and air-conditioning. Alternatives for HCFC-22, such as R410A, are available and HCFC-free air-conditioners cost about 2% to 10% more than conventional air conditioners containing HCFC.

Deputy President, the Subcommittee supports in principle the Amendment Regulation. Of course, the Civic Party also supports the Amendment Regulation. However, apart from Hong Kong's fulfilment of its international obligation, we are also very concerned about the disposal and recycling of air-conditioners, as the Secretary has just mentioned. While the proposed amendments under the Amendment Regulation can achieve the purpose of phasing out ODSs such as HCFC-22 found in air-conditioners, air-conditioners manufactured before the implementation of the Amendment Regulation are not covered. Therefore, the Civic Party is concerned that HCFC-22 may be released to the atmosphere after conventional air-conditioners have been disposed of in future. We therefore hope that the Government can properly handle the recycling work.

In reply, the Administration advises that in the next stage of implementing the Product Eco-Responsibility Ordinance, air-conditioners will be covered under the proposed producer responsibility scheme on waste electrical and electronic equipment and air-conditioners will be recycled through dealers and manufacturers. Deputy President, you also know that each piece of legislation touches upon things that happen in the future and we do not know when the Government will finalize the details of the scheme. We have been asking the Government to provide details of the proposed producer responsibility scheme on waste electrical and electronic equipment, such as how it will be implemented, what will be included in the code of practice and even what is the outline of the proposed scheme. But no answer is forthcoming to date. Deputy President, even for the environmental levy on plastic shopping bags which we have talked so much about, the focus is just about the levy and nothing has been said about

recycling. Hence, it is still unknown to the Government as to how air-conditioners containing HCFC-22 are to be recycled in the future.

Of course, there is the other question about whether workers responsible for recycling know how to handle the air-conditioners containing the chemical substances safely. At present, the recycling industry and even the recycling systems in Hong Kong are not operated professionally. Recycling is mainly carried out by recyclers in local areas and scavengers. We know that currently, the Government has appointed five major non-profit making organizations to collect used clothes but much support has to be provided to these organizations to ensure proper handling. Questions remain as to how are we going to consider the relevant issues relating to the producer responsibility scheme and the recycling business, and what kind of training is to be provided to the workers so as to upgrade the standard of the recycling trade to cope with the increasing amount of recycled items?

Deputy President, I raised the same query during the last motion debate of the Legislative Council as well as on some other previous occasions. Should the Government seriously consider implementing a licensing system? Of course I am not talking about issuing licences to scavengers on the streets but *bona fide* operators in the recycling trade. If the Government is considering providing subsidies or imposing regulation, a licensing system would be an option to be considered.

Lastly, the Amendment Regulation has upgraded the specifications of the products to achieve better environmental efficiency. The benefits are not limited to environmental protection because it may also induce manufacturers to develop better and more environmentally-friendly products and in turn, promote economic activities. Some people are worried that with the cost of conserving the environment factored in, these products will come with a high price tag and cannot compete with their conventional counterparts. However, judging from the Government's current legislative initiative to phase out HCFC refrigerants, we can see that even if the price will be slightly higher initially, the price difference will even out eventually. Initially, the price may be higher by 10% to 25% but now the price difference has closed in to 2% and 10% at most. This margin is acceptable in terms of ensuring sustainable development for the protection of the environment.

Deputy President, in addition to setting appropriate standards and making suitable regulations, the Civic Party calls for the Government to ensure that old products that are not environmentally friendly will ultimately be recycled properly. As far as the implementation of the producer responsibility scheme is concerned, I hope the Government would start discussion with us as soon as possible.

Thank you, Deputy President.

**MR WONG TING-KWONG** (in Cantonese): Deputy President, I speak on behalf of the Democratic Alliance for the Betterment and Progress of Hong Kong to support the SAR Government's move to phase out the import of products containing hydrochlorofluorocarbon (HCFC), chlorofluorocarbon (CFC) and other ozone-depleting substances (ODSs) into Hong Kong and to increase the penalties for an offence under the principal legislation so as to comply with the requirements of the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol).

In fact, the research to identify alternative non-ozone-depleting substances has been going on for many years with significant progress made in recent years. In respect of air-conditioning refrigerants, alternatives are now available. For example, alternative non-ozone-depleting substances are now being used in place of chlorodifluoromethane (R-22) which accounts for 98.3% of the local consumption of refrigerants.

However, some home electrical appliances including refrigerators and air-conditioners may still be using the old type R-22 refrigerants. I therefore consider that prior consultation must be conducted with the stakeholders so as to enable the trade and the market to have a better understanding of the Government's policy and put forward their views accordingly. By doing so, it can help ensure that the proposed ban would be practical, enforceable and implemented smoothly. I am glad to learn that the Government has already consulted major trade associations and product suppliers on the relevant proposals. The Government then knows that because of the impact of the financial tsunami on the global economy and the unique situation of local homes as compared to those in most other overseas countries (that is, the dominant use of window type and split type air-conditioners in Hong Kong homes due to space constraints), the manufacturers would need time to set up new production lines so

as to ensure an adequate supply of window type air-conditioners containing non-ozone-depleting substances for Hong Kong. Hence, this type of equipment should have a longer phasing-out period. Having taken heed to the opinion, the Government now decides to defer the relevant banning with respect to split type and window type air-conditioners to the middle of next year and the middle of the year after next respectively.

(THE PRESIDENT resumed the Chair)

President, the Administration has clarified that in the course of implementing the proposed import ban, it would ensure the supply of ODSs for the existing maintenance contractors to service the relevant equipment so that their business would not be affected. The Administration has also said that it would step up publicity efforts so that the trade would not have any unnecessary concerns and that any other concerns it may have would be addressed.

I stress that the proposed regulations must be simple and clear. The Administration must enhance communication with the trades concerned so that they are conversant with and able to comply with the regulations. In addition, the Administration must also step up publicity and education for the public. Apart from explaining the content of the new requirements, the Administration should step up publicity on the environmental benefits of using refrigerants containing non-ozone-depleting substances and drive forward the message of energy saving so as to enhance public awareness and support.

President, I so submit and support the resolution.

**MS CYD HO** (in Cantonese): President, of course I would support the passage of this resolution because nowadays, the people are very concerned about environmental protection. While we support the Amendment Regulation in principle, we found in the course of scrutiny that supporting measures were not sufficient. Hence, we had to discuss about the inclusion of relevant administrative measures in the Amendment Regulation. I think this is because the Government is always just concerned about implementing the international agreements it has entered into and local legislative proposals are routinely proposed for this sake only. The Government is not formulating its policies,

funding proposals and administrative measures as a total package under clear guiding principles to follow through the spirit of these international agreements. As a result, members who participated in the scrutiny of the Amendment Regulation all raise the same opinion today, that is, to ask the Government to put in place administrative measures for the proper recycling of those old air-conditioners.

In the course of scrutiny, the Administration accepted our proposals and the Secretary has said so just now. However, he has done no more than encouraging the public to do so. But mere encouragement is far from enough. It is because when recycling old air-conditioners and handling the refrigerants containing ozone-depleting substances (ODSs) used in these air-conditioners, the equipment should not merely be recovered as ordinary refuse and left to be piled up or disposed of in landfills. Instead, the old air-conditioners should be properly dismantled using good technical know-how so that the materials and substances inside can be segregated. Refrigerants containing ODSs should then be treated separately and properly. I hope the Administration is not just thinking about burying these substances under the ground. Instead, it should examine whether better technologies are available to neutralize these substances into non-harmful ones. It should not just bury all the problems under the ground.

President, the same thinking should also be adopted in the case of compact fluorescent lamps. When we are to launch green policies, we should not just focus on superficial or visible issues. Instead, we must discuss the issues involved according to the theoretical basis behind them. We should consider the best possible ways to treat substances that are harmful to the environment. In this connection, I hope the Environment Bureau will continue to work with scientific researchers to find a good solution. Thank you, President.

**MR KAM NAI-WAI** (in Cantonese): President, I speak on behalf of the Democratic Party in support of this resolution. We think that this resolution has come too late. I think we all know that that protecting the ozone layer is something that we should have done a long time ago and done so urgently. That this resolution is only proposed today is really a bit late.

In our discussion, we all know that the public probably has no idea as to what substances such as HCFC or CFC as mentioned by the Secretary today are about. I think the Administration's efforts in terms of education and publicity

are far from satisfactory. I think the Government must not shirk its responsibility in respect of increasing public awareness as to how these substances are affecting the ozone layer. If enough was done in terms of education and publicity earlier on, I think that even if the present Amendment Regulation is not proposed, market forces will drive the people away from buying these products. In fact, public awareness in this regard is highly inadequate.

The Democratic Party notes that with the passage of the resolution, products containing these substances will no longer be allowed to be imported into Hong Kong. Nonetheless, we hope that the Government can make use of the opportunity presented by the implementation of this resolution to step up education and publicity on environmental protection. For example, I notice recently that although the relevant legislation has yet to be introduced, the Government has run commercials about the proposed ban on idling vehicles with running engine on the radio frequently. This is to increase public awareness of the issue. I think the Government should put in more resources to enhance publicity in this respect. This is the first point I want to make.

The second point is about the issue of recycling which many Honourable colleagues have talked about just now. I do not know whether the Secretary is aware that the recycling of air-conditioners is not something that only concerns the junk recyclers. Nowadays, in some old districts in particular, we can often see people who have recycled the old air-conditioners wash them on the streets. Apart from creating an adverse impact on the environmental hygiene, the harmful substances could also affect the nearby residents. What will the Government do to deal with the recycling issue? Of course, the subject matter today is air-conditioners. But there are problems throughout the whole recycle chain: So what should the Government do? Should a licensing system be imposed on the recycling trade? In fact, the Democratic Party has raised the issue about the need for a licensing system on the recycling trade time and time again. What will the Government eventually do to deal with these old air-conditioners? Although Hong Kong has banned the import of these products, there are still many old air-conditioners containing these harmful substances in the market. These old air-conditioners might also be sold in the second-hand market because after the ban, their prices may ..... As compared with the more eco-friendly models, the old-type air-conditioners may be less expensive. We are all aware of the extreme disparity between the rich and the poor in Hong Kong. I think given the cheaper price of these old air-conditioners, they will still have some

market appeal. This would create the problem as to how these air-conditioners should be handled in the market. I have just talked about the problem on the streets. If you just walk around in Hong Kong, say in the Western district, Wan Chai or the Eastern district, you would notice that the problem with washing old air-conditioners on the streets exists in many densely-populated neighbourhoods.

Hence, I hope the Government should not just focus on the source by banning the import of the harmful substances with the passage of the resolution. Instead, it should also consider how the old air-conditioners which proliferate in the market should be handled in future. I hope the Government can adopt a more proactive approach to deal with the problem.

President, I so submit and hope the Secretary will take heed to what we have said and adopt a more proactive approach to follow up on the work required after the passage of the resolution. 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 the Environment to reply. This debate will come to a close after the Secretary has replied.

**SECRETARY FOR THE ENVIRONMENT** (in Cantonese): President, first of all, I would like to thank those members of the Subcommittee who are involved in the scrutiny of the Amendment Regulation. I have just heard some Members mention that with the passage of the Amendment Regulation, apart from enabling more people to use equipment not containing ozone-depleting substances (ODSs), how we are to go about doing the recycling work. As I have said in the main speech, we will follow up on the matter in two aspects, including recycling arrangements and educating the trade with better practices. I will also continue discussing with the trade in this respect. I hope this area of work will, as Members have said, become better in time. Thank you for your support.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by the Secretary for the Environment be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

## **MEMBERS' MOTIONS**

**PRESIDENT** (in Cantonese): Members' motions. Proposed resolution under the Interpretation and General Clauses Ordinance to repeal the Rules of the High Court (Amendment) Rules 2009.

I now call upon Dr Margaret NG to speak and move her motion.

## **PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE**

**DR MARGARET NG**: Mr President, in my capacity as the Chairman of the Subcommittee on Rules of the High Court (Amendment) Rules 2009 (the Subcommittee), I move that the motion, as printed on the Agenda, be passed. I do so with much regret, as the Subcommittee would greatly prefer that the Administration takes the initiative to withdraw the Rules of the High Court (Amendment) Rules 2009 (the Amendment Rules) for further deliberations by the Rules Committee of the High Court (the Rules Committee), in view of the many doubts raised and the short time in which to satisfactorily resolve them. These Rules affect the property and liberty of the public. This Council is duty bound to apply the most anxious scrutiny. It goes without saying that no disrespect is

meant for the Rules Committee itself. I shall now highlight the main contents of the Amendment Rules and the deliberations of the Subcommittee.

The United Nations (Anti-Terrorism Measures) Ordinance (the Ordinance) was enacted in July 2002 to give effect to the mandatory elements of the United Nations Security Council Resolution 1373 and the Special Recommendations of the Financial Action Task Force on Money Laundering (FATF). Subsequently, the Ordinance was amended by the United Nations (Anti-Terrorism Measures) (Amendment) Ordinance 2004 enacted in July 2004 to spell out certain enforcement powers, to implement the FATF Special Recommendations on freezing non-fund terrorist property and other international conventions against terrorism.

Sections 5, 6, 8, 12 and 13 of the Ordinance give the executive authorities great powers to specify persons and property as terrorists, terrorist associates or terrorist property, to freeze funds, to forfeit terrorist property, to compel information and material, to seize and detain terrorist property. Sections 17 and 18 provide for persons whose rights and interests are affected to seek revocation, variation or compensation. These sections have not been brought into operation pending the rules of court to be made to provide for the procedures.

The Amendment Rules were made by the Rules Committee under section 54 of the High Court Ordinance (Cap. 4) and section 20 of the Ordinance on 28 September 2009. The purpose of the Amendment Rules is to add a new Order 117A to the Rules of the High Court, which set out the procedures for applications to the Court under section 5, 12A, 12B, 12C, 12G, 12H, 13, 17 or 18 of the Ordinance. Furthermore, the Amendment Rules also amend Order 1, rule 2(3) of the principal Rules to ensure that other provisions of the principal Rules, if appropriate, apply in respect of applications that may be made under the Ordinance.

A major point of concern of the Subcommittee was the definition of "prescribed interest" in the Amendment Rules. Only persons with "prescribed interest" or secondarily, "affected persons" may apply to the Court in relation to the orders made under the Ordinance. In view of the extensive powers given to the Chief Executive to apply for an order to specify persons and property as terrorists, terrorist associates or terrorist property, to the Secretary for Security to freeze property suspected to be terrorist property, and to the law-enforcement agencies to investigate and seize and detain property suspected to be terrorist

property, members are of the view that the scope of "prescribed interest" in rule 1(4) of the new Order 117A should be as wide as possible so that no persons affected will be precluded by the definition from applying to the Court for an order to revoke a specification order, or to release the property being frozen, or to seek compensation from the Government.

The Administration has advised that the definition of "prescribed interest" is very wide indeed, and would cover persons who own, control or have a right to possess the property concerned and those persons who have an interest and rights in the property enforceable at common law and at equity. This would, for example, include mortgagors, mortgagees, trustees, beneficiaries under a trust, lessors and lessees, and a person having a chose in action in respect of the property. Moreover, even if the Court determines that certain categories of persons do not fall within the scope of "prescribed interest" as defined in the Amendment Rules, they may still come within the ambit of the Rules as "affected persons". Under section 2(6) of the Ordinance, the Court may of its own motion or on application order that any person who may be affected by an application under section 5 in the case of an application under section 5(1) made *inter partes*, or under section 13, 17 or 18, be joined as a party to the proceedings.

Some members have questioned whether, as a matter of legislative principle, it is valid and appropriate to delegate the definition of "prescribed interest" to the Amendment Rules, rather than to determine in the primary legislation who should or should not have the right to make an application to the Court. Members noted that in Australian legislation, the definition was part of the primary legislation. Some other members considered that the most important thing is the practical effect, not where the necessary provisions are made. The Administration however does not agree that there is any problem in this regard.

Members have pointed out that merely requiring the applicant, the Chief Executive or the Secretary for Justice as the case may be, to publish a notice of intention to make an application under sections 5(1)(a), 5(1)(b) and 13 of the Ordinance to specify persons and property as terrorists, terrorist associates or terrorist property and forfeit a terrorist property in a Chinese newspaper and an English newspaper that circulate generally in Hong Kong, if the whereabouts of the subject person are not known to the applicant, is far from adequate.

The Administration has explained that publishing a notice in two newspapers in Hong Kong is the minimum action that the authority would take to notify the subject person. Other means, such as publishing the notice on the Internet, would be explored, where appropriate. The Administration however has reservation about the suggestion of posting a notice at the property where the Chief Executive intends to make an application to specify the property as terrorist property under section 5(1)(b) of the Ordinance, as the tenant (if any) and neighbours may be alarmed and the property sales of the neighbouring flats may be affected. Likewise, posting a notice of intention to forfeit the property at the property's address before forfeiture would stigmatize the property, even if the forfeiture application is eventually unsuccessful. Members considered the Administration's explanation unacceptable, as a notice of intention to specify a property as terrorist property and a notice of intention to forfeit the property must be published in a Chinese newspaper and an English newspaper that circulate generally in Hong Kong.

Concern has been expressed that rule 14 of the new Order 117A requiring authorized officers to lay an information on oath to the Court to apply for an order under section 12A(1) to furnish information or produce material, or section 12B(1) to make material available, or for a warrant under section 12C(1) for entry and search of premises, or section 12G(1) for entry and search of premises and seizure, removal and detention of terrorist property is too simple in that it fails to make a distinction on the procedures for handling urgent and non-urgent applications and makes no mention of whether the information on oath has to be made in written form. In view of the intrusive powers to be provided to the authorized officers, the Administration should make reference to the Interception of Communications and Surveillance Ordinance which contains more detailed procedures for authorized officers to apply to the Court for similar powers under sections 12A(1), 12B(1), 12C(1) and 12G(1) of the Ordinance, instead of modelling rule 14 of the new Order 117A on rule 4 of Order 116 relating to the Organized and Serious Crimes Ordinance which was enacted over 10 years ago.

Under rules 16 and 17, where an order or warrant is issued to require the production or authorize the seizure of material, any claim of legal professional privilege must be made by application within three days. While the Administration explained that discussion was likely to have taken place sometime before action was taken, it could not be ruled out that the person concerned may

be required to furnish information and/or produce the relevant material without prior notice. In such cases, urgent instructions must be sought from the client.

Question has been raised as to why an application for continued detention of seized property under section 12H(2) of the Ordinance and rule 19(1) of the new Order 117A must be made by an *ex parte* originating summons, since the holder of the property and affected persons already know that the property is detained. Their views should be heard before the Court decides whether detention should be prolonged.

The Administration's explanation is that the use of *ex parte* application for continued detention is necessary because such a matter has to be dealt with expeditiously before the expiration of 30 days, given the dire consequences of possible terrorist acts. Otherwise, the investigation may likely be prejudiced if the order for continued detention of the property cannot be obtained in time. In any event, the person from whom the property was seized, the holder of the property or a person who otherwise has an interest in the property may apply to the Court under section 12H(4) for release of the property while the property is being detained.

Members have suggested that a notice should at least be served on the holder of the seized property of the intention of an authorized officer to apply to the Court for continued detention of the property under section 12H(2) of the Ordinance. The Administration agrees to implement the suggestion by administrative means.

Another area of concern is the reason why a person or an authorized officer has to apply to the Court under rule 21(1) or 21(3) of the new Order 117A to release the seized property, when the period for which the seized property could be detained has expired.

On application for compensation under section 18 of the Ordinance and rule 25 of the new Order 117A, some members have expressed concern that the applicant may not know the person who might have been at fault in carrying out the seizure order or detention order under the Ordinance.

The Administration has pointed out that rule 25 does not purport to impose, by way of rule 25(2)(b), any procedural hindrance against the making of an

application otherwise entitled under section 18 of the Ordinance. Even though the applicant does not specifically name a person who is in default and therefore does not serve the relevant documents in accordance with rule 25(2)(b), this fact alone does not prevent him from proceeding with his claim under section 18 and rule 25 of the new Order 117A. Further, in a case where the applicant does not know the whereabouts of any such other person mentioned such that no address is available for effecting service of the application under section 18, there is a provision of general application in rule 9 of Order 65 that the relevant document need not be served on that person unless the Court otherwise directs or any of the court rules otherwise provides.

Mr President, these are only some of the highlights of the Subcommittee. At the end of the day, while some members are content with the explanation of the Administration, a majority of members believe that the safer course is to move that these Amendment Rules be repealed and reconsidered.

**DR MARGARET NG** (in Cantonese): President, I would like to briefly make a few points in my personal capacity. First of all, the United Nations (Anti-Terrorism Measures) Ordinance (the Ordinance) was amended in 2004 following the enactment of the Amendment Ordinance. The Administration spent five years (actually more than five years) on drafting the Amendment Rules now under our discussion. However, the Administration required this Council to complete the scrutiny of the Amendment Rules in just a month or so. Such a request was highly irresponsible and unfair to Members of this Council.

President, the Ordinance actually confers very great powers on the authorities and these powers have a bearing on the property and liberty of the public. It is necessary for this Council to study the provisions clearly, so as to ensure that the public are provided with the necessary protection and to strike the most reasonable balance between anti-terrorism measures and the protection of the people's rights. It is our duty to do so. This is why Members are very disappointed that the Secretary requested us to endorse the Amendment Rules hastily on the grounds of responding to the needs of international development. The Secretary, when facing the media, even described Members' views as partisan arguments. That I have to move this motion today to withdraw the Amendment Rules is, I think, very unfortunate.

President, perhaps let me briefly talk about what powers the Ordinance confers on the authorities. For instance, it empowers the Chief Executive to

specify a person as a terrorist or a property as terrorist property. It also gives wide powers to the Secretary for Justice to apply for an order to forfeit such property. However, the only protection given to the public is that where an order is issued, the public can apply for revocation or variation of the order under other provisions of the Ordinance. It is therefore necessary to strike a balance between them. Given the time constraint of the legislative exercise, there was still a lot of room for improving the Ordinance. We hope that the inadequacies will not be extended, and that any imperfections identified in future can be rectified.

Let me cite the "prescribed interest" mentioned in the Amendment Rules as an example. We consider that since its definition will determine who can apply to the Court for a revocation or variation of the order concerned, this term should be given a wide definition, and what is more, it should not be included in the Amendment Rules which are, by nature, a piece of subsidiary legislation. Rather, as a matter of principle, the term should be defined in the Ordinance, because where it is defined will affect the power to make amendments. Therefore, it is better for the definition to be provided for in the Ordinance.

President, we certainly understand that a committee set up to scrutinize rules or subsidiary legislation is in no position to amend any principal ordinance, but we hope that the Administration can at least tell us that it has accepted our views and will introduce amendments when there is a chance to do so in future. But regrettably, the Administration has remained indifferent.

Another example is compensation. If a member of the public is made to suffer loss due to a default on the part of the authorities in respect of an order, under section 18 of the Ordinance, this member of the public can seek compensation under certain circumstances. In fact, there are defects in the Ordinance in that this member of the public is required to point out what fault was made by the authorities, that is, to pinpoint the person on whose part there has been default before he can obtain compensation. When making an order, the Chief Executive would usually have received certain intelligence. But how can the public know the source of such intelligence? For this reason, when making the Ordinance back then, we were very worried that this provision would be virtually useless. But what we consider even more worrying is that the Amendment Rules provide that the summons shall be served on any other person on whose part, it is alleged, there has been default. So, this provision will create an additional barrier, or a procedural barrier.

I wish to cite a third example, an example of refusing to rectify a known mistake. We questioned the Administration why an application for continued detention of seized property must be made *ex parte*? Why does it not require such an application to be made *inter partes*, so that the other party is also made aware that he can have the opportunity to offer reasons before the Court to persuade it to consider not granting approval for continued detention? The Administration responded that this practice is modelled on the Drug Trafficking (Recovery of Proceeds) Ordinance (DTRPO). However, we pointed out that this used to be a provision in the DTRPO, but this provision has already been amended. We therefore asked whether this similar provision in the Amendment Rules should also be amended. President, in its response, the Administration adamantly refused to rectify its mistake.

President, what I wish to point out is that throughout the scrutiny process, the representatives of the Administration and Members were actually able to work together with mutual understanding and a most co-operative attitude. We understand that Hong Kong must discharge its international obligations. We also understand that the making of these rules is a very professional task. Therefore, we do not mean any disrespect whatsoever for the Rules Committee. Given more time, we will certainly be able to do better and put forward ideas that are more refined.

President, there is actually a solution for this Council. This Council knows that when it comes to the negative vetting procedure, Members are given very limited time for scrutiny. But with regard to some very complicated and sensitive rules, our usual practice is to first set up a subcommittee to scrutinize the draft rules, and there will be no gazettal until Members are satisfied. The Administration has nevertheless lost sight of this point, thinking that the Amendment Rules will certainly be endorsed once they are tabled. But even when the Administration noticed mistakes on its part, it still adamantly refused to withdraw the rules, and I find this most regrettable.

President, fighting against terrorism has always been a highly controversial issue in all places, and a balance must be struck on some key issues. The enactment of these rules has now reached the final stage, so, we must keep a close watch on them. This is what we must do. Even if the rules are withdrawn, the Rules Committee has to re-examine them and we have to make all the explanations again — the Administration said that it had provided explanation but it did not say that Members were satisfied with its explanation — so long as we have the time, these can all be done. So, President, I call on ..... (*The buzzer sounded*)

**PRESIDENT** (in Cantonese): Dr NG, you have used up all your speaking time. Please finish your speech as soon as possible.

**DR MARGARET NG** (in Cantonese): Thank you, President. President, I call on Members to support the motion proposed by me to withdraw the Rules, so as to allow more time for more detailed scrutiny of the Rules. Thank you, President.

**Dr Margaret NG moved the following motion:**

"RESOLVED that the Rules of the High Court (Amendment) Rules 2009, published in the Gazette as Legal Notice No. 186 of 2009 and laid on the table of the Legislative Council on 14 October 2009, be repealed."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by Dr Margaret NG be passed.

**SECRETARY FOR SECURITY** (in Cantonese): President, the Legislative Council enacted the United Nations (Anti-Terrorism Measures) Ordinance (the Ordinance) in 2002 and subsequently enacted the United Nations (Anti-Terrorism Measures) (Amendment) Ordinance 2004 in July 2004. The amended Ordinance serves, firstly, to give full effect to the United Nations Security Council Resolution (UNSCR) 1373 in relation to fighting against terrorism; secondly, to implement the Special Recommendations of the Financial Action Task Force on Money Laundering (FATF) relating to measures and requirements targeting the financing of terrorism; and thirdly, to implement other international conventions against terrorism.

I must stress that the objective of the Ordinance is to fulfil the international obligations of Hong Kong under UNSCR 1373, FATF Special Recommendations and other international conventions against terrorist activities. The ambit of the Ordinance is not arbitrarily decided by the authorities.

Recently, it has been reported in the press that the Ordinance has not come into effect over the past seven years since its enactment in 2002. I have to stress that the majority of the provisions of the amended Ordinance have taken effect

one after another since 2002 and 2004. Since sections 5, 6, 8, 12A to 12J, 13, 14, 15, 17 and 18 involve applications to the Court, they can be brought into full operation only after this Council has voted for the passage of the relevant court rules today. In fact, since the Rules of the High Court (Amendment) Rules 2009 (the Amendment Rules) involve extensive and complicated court and other statutory procedures, they warrant careful consideration and detailed studies. The making of the Amendment Rules was completed in September 2009, and the executive authorities subsequently tabled the Amendment Rules to the Legislative Council for scrutiny on 14 October 2009.

Let me reiterate here that the Rules Committee of High Court (the Rules Committee) has already completed the making of the Amendment Rules. The provisions to be brought into force pursuant to the enactment of the Amendment Rules mainly involve the requirements for making applications to the Court for the purpose of combating terrorist financing. These applications aim to specify a person as a terrorist or terrorist associate, or specify a property as terrorist property, forfeit terrorist property and investigate crimes relating to terrorists through applications to the Court for an order or warrant. Besides, there are provisions in the Amendment Rules to ensure that the affected persons can apply to the Court for revocation or variation of an order and even apply to the Court for an order of compensation.

The purpose of the Amendment Rules is to add a new Order 117A to the Rules of the High Court (Cap. 4 sub. leg. A) (the principal Rules), setting out the procedures for applications to the Court of First Instance under the Ordinance.

Furthermore, the Amendment Rules also amend Order 1, rule 2(3) of the principal Rules to ensure that other provisions of the principal Rules, if appropriate, apply in respect of applications that may be made under the Ordinance. Section 2 of the Ordinance provides that for the purposes of the Ordinance, a person having a "prescribed interest" in any property is deemed to be a person by, for or on behalf of whom the property is or was held, and that rules of court may prescribe the meaning of "prescribed interest". Accordingly, the Rules Committee has set out the meaning of "prescribed interest" under rule 1 of the new Order 117A.

After the Rules Committee completed the making of the Amendment Rules in September 2009, we submitted the Amendment Rules to the Legislative Council on 14 October 2009. The Legislative Council subsequently set up the

Subcommittee on Rules of the High Court (Amendment) Rules 2009 (the Subcommittee) to scrutinize the Amendment Rules in detail.

Some Members said that the Government did not allow sufficient time for the Subcommittee to scrutinize the Amendment Rules. I do not agree to this. In fact, the Subcommittee scrutinized this subsidiary legislation, the Amendment Rules, by the negative vetting procedure. Totally seven meetings were held during the extended scrutiny period of "28 days plus 21 days" to complete the scrutiny of the Amendment Rules. I wish to take this opportunity to thank the Chairman and members of the Subcommittee for their efforts as well as the views given to us in the process.

During the scrutiny of the Amendment Rules, apart from attending the meetings to thoroughly explain the contents of the rules to members, we also provided the Subcommittee with seven information papers within a very short time at its request, so to ensure that each and every query raised by members was properly addressed.

I have to stress that the provisions of the Ordinance were made in the light of the international obligations and international standards that Hong Kong must meet, and reference was made to the anti-terrorism laws of other major common law jurisdictions. The Ordinance was endorsed by the Legislative Council after scrutiny by the relevant Bills Committee. The Amendment Rules on which Members will vote today are made after detailed studies by the Rules Committee by virtue of the powers conferred on it by the Ordinance.

During the scrutiny of the Amendment Rules, Members put forward many valuable views on the specific operational details of some rules. Having carefully examined Members' views with the Department of Justice, we can confirm that the relevant rules are valid and appropriate. In fact, the making of Amendment Rules has taken account of the existing Rules of the High Court, and definitions in line with international standards are adopted. Besides the Amendment Rules also tie in with the overall legislative framework of the Ordinance and can effectively implement the relevant sections of the Ordinance.

Even though the Amendment Rules are confirmed to be valid and appropriate, we are willing to listen to views and accept constructive proposals from some Subcommittee members provided that the integrity of the Amendment

Rules is not compromised. And, it will implement the relevant proposals through enhanced administrative measures when the relevant provisions of the Ordinance and the Amendment Rules take effect. These proposals include, firstly, serving a notice on the holder of seized property of the intention to apply to the Court for continued detention of the property; secondly, publishing on the Government's webpage a notice of intention to make an application to the Court to specify terrorists or terrorist property, and a notice of applying for the forfeiture of terrorist property; and thirdly, publishing on the Government's webpage the notice of revocation of order by the Court of First Instance.

As I mentioned earlier, while the Ordinance was enacted in 2002 and amended in 2004, a number of major provisions against terrorist financing have not come into force because the necessary court rules have not yet been made. President, we hope that Members will understand that it is imperative for Hong Kong to make these court rules as soon as possible for the purposes of the Ordinance, so as to expeditiously give effect to the relevant sections which have not yet been brought into force, thereby fulfilling Hong Kong's international obligations under UNSCR 1373 and the Special Recommendations of the FATF.

In fact, the FATF completed in 2008 an evaluation of Hong Kong's compliance with the international obligations and standards regarding anti-money laundering and combating the financing of terrorism. In respect of four major or key recommendations relating to terrorist financing, Hong Kong's rating is only "partially compliant", which is not up to par. A main reason for this is that the major provisions of the Ordinance have not yet been brought into force. In contrast, most other member states or territories of the FATF have achieved a rating of "largely compliant" in respect of the relevant recommendations.

In April 2010, Hong Kong must submit to the FATF the first progress report on the actions taken or planned to be taken to address the inadequacies pointed out in the evaluation report. In this connection, we hope that with Members' support, the Amendment Rules can be endorsed as soon as possible, so that the relevant sections of the Ordinance currently not in force can take effect as soon as possible.

The resolution proposed by Dr NG today to repeal the Amendment Rules, if passed, will prevent us from fully fulfilling our international obligations, thus

subjecting us to criticisms by the FATF and the international community. This will in turn jeopardize Hong Kong's reputation and position as an international financial centre and a responsible member of the international community.

For the reasons that I have stated above, the early enactment and implementation of the Amendment Rules is a matter of extreme urgency.

President, the resolution proposed by Dr Margaret NG to repeal the Amendment Rules will directly prevent us from fully implementing the Ordinance, thus rendering Hong Kong unable to fully discharge its international obligations under the UNSCR 1373 and the FATF Special Recommendations. I urge Members to oppose Dr NG's resolution.

Thank you, President.

**MR JAMES TO** (in Cantonese): President, sometimes when I see the behaviour of those Members belonging the League of Social Democrats, I cannot help showing disapproval. But when I saw what the Government did during the scrutiny of the legislation, when I saw its intransigence unreasonable acts, I sometimes really wondered how I should react.

President, as I listened to the Secretary just now, I frankly got more and more incensed. He said that Hong Kong would be in big trouble in April 2010, because the international community would condemn us for failing to complete the task of enacting anti-terrorism legislation. As Dr Margaret NG has pointed out, the legislation was enacted in 2004. Back in 2004, there was the same haste, as Members were likewise given just a few months to complete the task. Well, to put it plainly, the Government gave us just a few months, not bothering whether we could complete scrutiny in time. Its only intention was to "hand in its homework". Such was the behaviour of our Government. Such has been the behaviour of the Government since 1997.

This time around, it has acted in the same way again. The legislation was enacted in 2004, and the Government must have the Amendment Rules passed by April 2010. So, it did not submit the Amendment Rules to the Legislative Council until September or October this year. The Government had by that time worked on this legislation for five years. What has it done? Then, the

Government gave us two months. After that it claimed that it had scrutinized the legislation with us for seven times and had been provided with good advice. But while it said that it had accepted our views, it still worked in the same way. Why? In the past, when we took great pains to polish a bill to make it better during the deliberations of a Bills Committee, the Government would listen to good opinions. It would take such opinions into consideration and then respond to them. We would consider the legislation together in a positive manner.

This time around, the Government's response is something like this: Oh, you have taken great pains to polish it, haven't you? Sorry, we must get the bill passed by April 2010 and we have already given you two months. Now that you have made your point, let's call it a day.

This is how things are like now. The Government's only intention is to rush things through. It simply wants to make all the decisions by itself, and only wants to "hand in its homework". It has worked on the legislation for five years. But what has it done? What has the Secretary done? It simply gave us two months, throwing the Amendment Rules at us, making us scrutinize them like beggars.

President, let me cite just one example. Dr Margaret NG has cited many examples. According to the rules, the relevant documents must be submitted to the Secretary for Justice, and this is a mandatory requirement. But I asked the Government what was to be done if the one to be declared a terrorist was the Secretary for Justice. Are we supposed to submit the documents to him all the same? Certainly, Members will say that this is impossible. How can the Secretary for Justice be a terrorist? That is impossible, they will think.

We must think from all possible perspectives. What are we going to do if such a case really happens? How should the relevant rule be written? The expression "applicant" should be used, and the "applicant" should be the Chief Executive, as the Chief Executive is actually the "applicant" with the Secretary for Justice acting on his behalf only. Ultimately, the applicant should be the Chief Executive. The rules provide that the relevant documents should be submitted to the Secretary for Justice, but if the Secretary for Justice is declared a terrorist, the documents must have been submitted to a lawyer on fiat for declaring the Secretary for Justice as a terrorist. In that case, if the application is made *ex parte*, how can the documents still be handed to him? This is indeed

unreasonable and absurd. I made this point to them at that time, but the Government declined to respond, saying that it would figure out a way if such a case arose. What are we going to do if this really happens? If this happens, is the applicant (who is the Chief Executive) supposed to act against the rules? Or, could it be that there will simply be no rule to follow, thus making it impossible to declare the Secretary for Justice as a terrorist or owner of property? How can this be possible? The example I have just cited is only the most absurd case that may arise.

President, we very much respect the Rules Committee of the High Court because it is composed of many judges and representatives of the legal profession. But we think that this is a dilemma. Dr Margaret NG and I both come from the legal profession. We understand that there are some very basic bottomlines, and no matter how difficult it is, we must respect these bottomlines. This is why we put forward all the views we had, hoping that when the Secretary for Security went back, he could humbly say that the Legislative Council had expressed some specific opinions and viewpoints and ask the Government to give more thoughts to the matter. But the Government refused to do so. Is it God? Is the Rules Committee of the High Court God? Is it flawless and infallible? Our only intention is just to put forward our views for its consideration.

What the Government now thinks is that nothing must stand in its way. This mentality is indeed very bad, and with such a frame of mind, it is simply not going to reason things out with us. The Government's bottomline is to get the legislation passed, come what may. "Buddy", just get the legislation passed first. But the Government has made no promise to amend the legislation. It has made no promise to introduce amendments to it. This is what the Government is like. The Government is executive-led with Secretary Ambrose LEE keeping the reins in his hands. He insisted on his own views. His views, Secretary Ambrose LEE's views, are also the views of the Chief Executive — where there is the Chief Executive, there is the Secretary — This is their mindset; this is the mindset of the entire Government, from top to bottom.

President, no wonder our Justice WOO ..... That report on wiretapping is tabled to this Council today and it again concerns Secretary Ambrose LEE. And, there is also the Commissioner of the Independent Commission Against Corruption. The Principal Investigator turned a blind eye to mistakes made by his subordinate, and this was tantamount to ignoring the existence of Justice WOO and all the rules. The subordinate thought that he could carry out

wiretapping and could even tap the dialogues with a lawyer. This was what happened. With a Government which behaves in such a way and with a Secretary who behaves in such a way, why should their subordinates bother about other people? Why should they care about Justice WOO? Why should they care about the Commissioner on Interception of Communications and Surveillance? If I were their subordinate, I would even say, "Why should I not destroy the evidence and eliminate just everything?" This is what the Government is now like.

President, what I consider most infuriating is that some people described the whole thing as a partisan struggle. What partisan struggle are they talking about? Which party was fighting with which party anyway? How can they say anything like this? Our very good intention is treated as malice. We made an effort to polish ..... What the Government did in the past was that no matter what, as long as "you scored a point", that is, as long as you identified any flaws or loopholes, the Government would listen to such views and after listening to the views, it would revise its proposals and submit a paper to introduce amendments. What is so undesirable now is that the Government claims that there is a constraint, the constraint that no amendment can be made because these rules are made by those "Honourable Gentlemen" of the Court. In fact, this is exactly why we asked the Government to take the rules back to them, so that they could themselves make adjustments and improvements to the rules. We were not asking the Government to tell them that they had made mistakes. Rather, we only asked it to tell them that we had identified some areas for improvement. The Government can simply tell them this.

We have no intention of interfering with the Court. We have not tried to interfere with their internal operation. If we are to follow the Government's advice, is the legislature supposed to accept, endorse and rubber-stamp all the rules made by the Rules Committee? No. The "Honourable Gentlemen" all understand the principle of separation of powers, and that this set of rules made by them have to be enacted by this Council. So, in no way can this be offensive to them. But officials attending the meetings of the Subcommittee were very frightened. I wonder if the Secretary shares their view. They said that in all circumstances, no amendment could be and should be made, because the Court had considered the rules for a long time, and so on and so forth.

But they are not God. They are not flawless and entirely free of inadequacies. This Council does not always have to endorse whatever they propose. This is not the case. You must tell them that a forbearing, discerning

and broadminded Rules Committee of the High Court should be grateful to this Council. They should welcome the amendments we propose and even say that they are sorry for not noticing these problems. Yet, they need not make an apology openly or whatever. The important thing is that whenever they think that the points raised by us are reasonable, they can consider them and then make amendments accordingly. This is not going to affect our respect for each other or the dignity of either side; nor is it going to affect efficiency or the validity of the rules.

However, this is what the present situation is like. The Government thinks, "I have enough votes, and as long as I have enough votes from the pro-government parties, everything would be fine and all the problems would be solved, right? I can simply ignore everything else." If they behave like this, if they behave like this on this piece of legislation and another piece of legislation, and if they do the same to the legislation on wiretapping and to the legislation on the Independent Police Complaints Council, ..... If, even on these very simple, technical issues, Members are still treated like this when trying to help them do better and give them some advice, I cannot help wondering whether it is the intention of our Government to force all Members to take some very drastic actions. What is meant by co-operation between the legislature and the executive? In a bills committee, what we do is the least political, as everyone actually works for a common goal.

I have been serving the Panel on Security for many years. I certainly understand that these are important matters, but there is no reason for the Government to work on them for five years and then give us just two months for scrutiny. What attitude is this? What does the Government take this Council for? How does it perceive the relationship between the executive and the legislature? It is alright that people do not see eye to eye with each other, as long as sufficient time is allowed for the other side to think and put forward good opinions. The important thing is that mistakes can be corrected, further improvement is sought when there are none, and sound principles are adhered to. But it is absolutely unreasonable for one side to consider the matter for five years, drag its feet for five years, and then give the other side only two months, asking it to take it or leave it, and telling it that as long as there are enough votes, its existence will be ignored. I think this is exactly the behaviour of the Government now.

President, I do not want to suffer a stroke in the middle of my speech. I still have to get married.*(Laughter)* If things go on like this, the consequences would be very serious because if this is the approach adopted for one piece of

legislation after another, I really do not know what will happen in future. Will this approach be adopted indiscriminately in all cases? Will this approach be adopted even for handling technical amendments, or amendments of a reform nature or issues of a non-political nature?

We are not talking about a minimum wage level. Nor are we talking about anything relating to the constitutional system. If we are talking about these issues, I would have nothing to say. I would have nothing to say if we are talking about enacting legislation on the implementation of Article 23 of the Basic Law, right? What is involved here is not of a technical nature either. Some parts of the Amendment Rules may involve political issues, but the parts under discussion are not political at all.

So, I urge the Chief Executive and the Secretary not to allow themselves to drag their feet for five years and then give the Legislative Council a mere two months to work. Could they please give us sufficient time to think? It is only in this way that more colleagues can put forward good opinions to the Government for relaying to the relevant committee of the High Court for its consideration. President, it is the executive authorities, not the Rules Committee or the High Court, who should take up the greatest responsibility. They worked on this for so long and then gave so little time to the Legislative Council for scrutiny, thus resulting in such dreadful consequences. The executive authorities should be condemned and they should assume political responsibility.

**MS CYD HO** (in Cantonese): President, the very great haste characterizing the present legislative process and approach is actually a repetition of what happened before. I remember that in 2002, the scrutiny of the primary ordinance was also conducted in a very hasty and haphazard manner, with the result that printed copies of the amendments could not even be made available in good time, and government officials had to read out the amendments in the Bills Committee for Members to write down by themselves for scrutiny. The then Secretary for Security, Mrs Regina IP, who is a Member of this Council now, said, "If we do not pass the legislation, we will let China down, we will let the United States down, and we will let the United Nations down." After the hasty enactment of the ordinance, we are here to amend the Rules now, and seven years have since lapsed. In the beginning, we naturally hoped that a positive vetting procedure could be adopted, but our amendments would only be voted down given so many pro-government votes in the Council. So, the negative vetting procedure was then adopted.

In spite of this, if the Government was at all sincere in holding discussions with the Legislative Council, it could still adopt the method suggested by Dr Margaret NG earlier on. What I mean is that a Subcommittee can first be set up for holding discussions with us, so as to forge a consensus on the various details and give the community sufficient time for discussion. Then, even if our disagreement with the Government is still voted down, we will have no complaint. Although seven meetings were held and we had the opportunity to examine all the rules, there was insufficient time for the public to conduct any focused discussion. The only option is to enact the Amendment Rules hastily in the Legislative Council. Such a legislative process with no public participation and discussion is unsatisfactory. For this reason, if our opposition is really of no avail today, I can only say that it is the result of autocratic rule and hegemony and the fact that the Legislative Council cannot fully represent public opinions.

We often make reference to the legislative processes in overseas countries, saying that there are such laws in foreign countries, and that the laws were enacted a long time ago. When we talk about empowering provisions, that is, provisions conferring powers on the executive authorities, we make reference to overseas practices. But when it comes to the fundamental issue of establishing a democratic political system, we are always unwilling to follow overseas practices. In overseas countries, executive authorities can be given very extensive powers, but there may be sunset provisions, under which the legislation concerned will be reviewed after a specified period of time. There are also democratic elections to serve as the biggest, the final, and the most effective monitoring device. Besides, as there can be a change of government and a change of the ruling party, the executive authorities will be cautious and restrained in exercising their extensive powers. However, such a fundamental sharing of powers and a contractual relationship with the people do not exist in Hong Kong. This is why we must be especially careful and prudent in scrutinizing such empowering provisions.

President, I wish to focus on one example, an example relating to the seeking of compensation by an aggrieved person. Regarding the Amendment Rules, specifically, rules 25(2)(a) and 25(2)(b), the authorities can actually add clarity to the rules, so that the aggrieved person can more easily and more clearly define his interests in seeking compensation. Under the proposed rules, the aggrieved person is required to serve an affidavit on the Secretary for Justice and any official on whose part, as the aggrieved person thinks, there has been default. However, will the aggrieved person know which officials are at fault? As a lot

of the information is confidential, it is basically impossible for the aggrieved person to know who has been at fault. So, during our discussion, we asked the authorities whether they could write it down more clearly that the aggrieved person does not need to meet this requirement of serving an affidavit on the two officials. At the meetings of the Subcommittee, officials from different departments gave us two different answers. An official from one department said that serving an affidavit only on the Secretary for Justice would suffice, but another department insisted that an affidavit must be served on both officials. In this connection, we told the relevant officials at the time that we would like the Secretary to give a clear explanation and make a clarification on this point in his speech today. But as I heard clearly just now, the Secretary did not address this issue.

Therefore, President, first, I request the Secretary to clarify this point when he speaks again later; and second, I support the motion proposed by Dr Margaret NG today and oppose the enactment of the Amendment Rules.

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

**MS MIRIAM LAU** (in Cantonese): President, the Amendment Rules were made by the Rules Committee of the High Court by virtue of the powers conferred by section 54 of the High Court Ordinance and section 20 of the United Nations (Anti-Terrorism Measures) Ordinance (the Ordinance). According to the Administration, there is a pressing need to enact the Amendment Rules because the relevant international organizations have urged Hong Kong to expeditiously give effect to those sections of the Ordinance currently not in force in Hong Kong, in order to fulfil the international obligations required of Hong Kong. Therefore, members of the Subcommittee have worked very hard and seriously scrutinized the Amendment Rules within the very limited timeframe.

Some members do not agree to the provisions of the Amendment Rules and the approach adopted by the Government. Just now, three Members expressed their views. For instance, in relation to the definition of "prescribed interest", they questioned whether it should be incorporated into the primary ordinance or the subsidiary legislation.

With regard to the handling of the definition of "prescribed interest", the Liberal Party is of the view that the key issue concerns whether the legal effect is

the same in both cases. Under the present proposal, the definition is placed in the subsidiary legislation. Various studies have confirmed that this will not alter the legal effect, so the Liberal Party does not see anything wrong with the way it is now handled, nor do we think that this will undermine the interest of the affected persons. We also note that the wording used in the proposed definition of "prescribed interest" in the Amendment Rules is in line with international standards, and that its coverage has been made as wide as possible, so that more people can be protected. The Liberal Party considers this appropriate.

In scrutinizing the Amendment Rules, the Liberal Party adopts the principle that consideration must be given to their practicability and effects on the public. In the course of the scrutiny, we noticed that as the Amendment Rules proposed different arrangements or requirements for the notice periods in different proceedings, the people concerned might be confused, and this was not very satisfactory. However, the Government explained that the time limits were basically consistent with those prescribed in other existing rules of the High Court. As a result, it explained, it might be even more improper to adopt different standards in the Amendment Rules. The Liberal Party appreciates that it might require "a large-scale surgery" to rationalize these requirements. We consider that as these are not issues of principle but may just be areas where improvement is called for, we do not insist on making an amendment to the Amendment Rules.

After deliberations, we consider that the provisions of the Amendment Rules are basically reasonable and practicable, and they can also provide adequate protection to the affected persons. The Administration has also accepted the views put forward by some members, such as adopting administrative measures for serving a notice. The Liberal Party considers that the Amendment Rules should be enacted first. If inadequacies are really identified in the course of implementation in future, further amendments can be introduced, or steps can be taken at an appropriate time to improve or rationalize the provisions. Members must bear in mind that after the enactment of the Amendment Rules, the Administration will still have to submit the code of practice in connection with section 12A to the Legislative Council, and it is only after the endorsement of the code that those sections of the anti-terrorism law currently not in force can take effect. And it is only in this way that a report can be submitted in time to the international task force in April 2010.

Summing up the various factors mentioned above, the Liberal Party considers that we, being a political party with commitment to Hong Kong, should

support the passage of the Amendment Rules, so that Hong Kong can meet the international requirements and fulfil its international obligations of fighting against terrorist activities. It is, after all, not our wish to see Hong Kong being criticized as the weakest segment of international anti-terrorism efforts.

President, I so submit.

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

**MR LAU KONG-WAH** (in Cantonese): President, today, I speak on behalf of the Democratic Alliance for the Betterment and Progress of Hong Kong against the resolution proposed to repeal the Amendment Rules. I was also a member of the Subcommittee and I also attended its meetings. I do not quite agree to the comment made by some members earlier that the scrutiny was conducted in a hasty manner.

In fact, the deliberations were conducted according to the usual procedures and in a manner which is completely the same as that for scrutinizing other legislation. It is true that seven meetings were held in less than a month, but at the seven meetings, the Amendment Rules were examined one by one, and on seven occasions at different times in the process, we received the papers submitted to us by the Government in a prompt manner. We were able to study each and every provision in detail, in very much the same way as we scrutinize other legislation or subsidiary legislation. We are all used to the fact that when it comes to a certain point in the process, Members will invariably hold different views because we may see things from different angles. Even when it comes to the striking of a balance, the different standpoints of Members will lead to different conclusions. This is only normal.

The most important point is that the deliberations were conducted in strict accordance with all procedures. We studied all the provisions and listened to the Government's explanation. Some Members supported the proposals and some Members opposed them. But I think this is only normal. Disagreements were not about any issues of principle. The executive authorities can perhaps do better and Members have already put forward many views in this regard. Indeed, we have heard the Secretary mention some supplementary administrative measures today in response to the views expressed by Members during the

deliberations. For this reason, I do not agree with some Members who criticize the Government for being intransigent. In fact, the Secretary has already told us how administrative improvement can be made.

Earlier on, a number of Members mentioned the definition of "prescribed interest". President, I tried not to listen solely to the explanation given by the Government, and I looked up the minutes of meetings and reports of the Legislative Council at the time — President, as you also know, in 2002, I was the Chairman of this Bills Committee concerned. In paragraph 25 of the report on the anti-terrorism legislation prepared by the Legislative Council Secretariat in 2002, it is stated, "The Administration's reply is that these rules would be made by the Rules Committee, and they are subsidiary legislation subject to the scrutiny of the Legislative Council under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1)." This paragraph is actually about prescribed interest and all is explained very clearly. It was already stated at that time that the Court would make the rules at a later time for scrutiny by the Legislative Council. It is simply not true that the issue was never discussed and has been brought up all of a sudden. Some Members now want to trace back to the principal ordinance. I think this may not be necessary.

More importantly, Ms Miriam LAU mentioned earlier the question of whether the definition should be provided for in the principal ordinance or subsidiary legislation. This question was actually discussed repeatedly in the Subcommittee. In fact, the legal effect will not be different in either case. Since the effect will be the same and the definition is based on international standards, under such circumstances, why should it be necessary to trace back to the primary ordinance? It is indeed inappropriate for us to dwell on this issue any further.

President, what is more important is that as also pointed out by a number of Members earlier, both the primary ordinance back in 2002 and the amendments in 2004, and even the Rules today, are actually intended to respond to Resolution 1373 adopted by the United Nations after the 911 incident. President, I would like to read out a paragraph of the Resolution (which was endorsed by the United Nations in 2001). Paragraph 1c reads, "Decides that all States shall freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the

direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities." President, it is stated very clearly here that all countries and territories should do so without any delay.

It has been seven years since the enactment of the principal ordinance in 2002. Therefore, I think the Amendment Rules must be enacted today, so that our anti-terrorism law can practically, comprehensively and fully give effect to this Resolution. Indeed, fighting terrorism is a duty of all countries in the world. Some Members asked earlier why such great powers should be provided. There is only one reason for this, and that is, we must fulfil our obligations. Hong Kong is a member of the international community, and when facing the duty and obligation to fight terrorism, we should do our part without any hesitation. So, I do not think that we should delay any further on this issue. Of course, as to how the provisions can be written in a better way, there are indeed different ways to do so from different angles. So, President, I support the passage of the Amendment Rules and oppose the resolution on repealing them. Thank you, President.

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

**MR RONNY TONG** (in Cantonese): President, our discussion today is actually about two very important and fundamental principles. So, I do not agree with Mr LAU Kong-wah, who seemed to argue just now that all was about how subsidiary legislation should be handled.

President, the two principles that I wish to talk about are first, how the legislature of Hong Kong should fulfil its duty of protecting the property of individuals; and, second, whether this duty, when being discharged, should be given to an organization other than the legislature.

President, here, I wish to remind colleagues that the importance of the duty that I have just mentioned is underscored in two provisions. Article 29 of the Basic Law clearly provides, "The homes and other premises of Hong Kong residents shall be inviolable. Arbitrary or unlawful search of, or intrusion into, a resident's home or other premises shall be prohibited." The key point here is "arbitrary". Article 105 provides even more clearly, "The Hong Kong Special Administrative Region shall, in accordance with law, protect the right of

individuals and legal persons to the acquisition, use, disposal and inheritance of property and their right to compensation for lawful deprivation of their property." The last paragraph even provides explicitly, "The ownership of enterprises and the investments from outside the Region shall be protected by law."

President, the Basic Law highly respects the property of individuals and their right to enjoy such property. This right is not exclusive to Hong Kong residents; the right of inward investors is also protected.

President, fortunately, Hong Kong is not a place where terrorists are active. Certainly, we appreciate that as a member of the international community, we have the duty to provide support to other places in combating illegal elements, especially terrorist acts and resources. But it is precisely because the situation in Hong Kong is not pressing, not marked by any rampant terrorist activities, that we do not have to rush along to meet any urgent legislative deadline. What we have to discuss now is not whether the legal provisions or legal procedures should be enacted, but the question of which authority should formulate and uphold the legal procedures concerned.

President, what we are talking about is the fact that during its last term, the Legislative Council enacted a principal ordinance which empowers the Judiciary to formulate a piece of subsidiary legislation to provide for the judicial procedures and legal basis whereby the Government can apply for the forfeiture of private property. President, this is where the problem lies. I think that since the Basic Law accords so much respect to the duty of protecting property, this duty should not be lightly given to a Rules Committee set up by the Judiciary for drawing up judicial procedures.

President, I was not involved in the enactment of the principal ordinance. I do not mean that the colleagues who took part in it must have done something wrong or right. I think every person may make mistakes, and this is especially the case with Members of the Legislative Council. This is not the point. The point is that in any term of the Legislative Council, if any Members consider that there is a problem with the legislative procedures, particularly when the problem involves whether due importance is attached to the important rights safeguarded by the Basic Law, I believe very strongly that it is our duty to raise this problem and tackle it properly.

President, this is precisely the problem we are facing today. I think that the Legislative Council should handle such a solemn and important right through

the normal legislative procedures, rather than allowing the legal provisions to be passed lightly as subsidiary legislation under the negative vetting procedure. President, I think this is a question of how the Legislative Council discharges its duties and whether the right to property as stressed in the Basic Law is duly respected.

Therefore, President, I support the withdrawal of this subsidiary legislation.

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

(No Member indicated a wish to speak)

**SECRETARY FOR SECURITY** (in Cantonese): President, during the scrutiny of the Rules of the High Court (Amendment) Rules 2009 (the Amendment Rules) and the motion debate just now, some Members asserted and requested that we should consider amending the United Nations (Anti-Terrorism Measures) Ordinance (the Ordinance) to include the definition of "prescribed interest", rather than defining it in the Amendment Rules. However, we see no problem with the validity and appropriateness of prescribing the definition of "prescribed interest" in the Amendment Rules for the following considerations.

First, the Ordinance was passed by the Legislative Council in 2002 after thorough consideration. Section 2(1) defines "prescribed interest" as "in relation to any property, an interest in the property prescribed by rules of court as an interest for the purposes of this Ordinance";

Second, section 20(1)(e) of the Ordinance authorizes the making of rules of court to prescribe interests for the purposes of the definition of "prescribed interest". As such, to provide a definition of "prescribed interest" in the Amendment Rules is wholly within the scope of the power conferred by the section and is consistent with the provisions of the Ordinance; and

Third, we have made reference to the United Nation Office on Drugs and Crime Model Provisions on Money Laundering, Terrorist Financing, Preventive Measures and Proceeds of Crime (for common law legal systems) 2009. The definition of "prescribed interest" in the Amendment Rules is modelled on the definition of "interest" under section 43(5) of the Model Provisions.

On the basis of the above, it is clear that whether the definition of "prescribed interest" is provided in the Ordinance or the subsidiary legislation of the Ordinance would not affect the legal effect and effectiveness of the definition. Under the Ordinance, it is valid and appropriate for the definition to be provided in the Amendment Rules.

Some Members proposed that the definition of "prescribed interest" be amended, or its definition not to be provided in the Amendment Rules to ensure that the scope of definition is as wide as possible.

Section 2(1) of the Ordinance provides that "prescribed interest", in relation to any property, means an interest in the property prescribed by rules of court as an interest for the purposes of this Ordinance. Section 2(4) of the Ordinance further provides that a person who has a prescribed interest in any property shall be deemed to be a person by, for or on behalf of whom the property is or was held. Furthermore, section 20(1)(e) of the Ordinance stipulates that provision may be made by the rules of court prescribing interests for the purposes of the definition of "prescribed interest". Accordingly, rule 1(4) of the Amendment Rules provides for a definition of "prescribed interest".

The abovementioned provisions show that the legislative intent is clearly to make a definition of "prescribed interest", and the meaning of "prescribed interest" as prescribed by rules of court will provide the basis for the interpretation of the relevant provisions. Given that the legislative intent is clear, if we indefinitely extend the scope of definition or do not provide for the definition of "prescribed interest" in the rules of court, ambiguity is bound to arise in the interpretation of the relevant provisions.

At the meetings of the Subcommittee on the Rules of the High Court (Amendment) Rules 2009 (the Subcommittee), we already explained clearly to members that having considered the impact of the specification order and forfeiture order under sections 5 and 13 of the Ordinance, we consider from policy perspectives that in a situation where the identity of the relevant holder(s) cannot be reasonably ascertained, no application should be made to specify or forfeit the property concerned. The inclusion of "the applicant can reasonably ascertain to be" in the definition of "holder" will make certain the intention that only property of which the holder can be identified will become the terrorist property under sections 5(1)(b) or 13 of the Ordinance.

Besides, the definition of "holder" in the Amendment Rules only applies in the context of an application made under section 5(1)(b) (for a specification of terrorist order) or section 13 (for a forfeiture order). It is a short form for the expression "person whom the applicant can reasonably ascertain to be a person by, for or on behalf of whom the property is held". The use of the definition will avoid tedious repetition of the whole expression in those rules concerning the two types of applications. It does not mean that certain property does not have a holder if the holder or holders of the property cannot be reasonably ascertained. The use of a definition in this manner is quite common in the drafting of legislation.

The purpose of publication of a notice in newspaper is to give notice of the ex parte application to the subject person whose whereabouts are not known to the applicant. Upon having notice of the application, the subject person may, subject to directions of the Court, apply to join the proceedings. In fact, the requirement to publish a notice of application/order/decision/disciplinary orders in newspapers in order to inform the subject persons or any other affected persons is very common in our legislation. For example, section 3(2)(c)(ii)(B)(II) of the Drug Trafficking (Recovery of Proceeds) Ordinance and section 8(3)(c)(i)(B)(II) of the Organized and Serious Crimes Ordinance requires the publication of a notice of application for confiscation of proceeds of drug trafficking or crime.

However, as I mentioned earlier, we have accepted the proposals made by some members of the Subcommittee, and we will implement these proposals through enhanced administrative measures when the relevant sections of the Ordinance and the Amendment Rules take effect.

Some Members consider that the time limit for making a claim of legal privilege as stipulated in rules 16 and 17 of the Amendment Rules in relation to an order under section 12A or 12B, or a warrant under section 12C or 12G, is inadequate.

In the case of an exercise of powers under an order under section 12A or 12B, a certain period of time would be allowed in practice for the person concerned to produce the relevant materials. Therefore, ample studies can be made on the subject of legal privilege before an application has to be made to the Court under rule 16.

As for section 12C, under general circumstances, a warrant for search may only be sought from the Court if attempts to obtain the relevant materials through an order made under section 12A or 12B have become unsuccessful. Under section 12G, a warrant may be issued if there is reasonable cause to suspect that there is terrorist property or there is evidence of a terrorism-related offence in any place. In the circumstances, to allow for a longer period of time for the preparation for a claim of legal privilege may further delay the investigation of the law-enforcement agency.

In fact, according to similar experience of enforcement, the time limit as provided for under rules 16 and 17 of the Amendment Rules is generally adequate for a person to apply for a claim of legal privilege. I also wish to emphasize that the person concerned can apply to the Court for an extension of the time limit under special circumstances.

Moreover, under rule 25(2)(b) of the Amendment Rules, the applicant of an order for compensation made under section 18 is required to serve the summons or expedited originating summons, and a copy of any affidavit in support not less than 14 clear days before the date fixed for the hearing of the application on the Secretary for Justice and on any other person on whose part, it is alleged, there has been default. Some Members are concerned that if an applicant does not know the person who may have been in default in exercising the power in relation to a warrant under section 12G, the applicant may not be able to initiate legal proceedings to seek compensation from the Government under section 18 of the Ordinance.

I hope Members will understand that rule 25(2)(b) of the Amendment Rules is not intended to require an applicant to specify beforehand whether any person has made a mistake or the name of any person who has made a mistake in connection with specifying persons as terrorists/terrorist associates or property as terrorist property, or with the exercise of powers under a warrant issued under section 12G of the Ordinance.

In fact, the right to statutory compensation under section 18 of the Ordinance is premised on there having been default on the part of any person involved in obtaining the specification order and in seizure or detention of property and the applicant has, in consequence of such specification, seizure or detention and the default, suffered loss.

Therefore, rule 25(2)(b) of the Amendment Rules provides for the procedural steps for making an application for compensation, including that the applicant must serve the summons or expedited originating summons on the Secretary for Justice and on any other person on whose part, it is alleged, there has been default. If the applicant considers that there is default on the part of the Government in the course of law enforcement but cannot specify the name of the person in default, he only has to state the evidence in the affidavit and serve the summons or the expedited originating summons on the Secretary for Justice and the procedure is considered to be completed. The rule is not intended to, nor does it have the effect to, deprive the applicant of his right to statutory compensation under section 18 of the Ordinance. If the allegations of default on the part of the Government are sufficiently set out in his application and affidavit in support, the Court will be in a position to adjudicate the applicant's claim for compensation.

In short, even though the applicant cannot specifically name a person who is in default and therefore does not serve the relevant documents in accordance with rule 25(2)(b), this fact alone does not prevent him from proceeding with his claim under section 18 of the Ordinance and rule 25 of the Amendment Rules.

President I wish to reiterate that it is necessary for Hong Kong to make the rules of court for the purposes of the Ordinance as soon as possible, so as to expeditiously give effect to the relevant sections of the Ordinance which have yet been brought into force and fulfil Hong Kong's international obligations under United Nations Security Council Resolution 1373 and the Financial Action Task Force on Money Laundering (FATF).

During the deliberations on the Amendment Rules, members of the Subcommittee put forward views on some rules. After detailed studies, we consider that some of the views are inappropriate. And, we already explained this in detail to the members concerned in the Subcommittee. President, while we respect Members' right to put forward views on improving the provisions of the Amendment Rules, we cannot accept the proposal of a resolution to repeal the Amendment Rules in its entirety.

President, this resolution to repeal the Amendment Rules will deter us from giving full effect to the Ordinance. This will prevent Hong Kong from effectively fulfilling its international obligations and subject Hong Kong to criticisms by the FATF and the international community, which will in turn affect

Hong Kong's reputation and position as an international financial centre and a responsible member of the international community. We consider this inappropriate.

I call on Members again to oppose the resolution proposed by Dr Margaret NG. Thank you, President.

**PRESIDENT** (in Cantonese): I now call upon Dr Margaret NG to reply. This debate will come to a close after Dr Margaret NG has replied.

**DR MARGARET NG** (in Cantonese): President, I have moved this motion to repeal the Amendment Rules mainly because they are very important and I therefore think Members must be given an opportunity to debate the Amendment Rules. During the debate just now, many Members put forward their views, and they made their points very convincingly. So, President, I do not intend to repeat what other Members or myself have said. I just wish to add a few points briefly.

President, I really want to ask the Secretary who should be blamed if we really fail to pass all the necessary legislation speedily to fulfil our international obligations. Since the Secretary has also said that these Rules are so complicated that even the professional Rules Committee had to work on them for several years, why does he think that we can complete the scrutiny in a few weeks or two months?

President, Mr LAU Kong-wah mentioned earlier that the meaning of "prescribed interest" was already endorsed when enacting the principal ordinance. I wish to supplement what he has said. The anti-terrorism legislation was enacted so hastily that many Members did not have enough time to clarify many problems, and there was not detailed discussion, especially in respect of "prescribed interest". I would like to read out the speech made by Ms Audrey EU at that time after she had made a strong protest. She said, "Frankly speaking, Chairman, I think the Bills Committee has not adequately discussed other additions and deletions such as the 'prescribed interest' under discussion now. Although the topic was raised and I had asked some questions, there were too many issues for discussion and we did not have time to discuss what 'prescribed interest' was, how to exercise the relevant power or co-ordinate it with

other laws. We did not have time to discuss these matters at that time". This was what happened then. So, since we still have time today, we should pause for a while and consider whether "prescribed interest" should be defined in the principal ordinance.

President, when enacting legislation, apart from aiming at a smooth process, we must also uphold principles. I have worked very hard in this Council over the years precisely with the objective of making sure that the laws enacted by this Council are satisfactory and in line with the legislative principles concerned. It was in this spirit that the Amendment Rules were scrutinized. Earlier on the Secretary questioned the propriety of vetoing this subsidiary legislation in this way. In fact, had the Administration been co-operative, it would not have been necessary for us to do it this way. President, you may recall that we previously endorsed a more complicated set of rules on reforming the civil procedure of the High Court. This set of rules involved even more problems. But why did we still have adequate time for scrutiny? It was because the Chief Justice fully appreciated that this Council must fulfil its duties, so he was responsive to and supportive of our work. In the end, we endorsed the rules and made some amendments. However, the Chief Justice did not see this as a blow to his dignity. Quite the contrary, he even paid tribute to this Council at the Ceremonial Opening of the Legal Year. President, this is one of the successful examples.

Why do I think that the Amendment Rules involve problems of major principles? Let me cite a simple example. The powers to be exercised by the Government are immediate, substantial and intrusive. As Mr Ronny TONG has said, they affect liberty, property, investment, and so on, which are protected by the Basic Law. These executive powers of the Administration are conferred by the principal ordinance, but once an order is issued, and if a mistake is committed due to haste, the power of the public to apply for revocation is protected only by the subsidiary legislation. Even though the Subcommittee brought up these inadequacies, the authorities merely suggested remedies by way of an administrative order which is not legally binding at all. President, this is against the principles.

I am grateful to Members for speaking on this motion. I hope that what happened this time around will not recur in future, or else this Council will definitely be more stringent in passing principal legislation in the future, and our confidence in the executive will definitely be undermined. This will certainly affect efficiency. I hope that the authorities can repent and go back to the right path. Thank you, President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by Dr Margaret NG 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)

Dr Margaret NG rose to claim a division.

**PRESIDENT** (in Cantonese): Dr Margaret NG has claimed a division. The division bell will ring for three minutes.

**PRESIDENT** (in Cantonese): Will Members please proceed to vote.

**PRESIDENT** (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Dr Margaret NG, Mr CHEUNG Man-kwong and Mr CHEUNG Kwok-che voted for the motion.

Dr Raymond HO, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Ms Miriam LAU, Ms LI Fung-ying, Mr Tommy CHEUNG, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Prof Patrick LAU, Mr CHAN Kin-por, Mr IP Wai-ming, Mr IP Kwok-him, Dr PAN Pey-chyou and Dr Samson TAM voted against the motion.

Mr CHIM Pui-chung and Mr Paul CHAN abstained.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Ms Emily LAU, Mr Albert CHAN, Mr Frederick FUNG, Ms Audrey EU, Mr Alan LEONG, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Miss Tanya CHAN and Mr WONG Sing-chi voted for the motion.

Mr CHAN Kam-lam, Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr WONG Kwok-hing, Mr CHEUNG Hok-ming, Mr CHAN Hak-kan, Dr Priscilla LEUNG, Mr WONG Kwok-kin and Mrs Regina IP voted against the motion.

THE PRESIDENT, Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 23 were present, three were in favour of the motion, 18 were against it and two abstained; while among the Members returned by geographical constituencies through direct elections, 25 were present, 15 were in favour of the motion and nine against it. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the motion was negatived.

**PRESIDENT** (in Cantonese): Proposed resolution under Article 75 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China.

I now call upon Mr TAM Yiu-chung to speak and move his motion.

**PROPOSED RESOLUTION UNDER ARTICLE 75 OF THE BASIC LAW  
OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE  
PEOPLE'S REPUBLIC OF CHINA**

**MR TAM YIU-CHUNG** (in Cantonese): President, I move that my resolution relating to the amendment of the Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region be passed.

An important power and function of the Legislative council is to scrutinize legislative proposals. The Rules of Procedure (RoP) provide for standing arrangements for Members to debate on bills at meetings of the Legislative Council. However, with regard to subsidiary legislation tabled in Council, although they are legislative proposals with legislative effect, where no amendment is proposed, there is no established procedure for Members to conduct a debate and listen to the response of public officials.

A Member who wishes to speak on such subsidiary legislation or instruments can do so only in the form of an address under Rule 21(5) of the RoP but no debate may arise on the address. Although a Member may also do so in the form of a motion debate not intended to have legislative effect or an adjournment debate under Rule 16(4) of the RoP, the speaking time limit in these debates is shorter than that in debates on bills or the amendment of subsidiary legislation or instruments and so, Members may not be provided with sufficient time to express their views. In this connection, the House Committee invited the Committee on the Rules of Procedure (CRoP) to conduct a study on providing a standing arrangement to enable Members to speak on subsidiary legislation or instruments tabled in Council.

After detailed discussion and having made reference to the relevant rules and arrangements of other parliamentary assemblies, such as the Senate of the Australian Parliament, the CRoP proposed that since the House Committee already plays the role of co-ordinating the deliberations of subsidiary legislation and other instruments, it is appropriate for the Chairman of House Committee to present a report on the subsidiary legislation and other instruments to the Council at its meeting immediately before the expiry of the scrutiny period of such subsidiary legislation and instruments, in order to brief the Council on the deliberations of such subsidiary legislation and instruments. If a Member notifies the House Committee that a debate should be held on any of the subsidiary legislation or other instruments, the Chairman of House Committee will give notice of a motion to take note of the House Committee report in relation to that subsidiary legislation or instrument, so as to enable Members to conduct a debate and listen to the response of public officials.

Let me give a brief account of the relevant procedures. Such motion debates will be listed under a new item of business on the Agenda of the Legislative Council, namely, "Members' motions on subsidiary legislation and other instruments made under an Ordinance". This item of business will follow

Government Motions and precede Members' Bills and Members' Motions not intended to have legislative effect.

A Member who wishes to speak on any item of subsidiary legislation or instrument included in a House Committee report should notify the House Committee of his intention to do so at a debate on the House Committee report. If a motion to take note of a House Committee report covers more than one item of subsidiary legislation or instrument, the debate on the motion may be divided into separate sessions, with each session focusing on one or more items of subsidiary legislation or instruments which are related. The arrangement is to facilitate a structured and focused debate as well as the attendance of public officers concerned to respond to Members' views at the debate.

The speaking time limit for each Member is 15 minutes, which is the same as that for debates on bills. Where a debate is divided into separate sessions, the speaking time limit for each Member is 15 minutes in each session of the debate. Besides, the mover of a motion will not have the right of reply, and the motion will not be put to vote after the debate has come to a close.

The CRoP also proposed that if there is a motion to amend an item of subsidiary legislation or instrument, no motion to take note of the House Committee report on such subsidiary legislation or instrument should be moved. This is to avoid having same item of subsidiary legislation or instrument be debated twice in Council.

To give effect to the proposed procedures, the CRoP proposes that the RoP be amended.

The House Committee has expressed support for the proposed amendments as set out in the resolution. I so submit. Thank you, President.

**Mr TAM Yiu-chung moved the following motion:**

"RESOLVED that the Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region be amended —

(a) in Rule 18 —

- (i) in subrule (1)(j), by adding "other than those specified in paragraph (ja)" after "Government motions";
  - (ii) in subrule (1), by adding —
    - "(ja) Government motions on subsidiary legislation and other instruments made under an Ordinance.
    - (jb) Members' motions on subsidiary legislation and other instruments made under an Ordinance.";
  - (iii) in subrule (1)(l), by adding "other than those specified in paragraph (jb)" after "Members' motions";
- (b) in Rule 21 —
- (i) in subrule (3), by adding "and Rule 49D (Presentation of Reports of House Committee on Consideration of Subsidiary Legislation and Other Instruments)" after "Subject to subrules (4) and (4A)";
  - (ii) in subrule (5), by repealing "(5) A Member" and substituting "(5) Subject to subrule (7), a Member";
  - (iii) by adding —
    - "(7) No address shall be made under subrule (5) on any subsidiary legislation or instrument referred to in the report which is the subject of a motion moved under Rule 49E(2) (Motions on Reports of House Committee on Consideration of Subsidiary Legislation and Other Instruments).";
- (c) in Rule 33 —
- (i) by adding —
    - "(2A) In the debate on a motion moved under Rule 49E(2) (Motions on Reports of House Committee

on Consideration of Subsidiary Legislation and Other Instruments), the chairman of a subcommittee formed to study any subsidiary legislation or instrument referred to in the report which is the subject of that motion shall speak in the order as agreed by the House Committee.";

- (ii) in subrule (3A), by repealing "subrule (3B)" and substituting "subrules (3AA) and (3B)";
- (iii) by adding after subrule (3A) —

"(3AA) The mover of a motion under Rule 49E (Motions on Reports of House Committee on Consideration of Subsidiary Legislation and Other Instruments) shall not speak in reply.";

- (iv) in subrule (3B), by repealing "or Rule 16(4) (Motions for the Adjournment of the Council)" and substituting ", Rule 16(4) (Motions for the Adjournment of the Council) or Rule 49E(2) (Motions on Reports of House Committee on Consideration of Subsidiary Legislation and Other Instruments)";
- (v) by adding —

"(3C) In the debate on a motion moved under Rule 49E(2) (Motions on Reports of House Committee on Consideration of Subsidiary Legislation and Other Instruments) —

- (a) subject to paragraph (b), the President shall call upon designated public officers attending the debate to speak when no more Member indicates his intention to speak on the motion; or

- (b) if the debate is divided into sessions, the President shall call upon designated public officers attending a particular session to speak when no more Member indicates his intention to speak in that session.";
- (vi) in subrule (4), by repealing "The President" and substituting "Except as provided in Rule 49E(9) (Motions on Reports of House Committee on Consideration of Subsidiary Legislation and Other Instruments), the President";
- (d) in Rule 38(1), by adding —
  - "(fa) upon a motion to take note of a report of the House Committee as provided in Rule 49E(8) (Motions on Reports of House Committee on Consideration of Subsidiary Legislation and Other Instruments); or";
- (e) by adding —

## "PART JB

### REPORTS OF HOUSE COMMITTEE ON SUBSIDIARY LEGISLATION AND OTHER INSTRUMENTS AND RELATED MOTIONS

#### **49C. Application of this Part**

In any matter not provided for in this Part, the Rules in other Parts shall apply as appropriate.

#### **49D. Presentation of Reports of House Committee on Consideration of Subsidiary Legislation and Other Instruments**

With the permission of the President, a report of the House Committee on the consideration of subsidiary

legislation and other instruments which have been laid on the Table of the Council and are subject to amendment by the Council may be presented to the Council by the chairman of the House Committee at the Council meeting immediately before the expiry of the period for amendment in accordance with section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) or the relevant provision in the Ordinance under which the subsidiary legislation or instrument referred to in Rule 29(2) (Notice of Motions and Amendments) is made or, if the period is extended, immediately before the expiry of the extended period.

**49E. Motions on Reports of House Committee on Consideration of Subsidiary Legislation and Other Instruments**

- (1) (a) A Member may, at a meeting of House Committee held in or not later than the week preceding the Council meeting at which a report is presented under Rule 49D (Presentation of Reports of House Committee on Consideration of Subsidiary Legislation and Other Instruments), notify the House Committee that a debate should be held on any subsidiary legislation or instrument referred to in that report, provided that the Member has conveyed his notification to the clerk to the House Committee as an agenda item for that meeting of House Committee.
- (b) If there is no meeting of House Committee in the week preceding the Council meeting at which a report referred to in paragraph (a) is presented, notification that a debate should be held shall be conveyed to the clerk to the House Committee not later than 6 clear days before that Council

meeting, unless notification has been made at an earlier meeting of House Committee.

(2) Upon receipt of the notification that a debate should be held, the chairman of the House Committee shall, after notice has been given not less than 2 clear days before the Council meeting at which a report is presented under Rule 49D (Presentation of Reports of House Committee on Consideration of Subsidiary Legislation and Other Instruments), move a motion to take note of that report in relation to any specific item of subsidiary legislation or instrument:

Provided that the President may in his discretion dispense with such notice.

(3) If the chairman of the House Committee will not be present to move the motion referred to in subrule (2), the deputy chairman of the House Committee shall give notice and move that motion and in the event that both of them will not be present, the Member who will be present at the Council meeting referred to in subrule (2) and has the highest precedence in the order of precedence of Members as determined in accordance with Rule 1A (Precedence of Members) shall do so.

(4) A motion under subrule (2) shall be moved in the following form:

"That this Council takes note of Report No. (serial number) of the House Committee laid on the Table of the Council on (date of Council meeting at which the House Committee report is laid on the Table of the Council) in relation to the subsidiary legislation and instrument(s) as listed below:

<u>Item Number</u>	<u>Title of Subsidiary Legislation or Instrument</u>
--------------------	--

(item number)	(title of subsidiary legislation or instrument on which debate should be held under subrule (1) and the notice number or reference in the Gazette)."
---------------	--

(5) No amendment may be moved to a motion moved under subrule (2).

(6) If notice has been given under Rule 29(2) (Notice of Motions and Amendments) to amend any subsidiary legislation or instrument, no motion shall be moved under subrule (2) in relation to that subsidiary legislation or instrument.

(7) If the motion relates to more than one item of subsidiary legislation or instruments, the debate on that motion may be divided into sessions each of which relates to one or more items of subsidiary legislation or instruments.

(8) Subject to Rule 38 (Occasions when a Member may Speak more than once), a Member may speak only once in a debate on a motion moved under subrule (2) and, if the debate is divided into sessions, he may speak once in each of the sessions.

(9) After Members and designated public officers have spoken on a motion moved under subrule (2), the debate comes to a close. The President shall not put any question and the Council shall proceed to the next item of business.";

(f) in Rule 75, by adding —

"(10A) After the consideration of the subsidiary legislation and other instruments referred to in subrule (10), the committee may present a report to the Council."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr TAM Yiu-chung be passed.

**PRESIDENT** (in Cantonese): Does any other 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 Mr TAM Yiu-chung be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion passed.

**PRESIDENT** (in Cantonese): Two motions with no legislative effect. 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, and have another five minutes to speak on the amendments; 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: Actively responding to the United Nations Climate Change Conference 2009.

Members who wish to speak in the debate on the motion will please press the "Request to speak" button.

I now call upon Ms Audrey EU to speak and move her motion.

### **ACTIVELY RESPONDING TO THE UNITED NATIONS CLIMATE CHANGE CONFERENCE 2009**

**MS AUDREY EU** (in Cantonese): I move that the motion, as printed on the Agenda, be passed.

I am very glad that I can get this time slot today by lot-drawing for the motion on "Actively responding to the United Nations Climate Change Conference 2009". The reason is that the 15th Conference of the Parties to the United Nations Framework Convention on Climate Change will be held in Copenhagen, Denmark from 7 to 18 December. Actually, as the commitment period stipulated in the Kyoto Protocol adopted in 1997 will expire in 2012, reduction targets for greenhouse gas (GHG) emissions after 2012 have to be decided at the Copenhagen Conference to be held in December. This is definitely the ultimate negotiation on the fate of the earth and mankind.

President, why do I say so? Because scientists have long since agreed that global GHG emissions must start to decline starting from 2015, and the global temperature rise must be capped at 2°C, or else irreversible catastrophe will result. Therefore, we only have less than 10 years to tackle this problem. Scientists have also appealed to developed areas to reduce their emissions before 2020. With the 1990 emissions levels as the benchmark, GHG emissions should be reduced by 25% to 40%; and by 80% by 2050.

President, it should be noted that all these refer to the actual total emissions rather than some false targets. One example of false targets, President, is the reduction of energy intensity, to which the Government often refers when claiming that we have already set our emissions reduction targets. What is energy intensity? President, I have talked about this many times at meetings of this Council. However, I must repeat that it is a measure of the energy consumed per unit of the Gross Domestic Product (GDP). The Government keeps saying that we have reduced our emissions but the fact is that our GDP has been rising, and thus our carbon emissions have also been rising since 1990. Many members of the public do not understand why I say that the reduction of

energy intensity is a false target. I am very glad, President, that this issue has also been raised in today's *Ming Pao*. Why do I say this is a false target? Actually, *Ming Pao* makes it very clear that the Government is now using the 2005 level as the benchmark for the energy intensity target, and by 2030, energy intensity has to be reduced by 25%. *Ming Pao* points out clearly that even if the Government does not take any action, this target has already been achieved. Our energy intensity has already been reduced by 46% instead of only 25%. Besides, what is most frightening is that, President, according to press reports, the Ove Arup & Partners Hong Kong has informed us that based on the trend of an annual GDP growth of 4% over the past decade, it can be projected that by 2030, that is, by the year designated by the Government for achieving the target, our actual GHG emissions, rather than decreasing, will have increased by 140% when compared to the 1990 level.

Therefore, President, I have repeatedly pointed out this problem. When a reporter of the *Ming Pao* called me on this issue yesterday, I said that this actually reminded me of our discussion on universal suffrage. The situation is the same. The Government keeps talking about targets, all of which are false. It is the same with energy intensity, and the target can be achieved even if no action is taken at all. It is the same with universal suffrage. The Government says the targets are set and we are moving towards them. When we ask it what the targets for universal suffrage are, and whether they will include the abolition of functional constituencies, the Government simply says that such information cannot be released, and that the number of functional constituency seats will have to be increased anyway. Likewise, the Government always adopts these trickeries. Sometimes, we are indeed exasperated because despite our countless explanations, it seems that others still find the whole thing very complicated and difficult to understand. Therefore, I was very glad that a newspaper was willing to report on the Government's false emissions target yesterday.

President, let me speak further on the Kyoto Protocol. Actually, many countries, such as South Korea and China, did not take part last time on the ground that they were developing countries; Australia and the United States refused to participate in it because they were developed countries. Back to the upcoming Copenhagen Conference, we can see that these four countries have already taken actions. For example, LEE Myung-bak, President of South Korea, has already announced the target of reducing their annual GHG emissions by 4% against the 2005 level by 2020.

Besides, the Prime Minister of Australia has also indicated that his country plans to reduce emissions by 25% (against the 2000 level) by 2020. Barack OBAMA, who has succeeded George W. BUSH as President of the United States, has also said his country will reduce emissions by 17% (against the 2005 level) by 2020. Besides, China has recently said that it will take carbon intensity as a unit of measurement and reduce it by 40% to 45% (against the 2005 level) by 2020. President, we also know that besides the current participating countries, United Kingdom and France have all along been appealing to the international community on setting up a fund amounting to US\$10 billion for subsidizing some developing countries in their efforts to reduce emissions and adapt to climate change in the coming three years. The European Union and Japan have even indicated earlier that they will reduce their emissions by 20% and 25% respectively against the 1990 levels. As far as we can see, almost 200 countries will participate in the upcoming Copenhagen Conference, and many countries will be represented by their heads of state — China, for example, will be represented by Premier WEN Jiabao. Many civic organizations have opined that this is not simply an environmental issue but an issue which has to be addressed by the whole world. The Chief Executive should attend the Conference, but Secretary Edward YAU has indicated that he will do so.

What effort has the Government of the Hong Kong Special Administrative Region (SAR) made? President, as far as we know, the Government indicated in March last year that a consultancy study report on climate change would be compiled. I reckon if the study took 18 months, it should have been completed in October. However, for reasons unknown, the Government said it would not be completed until January next year. Although the Copenhagen Conference will soon be held in December, the Government is still saying that it has no idea on what to do because the expert report will not be available until January next year. Therefore, what strategy and stance will the SAR Government adopt? President, I very much hope that the Secretary can inform us of this in his response later.

Many reporters called me yesterday and the day before yesterday, asking me what request I would make if I were to put a request to the Government in moving this motion debate today on actively responding to climate change. I said I would simply tell it that the Council requested it to provide us with a total emissions target which must be an emissions reduction target instead of a false energy intensity target. The Civic Party considers that, in line with the requirement laid down in the Kyoto Protocol back then, emissions should be

reduced by 20% against the 1990 level by 2020; and by 50% by 2050. This is of vital importance. I hope Secretary Edward YAU will tell us in his response later whether a target with reference to total emissions will be adopted as an emissions reduction target. Actually, this issue has been discussed plenty of times at meetings of this Council. President, as far as I can remember, all Honourable colleagues who spoke on the issue agreed to this point. Therefore, the difference between the legislature of Hong Kong and those of other places is that this Council has at least reached a consensus on this issue. However, the Government lacks any determination.

President, instead of spending too much time on giving a detailed account of what we can do, I would like to focus only on the emissions reduction target. However, President, climate financing will also be one of the important considerations at the upcoming Copenhagen Conference. Very often, the areas most affected by climate change are impoverished areas. President, there is a loud speaker from Oxfam on my desk. I would like to point out specifically that it is actually very difficult for some impoverished areas to cope with climate change, as they may find it hard to decide whether they should devote their scanty resources to building schools and clinics or coping with climate change. Most of them would decide to build schools and clinics first, with the result that they are unable to cope with climate change. Even vast countries like China and India need financing and technological support. We may learn from press and television reports that there are still lots of problems in relation to coal mining and coal mines in China, which still relies on coal as fuel and for energy. Therefore, it is necessary for developed countries to think of ways to help other areas that are in need of support.

I have also mentioned just now that the leaders of the United Kingdom and France have proposed to set up a US\$10 billion fund to cope with climate change. However, according to the estimates of Oxfam, the United Nations Adaptation Fund requires an annual funding of US\$50 billion. Therefore, international civic organizations, such as Oxfam of the United Kingdom and Stamp Out Poverty, have proposed a financial transaction tax to make all transactions of financial products liable to taxation. The tax collected would be used to help impoverished areas to cope with climate change. Gordon BROWN, the Prime Minister of the United Kingdom, proposed such a financial transaction tax at the G-20 summit early last month, and he proposed setting the tax rate at 0.05%. In other words, each transaction of \$10,000 would be liable to a tax of \$5. The Presidents of France and Brazil also said the amount derived from the tax could be used on climate change projects. While the Secretary of the Treasury of the

United States, the Minister of Finance of Canada and the financial centres of Wall Street and London strongly opposed this, France and Germany expressed support for the idea.

Actually, the first person who proposed a financial transaction tax was James TOBIN, a Nobel laureate in economics, and that is why this tax is also known as Tobin Tax. He said there is no need to make the tax directly payable by members of the public; it may just be imposed on stock exchanges, and this may also reduce the excessive supply of hot money. The Austrian Government has estimated that if a financial transaction tax is imposed, US\$700 billion worth of tax will be collected. Naturally, there are many people who oppose this idea. Actually, given the international nature of financial markets, this idea cannot be successfully pursued if only some markets are willing to impose this tax. Therefore, we can see that there are divergent views.

I hope that Hong Kong, as an international financial centre, will give active consideration to this direction. This may be one of the solutions. I believe Honourable colleagues will also put forward various different proposals in their speeches later, but the crux of the problem is that we have failed to see any measure introduced by the Government in relation to climate change so far. To put it simply, when the Air Pollution Ordinance was introduced, the Government even opposed my amendment which sought to include carbon emissions as one of the sources of pollutants. Therefore, President, we hope the Secretary can give a positive response in this regard in his speech later. As for the other proposals, we have already given an account of them on other occasions, and I cannot take you through the efforts we should make within such a short time of 15 minutes. Thank you, President.

**Ms Audrey EU moved the following motion: (Translation)**

"That this Council appeals to the governments of various countries to strive to reach a new agreement on addressing climate change at the United Nations Climate Change Conference 2009, and urges the Hong Kong Government to grasp this critical moment to shoulder responsibility and put forward comprehensive policies and plans to address climate change, the reduction targets for total greenhouse gas emissions as well as the relevant legislative programme, and study how to assist developing countries in implementing the measures and financing arrangements for reducing emissions and adapting to climate change."

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

**PRESIDENT** (in Cantonese): Five Members will move amendments to this motion. This Council will now proceed to a joint debate on the motion and the five amendments.

I will call upon Mr CHAN Hak-kan to speak first, to be followed by Ms Cyd HO, Miss Tanya CHAN, Dr PAN Pey-chyou and Mr KAM Nai-wai; but no amendments are to be moved at this stage.

**MR CHAN HAK-KAN** (in Cantonese): President, as a Chinese saying goes, "whenever it snows in June, there must be grievances". Both Australia and Germany, for example, snowed in June. There were also hail drops in Hong Kong in 2006. However, the one who is aggrieved may not be DOU E or ZOU Yan but is Mr Earth, who has come down with serious fever and chills.

The first nine months of this year have been the hottest months in Hong Kong on record. In November, however, the Hong Kong Observatory issued the earliest cold weather warning ever for this month. It is envisaged that the overall temperature of Hong Kong will rise by 4°C to 6°C by the end of this century. Rainfall will continue to decrease, but it will pour when it rains, and the climate will become increasingly extreme.

Actually, the average global temperature has already risen by 0.7°C against the temperature before the Industrial Revolution, and it is still rising by the rate of 0.2°C per decade. The Human Development Report of the United Nations has also pointed out that the greenhouse gas (GHG) emissions of developed areas will reach an alarming level during the period from 2010 to 2015. Therefore, by 2020, various countries must reduce their GHG emissions by 30% against the 1990 levels.

Scientists have also warned that if the global temperature rises to 2°C higher than that before the Industrial Revolution, the global ecology will be at stake. By then, the plots of movies, such as *Knowing*, may no longer be fictional but may really come true.

President, my amendment to the original motion today only seeks to set out the concrete measures which can be taken by Hong Kong to cope with climate change. The Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) will vote in support of the original motion and amendments put forward by other Members. In the following part of my speech, I will give a brief account of the DAB's stance.

Since our country launched the policy of reform and opening, it has been experiencing rapid development and economic boom, and its GHG emissions have also increased correspondingly. To implement the national policy of sustainable development, Premier WEN Jiabao has taken the initiative to announce a specific emissions reduction target, whereby China is to reduce the emissions of carbon dioxide by 3.5 to 4 billion tonnes by 2020.

What about the situation of emissions reduction in Hong Kong as part of the country? The Government of the Hong Kong Special Administrative Region (SAR) has set the current emissions reduction target on the basis of the 2005 level, and it is hoped that energy intensity can be reduced by 25% before 2030.

However, it should be noted that the calculation of energy intensity, as pointed out by Ms EU just now, is subject to the influence of economic growth. Therefore, I would like to cite concrete examples to illustrate this point. Although the energy intensity of Hong Kong in 2007 was 7% lower than the level in 2005, carbon dioxide emissions nevertheless increased by about 6%. This is very disappointing.

President, the DAB has been maintaining that Hong Kong should follow the example of other developed areas and replace energy intensity by total emissions when setting its emissions reduction target and planning approach, so as to demonstrate its commitment to coping with climate change, rather than indulging in juggling with figures and evading the responsibilities it should discharge.

Actually, besides the emissions reduction target, our country has also supported the proposal of the United Nations Environment Programme by putting in 1% of its GDP, that is, about RMB 330 billion yuan, as green investments under the National 11th Five-Year Plan, with a view to encouraging enterprises to enhance their emissions reduction and energy conservation measures.

Although Hong Kong has also introduced various emissions reduction and energy conservation measures, such as encouraging the use of electric vehicles

and the switch to compact fluorescent lamps, a concrete green investment level has not been set. Therefore, I very much hope the Financial Secretary can consider whether a green GDP target should be set when preparing the budget for the coming year.

President, a major problem facing the promotion of emissions reduction and energy conservation is the availability of funding. Besides advocating international co-operation, the action plan passed at the international conference on climate change held in Bali in 2007 also set four directions for coping with climate change. One major subject is the issue of financing arrangements. As the coming few years are the critical period for coping with climate change, different parts of the world will be seeking funding to finance the provision of the technology and infrastructure necessary for coping with climate change. Therefore, it is necessary for Hong Kong to make early preparation. Besides making funding provision as part of regular government expenditure, Hong Kong should also explore ways of appealing to large enterprises, such as financial institutions, to participate in financing arrangements. It may also explore the setting up of a climate change fund with the participation of the Government and the private sector.

When it comes to financing and emissions reduction, one of the markets which have become increasingly well-developed is the carbon emissions trading market. At present, the market value of carbon emissions trading is already as large as US\$10 billion. The sale of carbon credits alone has brought an income of US\$18 billion to China and reduced its emissions reduction cost by US\$100 billion.

I believe that the commencement of the Climate Change Conference in Copenhagen can present an opportunity of setting more proactive emissions reduction targets, and the volume of trading for the purpose of carbon emissions reduction will increase exponentially, thus bringing forth huge business opportunities. I know that the Hong Kong Exchanges and Clearing Limited conducted a consultation and a study in the middle of this year on the feasibility of establishing a carbon emissions trading platform, but no concrete progress has been made so far. I hope the Hong Kong Government will adopt a more proactive approach and pursue this new business as soon as possible, or else we will miss this opportunity.

Besides, since there is a keen demand for emissions reduction technology and professional services in the Mainland and the Central Government has given

its consent for Hong Kong enterprises to participate in projects relating to the Mainland's Clean Development Mechanism, Hong Kong should capitalize on its strength in professional services and assist our country and Hong Kong manufacturers in the Mainland in engaging in clean production.

President, last of all, I would like to elucidate the proposal of promoting green information technology (IT) contained in my amendment. President, when I searched for relevant information on the Internet just now, I found that a simple Google search will set tens of thousands of computers to work all at the same time, making them each emit 7.5 grams of carbon dioxide. Can we imagine the amount of carbon dioxide emissions with so many people doing Google or Yahoo searches every day? .

In our previous discussions on IT development, our focus was mainly on how to speed up the operation of computers or servers. However, to develop green IT, consideration should be given to the need for environmental protection. Besides using recyclable materials to manufacture IT hardware, it is also necessary to adopt more technologies to enhance the energy efficiency and heat dissipation of computers, so to avoid the emissions of excessive exhaust heat and also the use of heavy air-conditioning to maintain the operation of servers at a low temperature.

Therefore, promoting the development of green IT will, to a certain extent, involve both environmental and creative technology industries. In a way, this is in line with the direction of developing the six industries mentioned by the Chief Executive.

President, I remember watching an advertisement when I was young. I still have vivid memory of the scene towards the end of the advertisement. A little girl comes forth and puts this question to the audience, "Mr Earth has fallen ill. Will he recover?" When this advertisement was shown, the earth might only be suffering from a fever or influenza. But now it is already in critical condition. If we still take the problem lightly without paying any attention to the impact arising from climate change, I believe that not only will Mr Earth be unable to recover but we human beings will not be spared either.

President, I so submit.

**MS CYD HO** (in Cantonese): President, we used to come across the issue of climate change only in programmes shown on the National Geographic Channel. We simply viewed these programmes in a detached and indifferent manner as if they were historical documentaries. However, after all these years, the adverse effects of climate change have come to be felt personally by the people of Hong Kong and brought concrete problems to our daily lives. Therefore, the aim of my amendment today is to discuss this topic from the "territorial" standpoint, to look climate change from our local perspective.

In the past decade, Hong Kong's average rate of temperature rise doubled that of the world in the past century. In the past two decades, our average temperature rose to 26°C, and the rate of temperature rise in the past four to five years was even more drastic. This has been compounded by the poor air flows resulting from our urban planning. As a result, it will actually feel like 38°C in the streets when a temperature of 34°C is recorded by the Hong Kong Observatory.

According to the estimates of the Combat Climate Change Coalition formed by a number of environmental groups and poverty-alleviation agencies, climate change has produced adverse effects on the life and health of at least 1.5 million people in Hong Kong. Those bearing the brunt are the low-income groups, including people living in cubical apartments, the poor elderly, the chronically ill, grass-root people and farmers working outdoors. The medical expenditure of Hong Kong has increased significantly as a result, thus indirectly affecting our economy.

On 26 July 2008, the Hong Kong Observatory issued the third Very Hot Weather Warning this year. That day, the Senior Citizen Home Safety Association received 1 287 requests for assistance from the elderly through the Personal Emergency Link service, and 81 elderly persons were sent to hospital. At least six members of the public were suspected to have suffered from heat stroke that day, and one elderly man aged 80 died of a medical episode allegedly triggered by the hot weather upon admission to hospital. Besides, a bus driver aged 30 felt unwell when driving a bus without air-conditioning (that is, one of those buses commonly called "hot dogs"), and this almost caused a serious traffic accident.

June 2008 was also the month with the heaviest rainfall in Hong Kong on record, with a rainfall volume reaching 1 364.1 millimeters. On 7 June alone,

the rainfall recorded was already 301 millimeters. This resulted in 162 cases of landslides and 622 reports of flooding, causing two deaths and affecting the work of thousands of people. According to the "climate change bill" released by Greenpeace in the middle of this year — the climate change bill of Greenpeace seeks to assess the relevant costs for Hong Kong — the downpour that day caused a financial loss amounting to \$57,850 trillion to Hong Kong. President, these problems are real, are no longer distant, and have become part of the daily life of Hong Kong people.

What about the situation around the world? Global warming has already upset the biological clock controlling the growth of plants. Some academics have pointed out that the Himalayan glaciers, which affect the water source of seven rivers in Asia, are melting at an accelerated rate and will vanish in 26 years. By then, billions of people in China and India will face a water shortage crisis, and Hong Kong will definitely not be spared. From then on, wars over natural resources would be waged among countries over water sources rather than oil.

Climate change has upset the growth cycles of plants. As a result of global warming, we now see poor harvests and decreasing crop yields. Changes in ocean temperature have led to a decrease in marine micro-organisms, depriving fish in the oceans of food, and in turn reducing catches. Therefore, these problems have come to affect the very survival of mankind, and have become urgent problems which must be resolved without delay.

President, our purpose of urging the Chief Executive to attend the Conference in Copenhagen is not to ask him to find out how the great powers shirk their responsibilities — because such international conferences are actually conferences on shifting responsibility. The United Nations Framework Convention on Climate Change (UNFCCC) was actually signed as early as 1992, but the Kyoto Protocol only came into being in 1997 and did not take effect until 2005. Even at the last conference in Bali, no consensus was reached and only a roadmap was formulated. This is evidence that the great powers have only been shifting responsibilities onto one another, and all of them have been trying to maintain their own Gross Domestic Product (GDP) and the pleasure of life brought about by it. They are not at all sincere in dealing with emissions reduction.

Therefore, President, by asking the Chief Executive to go to Copenhagen, we hope that he can, first, gain a clear understanding of the international situation. When he sees that others are not making any efforts, he should realize that it is necessary for us to do more. Second, we hope that he can meet with the international think-tanks and academics specializing in environmental protection gathered in Copenhagen, so as to gauge their views.

The last days of the Bali conference were actually very dramatic. The conference adjourned with small island states making their plea in tears and Al GORE, a former Vice-President of the United States, openly censuring the American Government for not discharging its due responsibilities as a global citizen. The current situation is that different countries are adopting a stalling tactic and trying to defer discussion on the issue until the Copenhagen Conference.

Now, an agreement has to be reached quickly at the Copenhagen Conference because the problem of flooding is indeed overwhelming. This is literally an overwhelming problem because the highest points of many island states are less than 4 m above sea level, and the people of various states, including Pacific islands such as Tuvalu, Kiribati, Fiji and Tonga, have become climate change refugees. New Zealand has signed an agreement with these island states to accept their climate change refugees. Actually, Hong Kong cannot be spared as we will also be adversely affected in terms of goods prices and public health. Therefore, we hope the Chief Executive will attend the Conference, so that he can get to know the latest technologies and policy proposals of international think-tanks and formulate, in collaboration with us, better emissions reduction policies when he comes back.

Certainly, some people may wonder what such a tiny place like Hong Kong can do. Hong Kong is certainly a small place, but as we are a highly developed economy, our carbon emissions level is very high. If the convenience we enjoy in our daily life is the result of energy depletion ..... If we are willing to put up with a certain degree of inconvenience and devote more resources to energy conservation and emissions reduction, we will be able to achieve satisfactory results. The plastic bag levy, for example, was met with strong resistance before implementation. But thanks to the great efforts made by the Secretary to introduce the levy as a means of reducing the use of plastic bags, we are now able to reduce our use of plastic bags by 90%. Therefore, we may be very pessimistic

about some measures before they are implemented, but if everyone is willing to take concrete actions to implement them, considerable results can be achieved.

Just now, two Members said that it was useless to rely solely on an energy intensity-related emissions reduction target. We must set down a concrete figure and specify an exact level of emissions reduction. Actually, China has set down an emissions reduction target of 40% and has also announced some policies. In his speech entitled "Working together to address the climate change challenge" delivered at the United Nations Summit on Climate Change in September, State President HU Jintao said that while "economic development, poverty alleviation and improvement of people's livelihood remain the primary tasks of developing countries", these countries also have to "abandon the former approach of tackling pollution after it has occurred". He also issued clear instructions to Mainland authorities at all levels, asking for enhanced local co-ordination and supervision over efforts to cope with climate change and also the timely formulation of local strategies to cope with climate change.

Therefore, President, when even the State is so very progressive, why should Hong Kong approach this issue in such a deceitful manner? Regarding financing, the people of Hong Kong are actually very generous in donating for disaster relief. We respond enthusiastically to donation appeals. We always donate enthusiastically whenever there is a drought or flood in the Mainland. However, these are remedial rather than preventive, and certainly not developmental, in nature. Therefore, we hope that Hong Kong will support the setting up of an international assistance fund. Furthermore, we also hope the Government can help the business sector of Hong Kong to look for green business opportunities outside Hong Kong.

Our business sector is really remarkable, and they reach practically all corners of the world, even including places such as Honduras, Mauritius and Haiti, which can only be found on the map with great care. We can actually help the business sector to launch rapid forestry regeneration projects in these developing countries. This is a business activity that can bring economic benefits. I hope the authorities can provide more active assistance in this regard, so that Hong Kong, as a developed area, can discharge the due responsibilities of a global citizen on various fronts and assist backward areas in better coping with the disasters arising from global warming.

Thank you, President.

**MISS TANYA CHAN** (in Cantonese): First of all, I would like to explain why I have put forward an amendment to the motion of my party leader. Actually, I have done so not so much because of any co-ordination problem but because of an incident which has aroused the great concern of some green groups. When the Secretary indicated that he would attend the Copenhagen Conference at the meeting of the Panel on Environmental Affairs on the second of last month, everyone was relieved. However, when responding to an oral question at a meeting of this Council two days afterwards, the Secretary did not sound as definite as before. Therefore, some people are worried whether the Secretary will provide a briefing when he comes back. And, I am not talking about a routine briefing, one which only tells us what happened after his "quick trip". Actually, we very much hope that the Secretary can give an account of how the Government will lead Hong Kong to achieve the emissions reduction targets. Therefore, I have added some words to the motion of our party leader, Ms Audrey EU, in the hope of ensuring that the Secretary can provide us with a briefing and lead us to achieve the targets.

Just now, many Honourable colleagues talked about how the climate these days had affected us. When I was listening to them, I wrote down the phrase "global warming". But then I suddenly noticed that — probably because of my poor handwriting — I had actually written down "global warning". This has made me think that it is really a warning to the whole world. As climate change has reached this critical moment, we really have to take concrete actions to achieve our emissions reduction targets and draw up plans for the long-term participation of various countries and areas, so as to cope with climate change. This is what we expect of this upcoming summit.

I must also point out that besides attaching importance to their own mitigating measures, developed countries should also devote adequate funding to assisting some backward areas in implementing measures of adapting to climate change. International co-operation on technological and financial support is crucial because only this can help developing countries cope with global warming. Global agreements — which, I hope, can be reached this time — and programmes of individual countries and areas should cover four aspects: mitigating measures, adaptation measures, technological development and financial support. And, all these must be stated in very concrete terms.

When preparing our speeches this time, I learned an expression, "climate justice". Just now, my colleagues already touched upon this concept in varying

degrees. Many relatively under-developed countries are directly impacted by global climate change. Recently, many press reports have mentioned that in many countries, such as those in Africa, the emissions levels are actually very low but the people's life, properties, family members and even animals are all directly impacted by global warming. I believe that climate justice is very important. As a highly affluent area, Hong Kong has all the conditions necessary for improvement, even though China is a developing country.

The Government may well say that our annual volume of per capita greenhouse gases (GHG) emissions is only 6.7 tonnes. This is actually not a low level. Although it seems to be very low in ranking, it is actually not so in real terms. It is double the average corresponding figure of the world. Besides, we can see that the total volume of carbon dioxide emissions of Hong Kong in 2007 stood at 46 700 tonnes, representing an increase of 19% against the volume in 1990.

This Monday, another survey was reported in the *South China Morning Post*. I believe the Secretary is also aware of this. In the survey, the total carbon footprint and emissions of Hong Kong were calculated based on the data for 2001 provided by the World Trade Organization. Members may be surprised to find that Hong Kong actually ranked second in the world after Luxemburg. This shows that our situation is even more serious than that in the United States. Even though our local carbon emissions may only be 17%, our overall volume of emissions is enormous. Of course, the Government has not responded specifically to this figure, but we can see that this has sounded a warning that we should not play down the responsibility of Hong Kong because we have actually imported lots of carbon emissions.

Actually, many green groups have referred to a concept on how climate justice can be achieved, in the hope that we can discharge "common but differentiated responsibilities". What does that mean? In essence, this means that since developed countries with the means already damaged our environment and obtained benefits in the past, they are expected to discharge their responsibilities now. First, they must formulate appropriate mitigation plans and adaptation measures such as those I have just mentioned. Besides, they also have the responsibility to provide technological and financial assistance to developing countries to help them formulate their own emissions reduction targets and relief measures.

I think there are many things our Government can do. The first thing is to refrain from hiding behind our country, that is, China. I hope that besides implementing "one country, two systems" on our constitutional development, we can also adopt the approach of "one country, two systems" in this respect. Although China is a developing country, Hong Kong is quite capable of making more efforts under the principle of "common but differentiated responsibilities" mentioned by me just now. For example, our Government should demonstrate its leadership by undertaking the responsibility of formulating emissions reduction targets, putting in place an effective regulatory framework, setting long-term goals and targets, and establishing a framework conducive to policy formulation. This framework should not be confined to adaptation measures. More importantly, it should be able to facilitate the implementation of mitigation measures, the provision of assistance and the formulation of a clear objective. It is only in this way that can lead society as a whole, the business sector and the civil society to work together to achieve this objective.

Hong Kong is capable of undertaking the obligations and responsibilities of a developed area, such as formulating voluntary emissions reduction targets. As mentioned by our party leader, the Civic Party hopes that by 2020, the Government can reduce our carbon emissions by at least 20% against the level in 1990. This is our target, but some green groups even hope that a reduction of 25% can be achieved. Besides, the Government should set an example of carbon emissions reduction and put forward a proposal on energy labelling for buildings as soon as possible. I can see on the Internet that this Council has already received the relevant Legislative Council Brief. I hope the Government can demonstrate its commitment by adopting a green procurement policy and promoting green industries expeditiously. Besides, the authorities should consult the industry and society as a whole as soon as possible for the purpose of formulating an integrated adaptation programme on the emissions reduction target for 2050 and the roadmap and visions involved. As different sectors may each be required to achieve a certain proportion of this emissions reduction target, full consultation is required. For example, the energy industry, which generates almost 60% of the GHG in Hong Kong, should be assigned a clear emissions reduction target. Besides, as buildings account for 89% of the electricity consumption of Hong Kong, it would be more desirable to set an emissions reduction and energy conservation target for buildings.

Furthermore, the Government should also discharge the obligation of providing financial assistance to backward areas. I will bring up this aspect specifically later. The Government may also provide more financial assistance to our own enterprises, so as to encourage them to conduct more scientific research on environmental protection technology, and provide more impetus to small and medium enterprises for energy conservation.

Besides, Honourable colleagues have mentioned the establishment of a climate change fund. Our government can establish this fund and fulfil its obligation of providing the Mainland and developing areas with the abovementioned financial assistance. In this connection, Mr CHAN Hak-kan also mentioned that some recognized rules and regulations on carbon offsets have been drawn up by the United Nations and the international community. In this regard, we hope the Government can take the initiative to purchase some carbon credits — I am sorry that I cannot think of the Chinese translation of this term off hand — and provide these resources to developing countries for implementing concrete emissions reduction measures, such as forestry protection, afforestation projects or even wind power development projects. These measures are not only beneficial to developing countries but are also a very desirable direction of global emissions reduction.

President, I so submit.

**DR PAN PEY-CHYOU** (in Cantonese): President, discussions on climate change resulting from global warming have been going on for a few decades. In recent years, scientists have clearly pointed out that global warming is mainly attributable to the increase in greenhouse gases (GHGs), the increase in GHGs is in turn caused mainly by human activities, particularly mass production and the associated wastage ever since the Industrial Revolution and also changes in people's ways of living, including the impacts of population growth and urbanization.

According to the 2008 Greenhouse Gas Bulletin released on 23 October 2008 by the World Meteorological Organization, in 2008, the atmospheric concentration of the GHGs, including carbon dioxide, methane and nitrous oxide, was at a record-high since the Industrial Revolution. This reflects that the greenhouse effect is becoming stronger.

Scientists have also pointed out that every rise of 2°C in global temperature will cause irreversible damage to the global ecology because many species may need a few centuries to adapt to climate change. The drastic change of temperature within a short span of a few decades has made the adaptation of many species impossible. Experts have also estimated that the temperature will rise by 4°C to 5°C by the end of this century. This is indeed very worrisome.

The State attaches great importance to the Climate Change Conference to be held in Copenhagen this month, and Premier WEN Jaibao will attend the meeting as a representative of the State. He even announced the "Implementation of the Bali Roadmap — China's Position on the Copenhagen Climate Change Conference" as early as May. Last week, the State Council announced for the first time a clear quantitative target for GHG emissions reduction: to reduce carbon emissions per unit of Gross Domestic Product (GDP) by 40% to 45% by 2020. This is a solemn undertaking made by the State to the world in the light of its capability and current stage of development. And, this target has binding effect throughout the country.

Actually, our country is one of the countries generating the largest volume of carbon emissions as well as one of the major developing countries victimized by severe climate change. Therefore, it must vigorously develop renewable energy to promote a low carbon economy. For the well-being of ourselves and the whole world, our country must follow this path, so as to ensure its sustainable development. At about the same time when our country announced the target concerned, the United States also announced that it would undertake, at the Copenhagen Climate Change Conference, to reduce its GHG emissions by 17% against the level in 2005 by 2020, and by 83% by 2050. We do not agree to one argument, the argument that a carbon emissions reduction target based on GDP is a false target. The reason is that the United States and China have only made their respective undertakings in the light of their actual situation.

As a Special Administrative Region (SAR), Hong Kong should echo and support the stance of the State. This is not to speak of the fact that reducing GHG emissions can also bring enormous benefits to Hong Kong and produce positive effects on our daily life. Over the past three decades, the average temperature of Hong Kong has risen by 1.5°C, with a rise of 0.7°C attributable to global warming and the remaining 0.8°C attributable to the urbanization and hot island effect in Hong Kong.

Theoretically, we may achieve the target of reducing GHG emissions through three approaches: first, reducing the proportion of fossil energy in the overall energy mix; second, adopting various energy conservation measures; and third, changing our diets and agricultural structure. As the agricultural industry of Hong Kong is not well-developed, there is little we can do in this respect. However, there are many things we can do in the other aspects.

Fossil energy refers to organic fuels such as coal, oil and natural gases. They may be used for generating electricity or in the process of direct combustion to generate power. During the combustion process of these fuels, GHGs, in particular carbon dioxide, will inevitably be generated. Examples of energy which does not generate GHGs are various types of renewable energy such as photovoltaic energy, wind power, geothermal energy, wave energy and even hydrogen. Nuclear energy is also one such example. We should actively explore various ways of switching to energy which does not generate emissions. In the context of Hong Kong, the use of photovoltaic energy and wind power is more worth exploration.

Regarding photovoltaic power generation, two months ago, Prof Patrick LAU and I visited the Hong Kong Science Park and observed the manufacturing process of photovoltaic glass panels in a factory established by a multinational company. I was deeply impressed. These glass panels may be used as window panes of ordinary households or commercial buildings. Not only can they provide insulation, thereby reducing the sunlight in the room and making it cooler, but they can also transform sunlight into electricity for other purposes. This is killing two birds with one stone. As Hong Kong is a city with abundant sunshine, this invention is very suitable for it. The provision of funding for scientific research in this respect will also enhance the value-adding capacity of our industries.

As for wind power generation, I once discussed with a senior staff member of a local power company the feasibility of its development in Hong Kong. He told me that their company had studied this issue and come to the conclusion that Hong Kong did not have the conditions necessary for the large-scale development of wind power generation. If large-scale development is not feasible, how about some small-scale projects? Regarding this, I have an idea — actually, this is an idea of a friend. He proposed installing windmills for generating wind power on the towers of the Hong Kong-Zhuhai-Macao Bridge due to constructed. After

the completion, we will see a very magnificent bridge with an endless line of white windmills. This can generate electricity for lighting or other purposes and will also beautify the bridge and create a unique sight in the Pearl River Estuary. I hope the relevant departments can explore this proposal to ascertain its feasibility.

As for energy saving, there are actually many things we can do. First of all, we can use energy-saving devices as much as possible. One example is the Government's proposal of issuing cash vouchers to the public for the purchase of compact fluorescent lamps. Although this policy has come under much criticism due to the lack of detailed planning, its broad direction of actively promoting the use of various energy-saving products and installations is correct. We may promote the switch to energy-saving installations through the provision of cash benefits or the enactment of legislation. And, the Government and public organizations should take the lead in using these installations.

Altering our urban design may also serve to save energy. For example, the development of industrial and business districts in the vicinity of residential districts can reduce people's travelling distance to and from work, thereby reducing the burden on transportation. The Construction of connected cycling paths in new towns can also encourage the use of bicycles and reduce the reliance on motor vehicles. Besides, the Government may also encourage the use of public transport and reduce the use of private cars by adopting administrative and financial measures, such as the provision of transport allowances.

More importantly, we should all change our living habits, so as to involve all people in energy saving. In summer, can we refrain from turning up the air-conditioner while wearing a sweater? At night, can we refrain from turning on the air-conditioner and covering ourselves with thick quilts? In the day time, can we refrain from drawing the curtain and turning on the lights in the room? As for food, can we eat less meat and more vegetarian food? It should be noted that livestock are the main source of GHGs, such as carbon dioxide and methane. One should not underestimate the importance of these minor acts because water droplets can accumulate to become a big river.

In many cases, energy-saving acts cannot be promoted by the enactment of legislation. Rather, all must depend on people's own initiative. Therefore, the Government must instill in the public the concept and value of energy saving and

emissions reduction through education, so that our children can cultivate good energy-saving habits from their early ages.

From the perspective of employment, we can see that since emissions reduction and energy conservation both require the support of new technologies, new knowledge and new industries, they can bring forth huge business opportunities and many jobs. However, while actively promoting emissions reduction and energy conservation, we should always bear grass-root people's livelihood in mind. As we all know, unsatisfactory measures will cause inconvenience and losses to many members of the public and even render them jobless. Therefore, we must carefully evaluate the impacts of various measures on people's livelihood.

We advocate that we must attach overriding importance to the livelihood of the grassroots while promoting emissions reduction and energy conservation. It is hoped that this can look after poor people's livelihood on the one hand and enable Hong Kong to move forward along the path of energy conservation and emissions reduction on the other. Policies which fail to obtain public support cannot sustain themselves. The implementation of emissions reduction and energy conservation measures is meant to promote the well-being of all of us and also to give our children a better future.

The icebergs in the Polar Regions keep on melting and the global climate has turned increasingly anomalous. Time is running out. We should unite. We should join hands with other places in the world to put words into practice and undertake this arduous and protracted environmental task.

I so submit.

**MR KAM NAI-WAI** (in Cantonese): President, the Democratic Party welcomes the motion on responding to the United Nations Climate Change Conference moved by Ms Audrey EU today because it is a very timely motion. The Conference will be held from 7 to 18 December in Copenhagen, and many people hope that major greenhouse gases (GHGs) emitting countries, such as our country China, the United States and India, will undertake to set GHG emissions reduction targets at the Conference to cope with global warming.

As we all know, the Copenhagen Conference is a sequel to the Kyoto Protocol adopted in 1997. As our country is classified as a developing country

under the Kyoto Protocol, Hong Kong, being part of China, is not required to comply with the requirement of setting a GHG emissions reduction target for 2012 under the Kyoto Protocol. The Hong Kong Government is often criticized by environmental groups for losing sight of Hong Kong's status as a developed area, for still regarding itself as a developing place, for making no commitment to GHG emissions reduction and for evading its responsibility. We very much hope that the various heads of states will attend the Conference and actively face up to the problem of global warming.

Earlier, I participated in an activity organized by Greenpeace in which each participant donated \$1 for sending our Chief Executive to Copenhagen. Unfortunately, however, instead of attending the Conference himself, the Chief Executive has only instructed the Secretary to do so. Why do we request the Chief Executive to attend the Conference? The reason is very simple. We want the Hong Kong Government to demonstrate one thing — its determination. Does the Hong Kong Government have the determination to tackle the problem of global warming? We are certainly a bit disappointed. Many Honourable colleagues have mentioned lots of climatic phenomena in their speeches. They have talked about subjects ranging from snowing in June to the number of requests for assistance made by the elderly through the Personal Emergency Link service. Undeniably, global warming has already come to affect different parts of the world and Hong Kong.

Recently, I watched a television promotional footage on a new programme called "Investigating the Arctic Ocean", which is exactly about the possible impacts of global warming on the ecologies of various countries. One classical and oft-mentioned case which has aroused extensive discussions must be the possible submersion of Maldives due to an imminent rise of the sea level. This may not be purely imaginary as the Scientific Committee on Antarctic Research has pointed out in its latest research report that global warming will cause the sea level to rise, and it is already rising at a rate two times faster than predicted. On the basis of the current rate of acceleration, it can be predicted that the sea level may have risen by 1.4 m by 2100. By then, it is probable that not only Maldives but also many places in the world, such as the metropolises of London, New York and Shanghai, will also be submerged. This is a warning sign.

With the approach of the Conference, the heads of states of various countries have announced their emissions reduction targets. The United States has indicated that it will reduce its emissions by 17% from the 2005 level by the year 2020. Recently, Premier WEN Jiabao has also indicated before attending the Conference that he will announce the reduction of emissions by about 40% to 45% from the 2005 level by the year 2020. Many Honourable colleagues have also quoted the target to be announced by Premier WEN Jiabao. However, many environmental groups have still criticized these targets, saying that the targets set by our country and the United States are deceitful because while most countries have adopted the 1990 level as the benchmark, our country and the United States have adopted the 2005 level as the benchmark, with the result that their actual emissions reduction can be lower than that of other countries.

Even though our country and the United States are criticized by environmental groups for their emissions reduction targets, I think they are still doing better than Hong Kong. As energy intensity has been mentioned by Ms Audrey EU just now and reported in the press recently, I will not dwell on it now because it is all about a false emissions reduction target in essence. Regarding this false emissions reduction target, I notice that Members have not given any concrete statistics. Let us take a look at such data now. According to some research data on the emissions volumes of Hong Kong, the actual volume of carbon dioxide emissions was 34 200 tonnes in 1990. It increased to 37 700 tonnes in 2003. And, in 2007, it was as large as 40 000 tonnes. This shows that our emissions volume has been increasing. However, calculated on the basis of energy intensity, our emissions volume has been decreasing. Our carbon dioxide emissions per HK\$1 of Gross Domestic Product (GDP) were 51.1 kilograms in 1990, 35.8 kilograms in 2003 and 29.8 kilograms in 2007. We can see that the figures are becoming smaller and smaller, in contrast to the figures on emissions volume mentioned earlier. Just now, an Honourable colleague said that this was a false target. These figures can testify to this comment. Therefore, I hope the Government will have the determination to make genuine efforts on emissions reduction in the future.

Our amendment today consists mainly of three points: first, we request the Government to formulate medium - to long-term reduction targets; second, we request the Government to regulate the maximum emissions from power plants; and third, we hope most strongly that a bill on climate change can be formulated. I would like to explain these three points briefly. When it comes to emissions reduction, many countries will put the greatest blame on power plants because

very often, power plants ..... In Hong Kong, for example, 64% of GHG emissions are from power plants. Recently, a consultation paper on air quality has pointed out that an increase in electricity tariffs will be necessary if power plants are not allowed to generate electricity by burning coal. Are tariff increases the only option? I often say to the Secretary that efforts to improve air quality can be made only when the public are convinced that there are commitments from the Government, the public and the business sector. How can GHG emissions be reduced? I think we should not make the public feel that this responsibility is to be undertaken solely by them. For this reason the Democratic Party has talked about the interconnection of electricity grids and whether different generating units using natural gases can be used ..... When we meet with the Financial Secretary later, the Democratic Party will take the initiative to propose that the Government should examine the possibility of constructing its own generation units for generating electricity using natural gases and then renting these generating units to power plants for supplying electricity to Hong Kong. I think this can demonstrate the Government's determination, and I hope the Government will give consideration to this proposal.

Besides, I would like to talk about a bill on climate change. Many countries, including the United Kingdom, have already formulated a bill on climate change, and such a bill is under discussion in Australia. A bill on climate change is mainly concerned with a few aspects: first, the Government should formulate medium- to long-term GHG emissions reduction targets; second, a carbon budget should be formulated; third, it should empower the Government to formulate relevant proposals and policies to achieve the emissions reduction targets stipulated in the carbon budget; fourth, amendments and reviews should be made in accordance with the emissions reduction targets set at international conferences, and prevailing progress should be kept track of; fifth, a regime for carbon emission caps and trading should be established; and sixth, some countries may consider using a carbon emissions tax as a financial means of providing financial incentives for carbon emissions reduction.

We can certainly further discuss which aspects are applicable to Hong Kong but most importantly, the formulation of a bill on climate change can demonstrate the Government's determination to cope with global warming. Does the Hong Kong Government have such determination? I so submit.

**SECRETARY FOR THE ENVIRONMENT** (in Cantonese): President and Honourable Members, first of all, I would like to express my gratitude to the various Members for expressing their views on the motion and putting forward the relevant amendments today.

From the Government's perspective, at this very time when we are about to attend the United Nations Climate Change Conference 2009 (Climate Change Conference) in Copenhagen, it is indeed a good thing for Members to move a motion urging not only Hong Kong but also the governments of participating countries all over the world to actively respond to this issue at this time.

I think there are three points in my first speech that merit Members' discussions. First, at this point of time following the adoption of the Kyoto Protocol and the participation of more and more countries, at this every time before the holding of the Climate Change Conference, can we capitalize on the concern shown by the international community and our society as a means of sharpening the focus of our discussions, so that more Members of the public can be encouraged to pitch in and render their support? President, this is of very great importance because, insofar as environmental issues are concerned, in addition to measures, determination is also required. Besides government efforts, the participation of the whole community is also necessary. It is crucial to solicit the support of the whole community.

Second, from the perspective of Hong Kong's interests, I agree to the comment made by various Members that Hong Kong, being a member of the global village, should not care only about itself without thinking about others. Many of the environmental problems cited by Members just now are caused by climate change, and we will be facing an ever increasing threat in the future. How should we consider or examine our overall policies and measures in the light of the situation of Hong Kong? In this regard, I believe Members will offer us plenty of opinions later. The Government already proposed some measures at various meetings of the Panel on Environmental Affairs in the past, but I am still happy to find out whether Members have any new directions and ideas in mind.

Third, Members have talked by the commitments stated by several major countries on the eve of the Climate Change Conference. Such commitments are important. It is indeed true that an important factor must be whether developed areas and countries can adhere to their undertakings made under the Kyoto

Protocol and in future, and whether they can eventually achieve the targets. Besides, our country has actually taken a considerable step forward before attending the Climate Change Conference. A case in point is its proposal of a sizeable voluntary emissions reduction target last week, as cited by Members.

Some Members think that an emissions reduction target linked to energy intensity may not be a real target. However, if we look at the rates and target years, and also the response of the international community, we may agree that this is already a significant improvement. I believe Members may give us some opinions on how Hong Kong should respond in the face of the proactive approach adopted by the State in this regard.

I can see from the original motion and the amendments proposed by Members that apart from requesting the Government to formulate strategies and keep them under review, Members have also proposed some concrete measures. I am very glad to see this because these measures are the actions that Hong Kong is capable of taking as a city or an area. In my response to Members' views later, I intend to give an account of some concrete measures which have been or will be put in place in Hong Kong, in the hope of providing a response on the role and position that Hong Kong should adopt on this issue.

President, that is all for my first speech. I would like to respond to Members' views one by one after listening to them.

**PRESIDENT** (in Cantonese): Ms Cyd HO has requested to make a clarification on the speech she delivered just now.

**MS CYD HO** (in Cantonese): Thank you, President, for giving me some time to make a clarification because I made a very serious mistake. Just now I mentioned that the temperature of Hong Kong has been on the rise over the past two decades. I wrote down 2.6°C in my script, but colleagues from my office immediately sent me a message, pointing out that I had said 26°C. Much as I am concerned about the change in temperature, I must still be true to reality. Thank you, President, for allowing me to make this clarification.

**MR LEE CHEUK-YAN** (in Cantonese): President, the timing of this motion debate today is very good because the international conference on global climate will be held in Copenhagen, Denmark next week.

Global warming will plunge mankind into an unprecedented catastrophe. Therefore, I have found it necessary to get some quick lessons on this topic. I would recommend to you this book, which is entitled *The Hot Topic*. In this book, Sir David KING gives a clear account of the entire issue, points out where the problems lie and puts forward solutions, including technological and financial solutions. It is, however, pointed out that the most important thing at the end of the day is political determination. Therefore, whether the whole world has the political determination to face these problems is of vital importance.

Sometimes, I tell myself that in 50 years' time, that is, around 2050, all of us will have rested in peace, will have passed away. Looking back at the history of this century, we will see that our generation, the so-called baby boomer generation ..... I do not remember how this should be rendered in Chinese. Anyway, I am talking about our generation. Our generation is the generation which has experienced the fastest economic growth, and which is the most wasteful of resources. Looking back at history, we will see that we are indeed sinners of the century. The present problem of global warming is caused by the wastefulness and over-consumption of mankind, and by the fact that they only strive for economic development without considering the earth and the resultant depletion of resources. This is indeed terrible. I think people of this century should be ashamed of ourselves because what we did in the past has driven the whole world towards an unprecedented catastrophe.

These days, all of us can see various warning signs, such as typhoons, flooding, heat waves, droughts and the rise of the sea level. All the problems are already here. We can feel that the weather has become hotter; while droughts are especially prominent in some places, flooding and torrential rains are more prominent in others. Actually, these are problems arising from climate change. The information I have is actually very shocking. The average global temperature has risen by 0.75°C when compared with that in the last century. It is projected that even if the whole world comes to a halt, all motor vehicles are stopped and no more pollution is generated, the greenhouse effect already lingering in the atmosphere will still cause the temperature to rise by 0.6°C. If we do not take any action, the temperature will rise by 1.4°C. Then, what is our greatest fear? Our greatest fear is that we will generate further pollution because

we will continue with our consumption and depletion of the resources of the earth. If we continue to generate pollution, the temperature may rise by 2°C to 3°C or even 4°C to 5°C.

According to the estimates of the United Nations Intergovernmental Panel on Climate Change (IPCC), which are also mentioned in this book, all of us will definitely die if the temperature rises by 5°C. Actually, it will already be very terrible if the temperature rises by 2°C to 3°C. What will the situation be like? Actually, the consequence will not be too severe: 40 million people will face the threat of starvation, 3 million people will face the risk of flooding; all barrier reefs in the world will be bleached; some islands will be submerged forever; typhoons will inflict tremendous loss of lives and properties; heat waves will cause many casualties; droughts will cause many people to languish in starvation; and, starvation will cause racial conflicts and killing.

Therefore, if we do not take any action now, the results will be very horrible. What is the existing global consensus? The consensus is that the temperature should only be allowed to rise at most by 2°C, but how should we deal with the situation if the temperature rises by more than 2°C? The global consensus is that emissions will have to be reduced by half from the existing level by 2050, so that the carbon dioxide equivalent in the air can remain at 450 ppm. PPM stands for part per million. The existing level is 430 ppm. In order to achieve the level of 450 ppm, emissions will have to be reduced by half by 2050. However, if the world does not work together to achieve this, all of us will definitely die. Therefore, we have to see whether the Conference to be held in Denmark will be able to agree on this emissions reduction target, and whether it will be able to formulate any concrete measures to give the whole world the political determination to do this task.

In a while, I will give a letter to the Secretary because the Chief Executive will not attend the Conference. Actually, the Chief Executive, is now a "wanted fugitive" because many people want him to attend the Conference to demonstrate the determination of the Hong Kong Government. However, if the Chief Executive is not going to attend the Conference, I will still give this letter to the Secretary. This is a joint petition from labour unions all over the world urging governments of various countries to pay heed to climate change. It contains the following key points: first, they support emissions reduction; second, they hope that green employment will be created; and third, they hope that the transition and transformation will be a just one, that is, they hope that no workers will be

victimized and affected during the transformation process. Rather, it is hoped that workers will be assisted by positive labour policies, that labour unions will be consulted during the process and that emissions reduction targets can be achieved with the help of technology. I will give this letter to the Secretary in a while.

Finally, and most disappointing of all, Hong Kong has not set its own emissions reduction target. We have not heard of any target so far. If Hong Kong does not have any target, we can only speculate what will happen in the future or they will simply pretend to be sincere in taking actions. But what exactly is the target? There is not any. Second, regarding the green industries mentioned recently, I am also very disappointed that no target, particularly no employment target, has been set. France has announced that 500 000 green employment opportunities will be created by 2020. How about Hong Kong? I have not heard of anything about this. I hope the Secretary will speak more on employment. Thank you, President.

**MR IP WAI-MING** (in Cantonese): President, all of us are concerned about the United Nations summit on climate change to be held in Copenhagen next Monday because climate change has come to affect our life more and more. Therefore, Hong Kong has turned increasingly concerned about climate change, and this is evidenced by the motion moved by Ms Audrey EU, the amendments proposed by various Members and the speeches delivered by my Honourable colleagues today. All of us hope the Government can make more efforts in this regard.

Earlier, Oxfam Hong Kong pointed out that climate change would have inflicted serious harm on many people of developing countries if emissions were reduced by 40% from the 1990 level by 2020. As a relatively developed area, we should also shoulder the responsibilities of a global citizen and make better efforts in this regard, so as to improve the living environment of the people of developing countries and that of ours. Therefore, I call upon various countries to fully implement the United Nations Framework Convention on Climate Change. I also hope that the Hong Kong Government can actively shoulder this responsibility under the principle of looking after the livelihood of the grassroots in Hong Kong.

President, another reason for our concern about climate change is that our working environment has changed substantially due to the hotter weather. Our weather has become warmer and warmer, and the former Director of the Hong

Kong Observatory once said there might not be any winter in Hong Kong in 10 years' time. What is the biggest problem caused by the warming of the weather? Many grass-root people and workers will be affected. We often hear that some grass-root tenants of poorly ventilated cubical apartments in certain districts are unable to sleep due to stuffiness. Another problem is that many workers have to work in enclosed or outdoor areas. For the benefit of these workers, we hope the Government can introduce legislation to regulate work arrangements in very hot weather as soon as possible.

Although our view seems to have nothing to do with Secretary Edward YAU, we hope he will give consideration to it and relay it to relevant policy bureaux. We have seen an increasing number of cases in which workers engaging in outdoor manual work feel physically unwell due to the hot working environment. According to the information of the Occupational Safety and Health Council, some people even suffered from excessive sweating and died of heat stroke. In the construction industry and the cleaning, hawking and marketing trades, workers often have to work outdoors under direct sunlight. Some workers, such as those engaged in the aviation industry, even have to work in an enclosed environment. Many workers have to work in the cramped cabin of an airplane, and some even have to work in an environment without any ventilation. We once measured the temperature in the relevant working environment and found that the temperature reached 40°C. Therefore, we hope the Government can follow the example of the Mainland or other areas and require the suspension of work when the weather is too hot or when the temperature has dropped to a certain level. We also hope that paid leave or breaks can be provided to workers to prevent them from feeling physically unwell or even dying of heat stroke as a result of working in a very hot working environment.

Whenever this issue is discussed, the Government always resorts to non-intervention as an excuse, ignoring the basic rights and interests of workers. However, I hope the Government can understand that the climate has changed and Hong Kong is becoming hotter and hotter. Many workers are really unable to stand the heat in such a hot working environment. I hope the Government can introduce some relevant legislation expeditiously to provide workers with a better working environment.

Regarding environmental protection, we can easily find signs of diminishing water sources. There are droughts in various parts of the world, and

many places, particularly the adjoining Guangdong Province. This shows that fresh water supplies will be affected in the future. This is a pressing problem not only for the Guangdong area but also for the people of Hong Kong. In our discussions on climate change conventions, we often hope that various countries or other governments can make more efforts. We also hope that everyone can put in their own effort because environmental protection can begin at the individual level and with minor living habits.

President, when I was preparing this speech, my colleagues introduced to me the World Wide Fund for Nature (WWF) website, on which a tracker of carbon footprint is posted. When I followed the simple steps, I found that just by slightly improving some minor living habits, I could already reduce my carbon emissions. Therefore, besides hoping that the Government can make more efforts, I would also like to call upon members of the public to take actions to reduce carbon emissions by correcting some of their minor living habits because this is our earth, and any further trampling on it will do all harm and no good to us.

President, I so submit.

**MR JEFFREY LAM** (in Cantonese): President, the advent of December means that Christmas is fast approaching. Has it ever occurred to Members that Santa Claus may put off his thick red flannel overcoat and wear a short-sleeved blouse and shave his big beard? This is not entirely impossible, President, because some studies have pointed out that the Santa Claus' Village in Finland is faced with the problem of inadequate snowfall. It is predicted that if this situation persists, the average temperature of Finland will have risen by 3°C to 6°C by 2050, and if Santa Claus still wears his existing outfit, he may be numbed by the heat.

In the United Nations Climate Change Conference to be held in Copenhagen next week, various places will strive to reach an agreement on global climate change. This will be a significant milestone. The Government of the Hong Kong Special Administrative Region (SAR) will be represented by Secretary Edward YAU. I hope he will adhere to the principle of "three good's", that is, "good deeds, good words, and good intentions", and work closely with the international community to formulate effective policies on addressing climate change and emissions reduction targets.

Hong Kong, though not a party state to the United Nations Framework Convention on Climate Change, can still make enormous contribution to addressing climate change. Hong Kong's average per capita carbon emission is about 6.6 tonnes, which are more than triple the ideal per capita carbon emission of 2 tonnes. While the population of Hong Kong is just 0.1% of the world population, its greenhouse gases (GHG) emissions still represent 0.2% of the global GHG emissions, even when we disregard the GHG emissions from fuels consumed by Hong Kong people when travelling abroad by air.

I believe members of the public also feel the climate change in recent years. Winter comes belatedly and is usually short. These days in December, one can still see many people wearing short-sleeved blouses in the streets. There are also fewer rainy days, and it often pours when it rains. Therefore, Hong Kong cannot be immune from climate change, and it should pitch in actively and formulate plans for emissions reduction.

Power plants are the main source of GHG emissions, and their use of cleaner fuels can effectively reduce emissions. Last year, the SAR Government entered into a Memorandum of Understanding on energy co-operation with the Central Authorities. This can ensure a stable supply of nuclear electricity and natural gases to the power companies in Hong Kong in the coming two decades, with the result that they can progressively reduce the use of coal.

I know that the two power companies have been making active efforts to develop renewable energy, including the construction of a wind farm on Lamma Island. Towngas is also making use of methane from landfills for gas generation. The Housing Authority has installed solar photovoltaic panels in some housing estates for electricity generation. However, as Hong Kong is a small place with a huge population, there are constraints on the development of large-scale electricity generating facilities using wind power or solar energy. Therefore, I propose that the Government should join hands with Guangdong Province to actively explore a co-operative programme on promoting the development and use of renewable energy. Besides, the Government should encourage the installation of solar photovoltaic panels on the outside of buildings so as to make the best use of sunlight.

Besides emissions reduction, another step to take should be energy saving. At present, buildings account for 89% of the electricity consumption in Hong

Kong. Regarding building energy efficiency, we should reduce the use of energy or enhance energy efficiency in both commercial and residential buildings, and at places ranging from households and workplaces to public places, so as to reduce carbon emissions.

The Buildings Energy Efficiency Bill has just been introduced by the Secretary today, and I hope that proposals relating to the Energy Efficiency (Labelling of Products) Ordinance will be introduced expeditiously so that the second phase of the Mandatory Energy Efficiency Labelling Scheme can be implemented. The reason is that both pieces of legislation can facilitate energy saving at root.

The business and industrial sectors have been promoting environmental protection by improving production processes. The Cleaner Production Partnership Programme with a funding of \$9.3 million provided by the Government and introduced in collaboration with the authorities of Guangdong Province can effectively assist Hong Kong businessmen in the Pearl River Delta Region in adopting environmentally-friendly production technologies. Over a hundred enterprises have benefited from it so far. At the end of last month, the Environment Bureau and the Economic and Information Technology Commission of Guangdong Province jointly launched the "Hong Kong — Guangdong Cleaner Production Partners Recognition Scheme" to commend the efforts made by Hong Kong-owned factories to engage in cleaner production. One of the garment factories even successfully attracted new orders after replacing its sewing machines and lights with energy-saving ones, resulting in the doubling of its business volume. This Scheme has shown that as long as the Government makes some promotional effort, the business and industrial sectors will be very willing to take complementary actions.

President, the Government mentioned earlier that the consultancy study on climate change launched in March last year would be completed early next year. I really do not understand why it must take two years, and I hope this is not a delaying tactic. I hope the Secretary will introduce the proposed scheme as soon as possible after incorporating the results of the Copenhagen Conference into it. As public consultation on the Air Quality Objectives has just been completed, new objectives should be formulated expeditiously — because the existing objectives are indeed very out-dated — in order to improve the environment and enhance public health.

President, I so submit.

**PROF PATRICK LAU** (in Cantonese): President, I believe Members all know of the film and the book called *Inconvenient Truth* by Al GORE, a former Vice-President of the United States. He subsequently won the Nobel Prize. A lot of scientific evidence and arguments on the study of global warming are quoted in the film and the book, and they can provide very useful reference for us. It is mentioned in the studies that global warming may result in the melting of icebags in Greenland or the Antarctica. Sea levels may thus rise by approximately 6 m, flooding low-lying areas like Taiwan or coastal areas. This will mean practically the end of the world.

The United Nations Intergovernmental Panel on Climate Change issued a report in 2007. According to this report, the amount of carbon dioxide accumulated in the atmosphere is at the highest level in 650 000 years; the global average temperature has increased by 0.74°C over the 100 years from 1906 to 2005; and, the rate of temperature increase in the last 50 years is twice the rate in the past 100 years. The problem of global warming has been worsening.

As the global warming crisis worsens, the ecology of the earth will face enormous challenges. Recently, many places have been affected by anomalous weather conditions. For instance, the United Kingdom was struck by severe floods; Beijing was hit by serious snowstorms; and, the Southern part of China was affected by droughts. These phenomena are unusual. Moreover, as icebergs melt away, polar bears cannot find floes to land, and many of them have eventually died of hunger after swimming a long way to search in vain for food. On the other hand, due to sudden temperature changes, the waters of Japan are plagued by huge jellyfish, which secrete toxin that substantially reduces the catches of fishermen. And, some fishing boats have even been overturned by the jellyfish. It is evident that the dramatic changes in the natural environment have greatly affected both mankind and animals.

In Volume I of the *Treatise on Food and Money* of the *History of the Han Dynasty* (《漢書·食貨志上》"Hanshu — Shihuo zhishang") written by BAN Gu of the Eastern Han Dynasty, it is said, "As a teaching of Shennong ("神農") goes, 'If a country has strong fortifications, a moat of hot water and millions of soldiers but no food, it cannot guard against its enemy.' This shows that food is of great importance to a ruler and forms the basic essential for governance." This quote means to tell us that it is useless to have money and manpower but no food, for we cannot live without food. Food is thus the basic essential for governance. Climate change has affected the harvest of crops and disrupted the ecology, and

even the food chain. Food is essential to our survival. Hence, I hope that the Government will take the lead in coping with the impacts of climate change on us and formulate appropriate policies to mitigate climate change as much as possible, so as to ensure our survival.

The Kyoto Protocol will soon expire. Many Members said earlier that the summit held in Copenhagen next week was a golden opportunity for the leaders of various countries to discuss new options for reducing greenhouse gases emissions (GHGs). I think that as an international city, Hong Kong should naturally pitch in and formulate measures on coping with climate change. It has been reported that Hong Kong has pledged to achieve a 25% reduction in energy intensity from the level in 2005 by 2030. But the point is that as long as Hong Kong maintains its *status quo*, it may already be able reduce energy intensity by 46%, that is, it may already be able achieve the pledge that way. However, GHG emissions will increase with economic growth. Besides, we have not noticed any substantial improvement in air quality so far. Hence, I think the Government must set a more ambitious target for emissions reduction.

President, the weather in Hong Kong is getting hotter. The accumulated temperature increase in Hong Kong over the past 125 years is 1.5°C. The two major sources of GHG emission in Hong Kong are power generation and electricity consumption by buildings. Hence, the Government should formulate measures directed specifically at these two sources. In the case of power plants, the Government should tighten its supervision of the two power companies in regard to their reduction of carbon dioxide emissions. They must be required to use cleaner or renewable energy for power generation and step up liaison with the Pearl River Delta Region for the joint formulation of emissions reduction targets.

Power consumption by buildings is mainly for air-conditioning and other electric appliances. In 2002, a group of professionals and I founded the Professional Green Building Council to promote green building concepts, set up awards and promote green building studies. In building designs, Hong Kong should give due consideration to the full utilization of natural airflow, so that the use of air-conditioning can be minimized. The Government should also step up the promotion of the existing programmes on energy efficiency and carbon audits for buildings. The Government has also said that it will actively encourage more owners and organizations to participate in building emissions reduction activities. Recently, the Green Building Council was established in Hong Kong. But regrettably, I did not see the Secretary at the inauguration ceremony of the

council. Some Members said earlier that the introduction of legislation on building emissions reduction would provide a good opportunity for the Secretary to promote environmental protection.

President, climate change is closely related to our daily life and is exerting increasing impact on us. I hope the Government can attach greater importance to environmental protection. It should achieve the emissions reduction targets as soon as possible, reduce energy consumption and promote green living, so as to spare the next generation from facing an irreversible crisis.

I so submit. Thank you, President.

**DR SAMSON TAM** (in Cantonese): President, Hong Kong is a developed city and its per capita resource consumption exceeds those of many countries or regions. Hence, I think the Government should redouble its effort and make greater commitment to emissions reduction, so that Hong Kong can in time become a city marked by the efficient use of resources.

My speech today includes three parts. First, emissions reduction must be driven by economic incentives, and the Government must thus promote a green economy. According to a recent report issued by the United Nations Environment Programme, by 2030, more than 20 million employment opportunities will be created by green industries worldwide, 30% more than those created by conventional industries.

For this reason, the European Union, the United States and the United Kingdom have introduced many measures to stimulate the development of green industries and create green employment opportunities. These countries have also planned to invest US\$150 billion in the next decade to create 5 million employment opportunities relating to the adoption of new sources of energy, energy conservation and clean production. The Government has indicated its intention of promoting a green economy, but has it put in place any specific policy? Since the whole world will work on this item, does the Hong Kong Government have any strategy to maintain the competitive edge of this tiny place of ours?

Second, I believe that in the future, apart from promoting green industries through economic development, the Government must also promote green living

if it is to improve the quality of living of every citizen in Hong Kong. What is green living? According to the WIKIPEDIA, green living is a lifestyle of an individual or a society that can attain sustainability with limited natural resource, without resulting in the loss of the earth's resources. New methods are adopted in transportation, living, energy consumption and diet for this purpose. I cannot say that the Secretary has done nothing to promote green living, for the Chief Executive has taught us about the replacement of light bulbs in his policy address.

Last month, I bought a book entitled *"When Changing a Lightbulb Just Isn't Enough"*, which means just switching to the use of compact fluorescent lamps cannot solve the problem. The book lists 150 ways to lead a green living. It also points out that many education efforts are made in Europe and the United States to induce people to engage in green economic activities. Some examples are quoted in the book. For instance, 1.44 million tons of soft-drink aluminum cans are disposed of by Americans every year. This means that each American disposes of more than a million tons of aluminum cans every year. However, only 45% of the cans disposed of are recycled, and the recycling of aluminum cans can reduce carbon emission by 95%. Obviously, the recovery of these cans will not only bring economic benefits but, more importantly, will also help reduce the global carbon emission by 96%. Hence, the Government should consider how it can assist the recovery industries in Hong Kong. This is indeed a pressing task. I hope that the Government will not just consider the issue from its economic viability, but will also consider what policies it should adopt to meet commitment to emissions reduction.

Green living refers not only to recovery and recycling but also recovery and reuse, which means transferring things you consider useless to others who find them useful. Recently, I have written an article about how the people in Europe and the United States put the things they no longer want to use in their backyard, so that others may buy them when they are walking past. In Hong Kong, not many people have any backyards to put their second-hand items for sale, but we have online sales. Hence, I hope that the Government will consider promoting online second-hand trading, so to encourage more people not to dispose of useless items, particularly electrical appliances, after they have bought new models. I believe online trading of second-hand items can generate profit and enable people to pick the items they need. Hence, I think the Government should consider formulating policies to promote second-hand goods trading in

Hong Kong. It is worthwhile to think about this. I hereby encourage the Secretary to try to sell his the second-hand items through online sale.

Finally, I would like to talk about the application of technology. Apart from the promotion of green economy and green living, technology is definitely also a means of reducing global emissions. How should technology be applied? Information technology, in particular, has reduced the travelling time people used to spend on attending meetings, and the quantities of paper documents required have been reduced. The technologies of video conferencing and paperless offices are worth the Government's active promotion.

Some people may point out that the power consumption of computers is high. Right, statistics show that the number of computer data centres is on the rise. It is estimated that by 2020, these data centres may account for 10% to 15% of the total global emissions, thus becoming the culprit of carbon emissions. Hence, it is worthwhile for the Government to promote various ways of helping these data centres to reduce their emissions.

Actually, Hong Kong is now the hub of data centres in Asia. Has the Government put in place any policy to encourage more enterprises ..... or has it taken the lead in the adoption of new technology for setting up data centres which require substantially lower air-conditioning? Has it ever considered promoting cloud computing to avoid the duplicated establishment of these data centres? I think the Government should think of certain policies to enable Hong Kong to become a model of reducing data centre emissions. In this way, the people of Hong Kong may tell others that Hong Kong also possesses the special technology required for reducing global emissions. There are many policies and actions that we hope the Government can implement immediately.

President, I so submit.

**MS MIRIAM LAU** (in Cantonese): President, the film "The Day After Tomorrow" was criticized by many film critics for being exaggerating and misleading. But, President, I myself like this film. I think that the horrifying scene of New York being engulfed in water may one day occur in reality, though it may not be so dramatic or may not come so soon. As global warming worsens, natural disasters caused by extreme climate are happening on Hong Kong's doorstep. The 8.8 flood in Taiwan and the severe drought in Southern

China that triggered a crisis of water rationing have sounded an alarm to us that Hong Kong will no longer be left intact under the influence of global warming.

In the face of the climate crisis, people hope that at the climate conference to be held next week at Copenhagen, participating countries will reach an emissions reduction target with binding effect. Before the conference, China put forth an emissions reduction target considered by others as "very ambitious", that is, to reduce carbon dioxide emissions per unit of GDP in 2020 by 45% at the maximum. Regrettably, developed countries seem to be holding back in making emissions reduction pledge, and they have not yet honoured their post-dated cheque of providing funds to help developing countries. A survey conducted by the British Broadcasting Corporation reveals that so far, only 15% of the subsidy which developed countries promised in 2001 to provide to developing countries for coping with climate change have been provided.

On the other hand, though Hong Kong is a developed region, we lag far behind our Motherland in achieving emissions reduction. When the State announced the China's National Climate Change Programme in 2007, we had not yet even started to examine any options to address climate change.

In developed countries, as well as under the Kyoto Protocol, the level of total carbon emissions is used as the standard of calculating emissions reduction. The State has stopped using "energy intensity" and switched to carbon intensity, a more stringent standard, in setting emission reduction targets. But the SAR Government still holds on to the obsolete standard, continuing to set its emission reduction target at a 25% reduction in energy intensity. Such a target is not commensurate with our status as a developed city, and also runs counter to the global trend.

Actually, as quoted in a newspaper today, an analysis of a project consultant company points out that the Government's present emissions reduction target calculated on the basis of energy intensity is indeed a "fake target". According to the computations of the consultant company, even if the Government does not take any action, by 2030, Hong Kong can still far exceed the target of reducing energy intensity by 25%. But the actual carbon emissions in Hong Kong will increase substantially by 107% in 2030 when compared with the level in 2005. If that case, how can there be any emissions reduction? Hence, when the world as a whole is making every effort to reduce emissions, the

Government should not try to deceive itself and others by adopting such an obsolete standard and fake target.

In Hong Kong, power generation is the main source of GHG emission, accounting for 60% of the total emissions in Hong Kong. Hence, when it comes to emissions reduction, there is no better alternative than promoting energy conservation and increasing the proportion of clean fuel in power generation.

Insofar as energy saving is concerned, we think that the Government should take the lead and set an example in this respect. It should set some "rigid targets" every year and instruct all departments to save energy and reduce emissions. At the same time, it should offer incentives to mobilize everyone in Hong Kong to save energy.

Earlier on, the Government of Macao offered a rebate of water tariff to encourage people to use less water. The SAR Government may draw on the experience of this practice and introduce an electricity tariff rebate. For instance, if a customer can achieve an electricity consumption saving of, say, 5%, within a certain period when compared with the consumption in the same period of the previous year, he can be offered a fixed tariff rebate as an incentive. We believe this arrangement can help customers developing the habit of energy conservation and achieve emissions reduction in the long term.

In addition to energy conservation, increasing the use of clean fuel, such as increasing the proportion of power generated by natural gas, is a measure that must be implemented. However, if the proportion of natural gas electricity generation is increased from 28% at present to 50%, society will have to face a 20% increase in tariff in phases. Hence, in formulating emissions reduction policies, the authorities must assess the social and economic impacts brought forth by the policies, and they should draw up mitigation measures as early as possible to remove the hurdles to emissions reduction.

Increasing the proportion of natural gas electricity generation is one option. But since the State is actively increasing the proportion of clean energy power generation, that is, the proportion of nuclear power, we may discuss and examine with the Mainland the possibility of drawing more nuclear power from the Mainland as a supplement to our power supply. Moreover, the technology of nuclear power generation is more advanced than that of wind power and solar power, and the cost is lower. Besides, after the many years of operation, it is proven safe.

President, the per capital carbon emission of Hong Kong is actually affected by the fact that industries in Hong Kong have moved northward to the Mainland, and by the factor of "a shop in front and a factory at the back". All along, the economic growth in Hong Kong has been driven by the export of products manufactured in the Mainland, and our carbon emission is thus "left" on the Mainland. Had these factors been taken into account, the actual carbon emission of Hong Kong would have been much higher than the figures on the surface. Hence, to assist developing countries to reduce emission, the authorities should first consider assisting the Mainland in reducing its emissions or sharing the emissions of the Mainland. This is the responsibility and obligation that Hong Kong should undertake.

President, the Liberal Party agrees to the original motion and all the amendments proposed today, and we hope that we will take a step forward in promoting a green economy and green living. President, I so submit.

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

**MR WONG YUK-MAN** (in Cantonese): President, Hong Kong as a cosmopolitan city is inevitably be affected by the hazards of climate change, and it cannot evade its responsibility either. Many green groups have pointed out that by 2020, we may no longer have any winter. In other words, gone may be the days with a temperature lower than 12°C. By 2050, Hong Kong's highest temperature may reach 40°C. As proven by the statistics of the Hong Kong Observatory, heat stress and rainfall in Hong Kong have shown an obvious increasing trend. According to the report of a survey conducted by Greenpeace, the heavy rainstorm brought about by the extreme weather on 7 June 2008 alone has cost Hong Kong a direct economic loss of \$570 million.

The United Nations Climate Change Conference will be held at Copenhagen on 7 December. The conference at Copenhagen will have a bearing on the sustainable development of the world. Its target is crystal clear, that is, to reach a new agreement on reducing greenhouse gases (GHGs) emission worldwide and to prevent the severest impact resulting from climate change. To avoid disastrous consequences, governments of various countries must act proactively to set emissions reduction targets and open up their funding mechanisms in order to slow down global warming. It is the obligation of all

governments in the world to solve the problem of climate change. Hong Kong should naturally do its level best and face up to the unprecedented threat brought about by climate change together with other countries.

In order to press the Chief Executive to attend the conference at Copenhagen in person, Greenpeace hung a huge poster outside the west wing of the Government Headquarters in June this year. The public could see from the poster that the "Climate Fugitive", Chief Executive Donald Tsang, was wanted for negligence of duties. As a result, the security measures at the Central Government Offices have since been tightened and people entering and leaving the building must now undergo stringent checks.

In 2006, green groups initiated the "Light Out Hong Kong" programme (I wonder if the Secretary can still remember this), calling upon the public to reduce electricity consumption and alleviate the problem of air pollution. But rather than providing any active support, Donald TSANG even criticized the programme for tarnishing the image of Hong Kong, refusing to cancel his own programme called "A Symphony of Lights". Speaking on the "light out" incident, an academic MA Kwok-ming criticized the SAR Government for indulging in image building and turning a blind eye to practical problems. He made the following remarks in one of his articles, and I would like to read it out to the Secretary, "The Light Out Hong Kong Programme aims only to call upon all citizens to join hands to solve the problem of air pollution. The Chairman of the Hong Kong Tourism Board and critics of this programme definitely will not and dare not deny that the problem of air pollution can only be solved with the participation of all citizens. However, they have openly asserted that the programme will tarnish the image of Hong Kong. What they imply is that image is very important to Hong Kong, so certain actions which can help address practical problems cannot be accepted if they will tarnish the image of Hong Kong." Following this line of reasoning underlying such image building efforts, one can say that the SAR Government will do nothing if climate change does not affect the image of Hong Kong, and all actions it takes are meant to improve the image of Hong Kong, not to address any practical problems. This kind of logic is really very interesting.

On 7 July this year, at the Chief Executive's Question and Answer Session held right before the recess of this Council, when Donald TSANG responded to the criticism that he was as a climate fugitive ..... At that time, we laid out portraits of Donald TSANG as a wanted climate fugitive. His remarks revealed

a complete lack of commitment to the problem of climate change, and showed that his only concern was his image, rather than any realistic problems. The Greenpeace subsequently criticized him for four wrongs: ignorance, bragging, exposing his shortcomings and talking like a fool. I would like to explain further.

When replying to the request for a concrete emissions reduction target, he emphasized that Hong Kong would achieve a 30% reduction of energy intensity by 2030. It is evident that he is completely ignorant. Many people have already pointed out that a reduction of energy intensity is not equal to a concrete emissions reduction target. The focus of the world is now on actual emissions reduction targets. In the United Kingdom, legislation has been enacted to require that by 2050, the GHG emissions of the country must be reduced by 80%. Japan has also pledged to reduce its total GHG emissions by at least 20% by 2020, from the level in 1990. Even our sovereign power has decided to reduce its carbon dioxide emissions per unit of GDP by 40% to 45% by 2020, from the level in 2005. But up to now, Donald TSANG still refuses to set a specific emissions reduction target. He still looks at global warming with the same ignorance. This is really worrying.

On the other hand, he likes bragging. He stressed that the Government wanted to develop green industries and announced that the Government would stop purchasing incandescent light bulbs and replace them with 42 000 compact fluorescent lamps (CFLs). In the end, "Donald the Light Bulb Lover" ran into trouble, showing that he can no longer pretend to be a good official amidst severe criticisms. This policy has come to an unnoticed end, becoming a laughing stock.

Donald TSANG also exposed his shortcomings when he compared the carbon dioxide emissions of Hong Kong with those of the United Kingdom. The economy of Hong Kong bases mainly on the services industry, so the average annual per capita carbon dioxide emissions of 6 tons are already quite alarming. Referring to this figure he claimed that the annual per capita carbon emissions in Hong Kong were 11 tons less than those of the United Kingdom. But the United Kingdom is an industrialized country, so his claim is very deceiving. Moreover, in the past, only officials at junior levels were appointed to attend this kind international climate conferences. The Chief Executive said that he would not attend, for only sovereign states could participate in these conferences. But now

a Director of Bureau is appointed to attend the conference. If he has the guts, he would have sent no one to the conference. This again reveals his weaknesses.

President, I support the original motion and all the amendments. Thank you.

**DR RAYMOND HO** (in Cantonese): President, the Kyoto Protocol is the only global consensus on addressing the problem of greenhouse gases, but it will expire by the end of 2012. At the United Nations Climate Change Conference (UNCCC) 2009 to be held at Copenhagen next week, from 7 to 18 December, the world will focus on whether any emissions reduction targets can be successfully formulated after the Kyoto Protocol expires. The new emissions reduction standards will produce far-reaching effects on the economic development and strategies of all our country. Hong Kong as part of China is not explicitly required under the Kyoto Protocol to make any commitments to emissions reduction, but as a place with a highly developed economy, it should still adopt resolute measures to reduce GHG emissions and make good preparations for new emissions reduction targets set for the time after 2012.

According to the Carbon Dioxide Information Analysis Centre and the International Energy Agency, though the per capita emissions in China are very low, it has already overtaken the United States and become the country with the highest level carbon dioxide emissions worldwide. This is one major reason for the international concern about the emissions reduction policy adopted by China. Actually, a consensus on common but differentiated responsibilities has already been reached under the United Nations Framework Convention on Climate Change. It is evident that developed countries are the major source of GHG emissions, so they should naturally assume a greater responsibility of address the problem of GHGs. A look at the development of China over the past 50 years can show that the levels of its accumulated emissions and per capita emissions have been far lower than those of developed countries. Hence, Premier WEN Jiabao stressed earlier that whether the countries concerned could fulfil the common but differentiated responsibilities would be the key to the success of the UNCCC.

The carbon dioxide emissions of China have increased in recent years, and this is attributable to its rapid social and economic development, as well as the

consequential improvement in its people's standard of living. In order to show the State's concern about climate change and its determination to achieve emissions reduction, the State Council announced after its Executive Meeting last week (25 November) the national emissions reduction target in the run-up to 2020: a reduction in carbon dioxide emissions per unit of GDP by 40% to 45% by 2020 from the level in 2005.

In the policy address for the year 2008-2009, the Government advocated a low carbon economy, the use of clean fuels and the reduction of our reliance on fossil fuels. I have repeatedly proposed that a policy should be formulated to promote the development of renewable energy sources, such as solar energy, wind power and geothermal energy, and so on. To kick start the development of renewable energy in Hong Kong, the Government must offer financial support and implement supporting policies at the initial stage. At the same time, the Government should allocate funds for implementing certain essential testing projects to speed up the development of the technologies concerned. The State projects that by 2020, the power generated by renewable energy will account for 15% of the power generated in the State. In stark contrast, Hong Kong's estimated figures in this regard are pitifully low ranging from a mere 1% to 3%. This is pitiable. Regarding the development of nuclear power, the State envisages that by 2020, 80 million kilowatts of electricity will be generated by nuclear power. In other words, in the next 11 to 12 years, 30 nuclear plants will be built. I think Hong Kong should stop being complacent, and it must catch up with the standards of the State, so as to tie in with the environmental and economic development of the region, and help develop a "Green and Quality Living Area" in the Greater Pearl River Delta Region.

I maintain that the Government must implement the Building Energy Code on a mandatory basis. The voluntary Energy Efficiency Registration Scheme for Buildings was launched in 1998, but the effect has not been satisfactory. The Government should identify the inadequacies of the voluntary scheme and draw lessons from it, because very often, the desired effect can only be obtained through mandatory implementation. The mandatory scheme may first cover commercial buildings. After some time, the authorities may consider how the scheme can be extended to cover other types of buildings on the basis of the data collected during the initial stage.

As early as 26 January 2000, I already moved a motion entitled "Review of Buildings Ordinance". I also proposed that the Government should actively promote the development of building designs conforming to the principles of sustainable development. This includes the use of regional water cooling systems — the Government has started to consider this option now — or geothermal energy, as well as avoiding building designs creating the "wall effect". The Government should also encourage developers to adopt construction methods that are more environment-friendly so as to reduce construction waste, particularly the consumption of wood.

There have been drastic temperature fluctuations these days, so one cannot help associating anomalous weather conditions with climate change. What has gone wrong? The over-loading of the natural environment will be an inevitable reality. I hope that the representative of the Hong Kong SAR Government will express our expectations at the UNCCC and report to us the achievements made, so as to help Hong Kong expeditiously formulate policies to tackle the problem of climate change, and allow the public to understand the plan and direction of the Government and render their support.

President, I so submit. Thank you.

**MR LEUNG KWOK-HUNG** (in Cantonese): Speaking of this problem, I must say that the Government is certainly the one to be held mainly responsible. The reason is that our Government is wealthy, nearly the wealthiest in the world, and power is highly concentrated in its hands. In other words, it has both money and power. However, why have we failed to discharge our environmental responsibilities? What is the crux of the problem? The answer is that the Government is much too indecisive, completely devoid of any consistent conviction.

In the north, our Motherland has become a country with the highest level of emissions in the world, and our nearby Guangdong Province is now a very important industrial base. Having decided to spend a huge amount of money, as much as \$65 billion, or even more than \$65 billion, on constructing the Guangzhou-Shenzhen-Hong Kong Express Rail Link (XRL), we are still worried that the tempo of our life is not fast enough. The construction of the XRL, symbolizes closer and more frequent ties between us and Guangdong Province, because when HU Jintao put forward the concept of "one-hour living circle", his intention was to achieve a faster tempo of life. Ignoring all the queries raised in

the community, our Government is going to apply for funding from the Public Works Subcommittee tomorrow. I have never heard our government officials tell their Mainland counterparts what our policies and plans are during all the discussions between the two sides on the emissions problem. But Secretary Edward YAU has come up with an idea — this may not be his brainchild, and he may just be taking the blame for others. I am talking about the compact fluorescent lamps (CFL) incident. Obviously, this is a mere gesture with not much practical use.

We have been asking why CFLs are chosen. These light bulbs contain mercury. Why has he come up with this idea? How come they do not give the money to the public for purchasing better types of light bulbs? Just now, I heard Dr Samson TAM mention a book he had read, a book which discloses that CFLs are not the only alternative. May I ask Secretary Edward YAU whether he has read that book? If yes, why does he not give a lecture to the Chief Executive? If no, how can he fulfil the duties of a Director of Bureau? Buddy, such is their policy.

This reminds me of a remark made by Karl MARX. He once asked what capital was. He said that it was a huge accumulation of commodities. In Hong Kong, during all discussions on environmental protection, it is invariably asserted that the interest of businessmen must not be compromised. Do we dare to offend real estate developers and request them to construct fewer wall buildings? Our Government can do nothing even when certain floor numbers in a building are skipped. So, what more can we say? Yuk-man said earlier that since some people had hung a banner hoping to catch Donald TSANG, the security measures of the Government Headquarters had been tightened. However, Donald TSANG has failed to do any self-reflection, nor has he thought deeply about others' comments.

One certain day, I asked the Secretary to show me his schedule of the day, but he did not give it to me. I told the Secretary that people were waiting for him outside and would like to hand him something. But the Secretary did not even attend the meeting that day. Today, he has not brought the schedule either. Where is his schedule for that day? Green groups want to meet with him. Does he think that a meeting with them is not a matter of any importance? He comes from the public relations field, Buddy. He is not from the environmental protection field. But even if he fails to fulfil his duties in environmental protection, he should still be able to do a good job in public relations. Buddy, will you respond to us?

Secretary, we have spent so much money on entertaining the request of the Mainland. May I ask you whether you have ever asked the Chief Executive to develop green industries? I have said many times that I live in Kai Yip Estate. In the estate, three-coloured recycling bags for waste and cans are used, but I wonder if those bags will be recycled. In this Council ..... At that time, I staged a protest up on the Public Gallery, and TUNG Chee-hwa was sitting here. There was a movement called Green Actions at the time, and the aim was to provide people with a means of livelihood through the promotion of green industries. However, are they aware that waste paper recovery shops are not even able to survive because of exorbitant rents? Have they ever thought about setting aside certain sites for this purpose? There are to be all sorts of development in Qianhai and the Loop, but have they ever thought about this idea? So, I think it is really useless to debate with him today.

There is one more thing. Is there any policy on developing green industries? If yes, when will it be implemented? How much funding will be allocated? Which sites will be allocated? If no, why do they still come to this Council? Why do they still attend the conference at Copenhagen? What is the point of entertaining the "foreigners" there? Why do they not discharge their own duties first? I hope he will answer all these questions when he gives his response later, and I hope he will give me his schedule for that day. I have been asking him to do so for a long time. He has a computer, Buddy.

**MR LEE WING-TAT** (in Cantonese): President, I should thank Ms Audrey EU for proposing this motion debate today. In my opinion, this debate is just a very minor part of Hong Kong's response to the Copenhagen Conference. I think the overall environmental protection policy of the Government should be the most important. I asked the Chief Executive to attend the Conference during the last Question and Answer Session. However, it is a great pity that he is not going to do so. Members can see that President OBAMA of the United States is also going to attend the Conference. This shows that in view of the increasing gravity of global warming, the United States actually takes this issue seriously. I have been trying to save money recently. Why? I have told myself I must travel once to the North Pole and the South Pole sooner or later because I fear that many glaciers and rivers in the North Pole and the South Pole may simply disappear during my lifetime. This phenomenon was depicted in the movie produced by GORE a few years ago. Has this phenomenon stopped now? I do not think so.

The Government and the Secretary frequently say that the volume of carbon dioxide emissions in Hong Kong accounts only for a very small portion of the global emissions. However, I do not want the Government and the Secretary to approach the matter from this angle all the time. Hong Kong is a well-developed place with impressive Gross Domestic Product figures. For this reason, we are under a greater obligation to do better. At the least, we should tell our Motherland that Hong Kong can do better. Many Mainland cities, such as Beijing, Shanghai and Guangzhou ..... I am not allowed to go to these cities ..... But fortunately, last year, I was allowed to visit Guangzhou once with the help of the President. My impression was that Guangzhou was not very different from Hong Kong, as both places were equally hazy, full of smog. Perhaps, this happened to be the case only on the day of our arrival. Anyway, it was so foggy. Therefore, if Hong Kong as a modern city is capable of making greater efforts, it should not pay attention to itself only. Rather, within the framework of our country's environmental efforts, it should position itself as a showcase of how greater and better efforts can be made.

For this reason, I am greatly disappointed. As I have said, the Chief Executive is unwilling to attend the Conference. But the Conference is of considerable symbolic significance. Some may well argue that even if the Chief Executive goes to the Conference, he cannot have any participation because Hong Kong is not a sovereign state. This is just an excuse. Even if the Secretary goes to the Conference, he will not be ..... I do not know whether he can deliver any speeches, nor do I know what role he is going to play, but by attending the Conference, he can at least have exchanges with other countries and learn from them, thus demonstrating to the people and various sectors of Hong Kong that the Chief Executive will do his best to get this job done. Can OBAMA stop global warming simply by attending the Conference? He cannot. However, his attendance symbolizes the importance he attaches to the issue and his hope that he can help foster the conclusion of a more progressive and comprehensive international agreement on emissions reduction. The Chief Executive's refusal to attend the Conference is one thing. Having looked at what the Government has been doing over the past few years, I must say that the Government does not have enough determination and it has too many worries.

Once when the Secretary and I talked over a meal, we touched upon our country's trial of banning vehicles with even- and odd-numbered licence plates on alternate days during the Olympic Games. I said that even Beijing could make it, so presumably ..... I said that Hong Kong's traffic management was not bad, was fairly advanced. I suggested that the Government might choose to do so in a few areas during peak hours even if it was not prepared to impose such a ban

fully. I told him that the most congested areas were actually Central, Wan Chai, Causeway Bay and Tsim Sha Tsui, so the situation would already be much better if fewer vehicles were allowed to drive into these areas. Nonetheless, the Secretary rejected my suggestion downright. I was a bit disappointed because I thought that, if the Government did not have any determination, then no matter what my Honourable colleagues said in this Council, they would only get half the result with twice the effort, the reason being that we did not have political and policy-making resources in our hands. If the Government does not make any proposal, we cannot possibly express any agreement or disagreement. We have been urging the Government to designate low-emission zones for a long time. It has made some efforts, shown some responses. But the Democratic Party has been advocating the proposal for two to three years already.

We have been proposing the banning of idling vehicles with running engines, but I do not know when the Government is going to legislate on the matter. I made the proposal when I was elected to the Legislative Council again in 2004 — I was not elected in one term. How many years have passed since then? Secretary, five years have already passed. In the last term, when I saw the Under Secretaries assume office, I asked Under Secretary Dr POON if the work would be expedited after she had assumed office. She told me that it would definitely be expedited. It has been more than a year since Dr POON took office, President. But there have just been mere talks; and we do not know when a law will be enacted. The Secretary often tells me that it is hard to balance all the conflicting interests. This is actually true in all cases. If the job is an easy one, it will not be necessary to appoint Edward YAU as Secretary for the Environment. It will be fine to select YAU Chi-wah, YAU Sam-wah or practically anyone else for that matter. Why must it be Edward YAU in particular? The Government appointed Edward YAU as Secretary for the Environment because it thought that he was capable, having the will power to overcome difficulties and the ability to lead discussions. Actually, the Secretary is not incapable, as evidenced, for example, by his successful introduction of the plastic bag levy. Why should he humble himself unduly, saying that he is not good enough? He is actually able to overcome difficulties. Also, I often tell Secretary Edward YAU that the more he puts off actions to reduce global warming, to give a timetable, a roadmap and a completion date, the more he will disappoint environmentalism supporters. They will think that despite their support, the Government is still so slow in action.

Hence, President, I really hope that after the Secretary has attended this Conference, he can learn through his exchanges with other countries at this Conference how to formulate strategies, action plans and timetables, as well as

learn from their experience in overcoming difficulties. No job is an easy one. But if one simply gives up the task just because it is difficult, one cannot possibly face the earth and the next generation. Thank you, President.

**MR FREDERICK FUNG** (in Cantonese): President, the United Nations Climate Change Conference will be held five days later in Copenhagen, but each state is still sticking to its own views. Therefore, outsiders are not optimistic about the conclusion of any agreement.

Unlike previous United Nations conferences at which various state parties simply expressed their respective views on economic, diplomatic and military issues, this Conference is very important because it is closely tied up with the fate of human beings in the future. The 190 participating state leaders must have the courage and commitment to conclude a specific and effective agreement on coping with global climate change after 2012, so as to restore the harmonious relationship between human beings and nature. The erroneous survival philosophy of old, characterized by a blind pursuit of economic development and unbridled exploitation and plundering of earth resources, must become history. All participating countries must seek to reach a forward-looking emissions reduction agreement with a highly responsible attitude and from the perspective that mankind have come to a moment of life and death.

President, to put it simply, if we are to check the far-reaching impacts of global warming on mankind and nature, we must control greenhouse gases (GHGs) emissions. As is known to all, GHGs has led to climate warming. All is similar to the operation of greenhouses. GHGs trap the heat energy from the sun and warm up the surface of the earth, resulting in anomalous temperature increases. Gases causing greenhouse effects include steam, carbon dioxide, methane, nitrous oxide and ozone. Since the Industrial Revolution, human beings have been burning large amounts of fossil fuel as energy, producing huge quantities of carbon dioxide and an ever increasing concentration of GHGs in the atmosphere.

According to the Greenhouse Gas Bulletin 2008 recently released by the World Meteorological Organization in Geneva, Switzerland, the levels of most greenhouse gases continued to show a rising trend in 2008. The concentration levels of long-lived GHGs in the atmosphere, including carbon dioxide, methane and nitrous oxide, all reached the highest levels recorded since the Industrial Revolution. The concentration of carbon dioxide in the atmosphere, a matter of great concern to people, was 385.2 ppm, an increase of 2 ppm from the level in 2007. Its atmospheric abundance was about 280 ppm before the Industrial

Revolution, so the rate of increase is indeed alarming. The trend of continuous increase can no longer be stopped. And, the climate change caused by mankind in the past has come to produce irreversible impacts on the present era.

In June this year, the G8 and several major developing countries agreed to cap the average temperature increase since the Industrial Revolution at 2°C. President, as a matter of fact, the average global temperature has increased by 0.7°C since the Industrial Revolution. Experts have estimated on the basis of the current GHG concentration that the average global temperature will certainly increase by another 0.8°C. This means there is only 0.5°C to go before reaching the upper limit of 2°C.

Not long ago, the Intergovernmental Panel on Climate Change also pointed out the necessity of capping the temperature increase at 2°C, saying that GHG emissions must top out and then begin to fall in the next 15 to 20 years. Therefore, the importance of the Copenhagen Climate Change Conference is self-evident. It should emphasize the formulation of measures to respond and adapt to the irreversible effects that have been produced by GHGs. At the same time, it should also reach an emissions reduction agreement to restrict the increase in GHG emissions in the short, medium, and long run, so as to reduce GHGs emissions in the long run. President, evidently, we need a roadmap and timetable for emissions reduction.

In responding to climate change and setting a target for greenhouse gas emissions reduction, the Government has also been hesitant and refused to make any progress. Hong Kong has a per capita carbon dioxide emission of 6 tonnes, which is two times the global per capita emissions. As one of the developed economies in the world, Hong Kong should adopt an approach consistent with those of other developed economies and set an emissions reduction target. Yet, the Government has chosen to hide behind the status of China as a developing country which is not required to undertake to restrict or reduce GHG emissions under the Kyoto Protocol. Even so, in spite of the fact that the Chief Executive has mentioned in the policy address 2007 that Hong Kong will seek to achieve a reduction in energy intensity of at least 25% by 2030 (with 2005 as the base year), we must still say that this is a target with no focus, and we have not seen any specific proposal for achieving it.

Worse still, this cannot compare favourably to the latest decision made at the Executive Meeting of the State Council to set a target of carbon emissions intensity. Through measures such as enhancing energy conservation and emissions reduction, developing carbon emission intensity and afforestation, with 2005 as the base year, China will seek to achieve a reduction in carbon dioxide

emissions intensity by 40% to 45% by 2020. Carbon dioxide emission intensity refers to the amount of carbon dioxide emitted per unit of GDP. President, although this target is different from the emissions reduction target for developed countries, we must admit that when a developing country which is not required to undertake to restrict or reduce GHGs emissions under the Kyoto Protocol adopts a *de facto* target of balancing economic development and carbon emission, it has indeed taken an important step towards capping total global emissions as soon as possible.

The Hong Kong Association for Democracy and People's Livelihood hopes that Hong Kong as a developed economy will never live under our country's shelter, refusing to accept its due responsibility of emissions reduction as a developed area. It should not simply muddle through the work by following the target of carbon emission intensity just announced by our country. Based upon this practice, the Government must set a specific emissions reduction target. For instance, Oxfam Hong Kong has proposed earlier that the Government should take 1990 as the base year and reduce carbon emission by 40% in 2020.

President, with these remarks, I support the original motion and the amendments.

**MR LEUNG YIU-CHUNG** (in Cantonese): President, the threat posed by global warming to the whole world and all mankind is an indisputable fact, and we need not prove that with any data. I believe the Secretary will not raise any objection. This motion proposed by Ms Audrey EU today is intended to arouse our concern through its reference to an international conference, hoping that the Government can make greater efforts. For example, if the Chief Executive attends the Conference, will he put forward some ideas, bring back certain views or make greater efforts to improve the environment in Hong Kong?

Certainly, it is desirable for the Government to attend such conferences because in that case, we can understand the views of other countries in the world and see whether we can reach a consensus on certain matters. However, I do not have any expectations of such international conferences. In fact, if we want to achieve certain results, we basically do not need to convene conferences. Provided that each country makes the best efforts, the problem can already be solved. The current problem is that the various countries simply put the responsibilities on others' shoulders, and they will only protect their vested interests and convenience.

In my opinion, all of us know that there is a problem, but, why is there not any way to make improvement or progress so far? The reason is that although all of us think that the problem must be solved without delay, we nevertheless expect efforts to be made by others but not ourselves. This is the biggest problem. Similarly, we emphasize environmental protection in Hong Kong, but who should work on environmental protection? The Government says that people should do so and put the responsibility on people's shoulders. Nevertheless, what has the Government done? It seems that the Government has already tried its best and there is nothing else for it to do. The only problem seems to be that people have not done anything. But is that really the case? President, I do not think so. I would like to tell the Secretary that the Government can actually do many things, but it is too bad that it has not yet done so; and we find this most disappointing.

Let me cite an example. The MTR Corporation Limited is certainly the principal polluter in Hong Kong as it produces the most serious pollutants. The vehicles on the streets (mainly buses and minibuses) are also polluting. These problems have always existed; however, given these sources of pollution, what has the Government done? It has just been putting up with the problem indefinitely. What exactly is the problem? The problem is that there are no solutions even though the problem exists.

Let me give a very simple example. There are some 5 000 to 6 000 vans running on the roads every day and the drivers of these vans and minibuses keep asking the Government if vans can also switch to Liquefied Petroleum Gas (LPG) now that other vehicles (for example, taxis) are already using LPG. The Government pays no attention to them. Even though van drivers have said that they will try to purchase LPG vehicles from Japan for trial use, the Government has said that this cannot be done. What are the reasons? It is because there are not enough LPG filling stations at present and there is just a sufficient supply for taxis only. It will be difficult to supply LPG also to vans and minibuses. Hence, LPG cannot be provided and the Government has decided not to implement the idea. It is going to allow the problem to remain and also allow the continuous emissions by vans.

There are also buses apart from vans and minibuses. All of us know that buses on the roads emit the most serious pollutants, but, what has the Government done? It has been tolerating the problem again. These pollutants aside, we have also said that we should do our best in respect of recycling for use and we should not waste resources. Nevertheless, how much effort has the Government

made? If it takes the initiative to procure some recycled products, it will become a major client, and it will be able to promote the overall operation of the industry. Yet, how much effort has the Government made in this connection? We often hear high-sounding words, but the biggest problem is that the Government is not willing to take any actions. So, what is the point?

In my opinion, as Mr WONG Yuk-man has just said, a very important and worthwhile task is for the Government to set a target. If the Government is not ready to set a target, what can we say? The Government always tells us that it will make efforts, but the Government is the only who can say how much it has done. It says that it is successful when it has just made little effort. The Government can say whatever it likes. If it really means to do so, I think it is not important whether it attends this international conference or not; I will be happier if it does its duty. As I have just said, it will be fine if the Government sets a target and lets us know what it is going to do in the future. Unfortunately, the Government has only shown us that it has just taken stopgap measures so far. It will take actions only when it is asked to do so, and this is already not too bad. Sometimes, it may not take any actions at all.

Hence, I do not think we should talk too much because taking prompt actions is the most important; the Government should do something right away. We need not talk too much at this moment for all of us know that the problem exists. Do we still need to talk that much? I believe the Secretary is very clear about that. As I have observed, he has attended a lot of meetings within this period to probe into the environmental protection issue. Now that he has got a grasp of a lot of information, I hope that he will give us a good answer today and set a target to show how much time it will take to solve the problem.

I so submit, President.

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): Ms Audrey EU, you may now speak on the five amendments. You may speak for up to five minutes.

**MS AUDREY EU** (in Cantonese): President, the first amendment today was proposed by Mr CHAN Hak-kan, and it covers many issues that I previously touched upon in this Council, such as, a green economy, a green lifestyle and carbon trading, and so on.

President, I would like to mention that I have asked a written question today about carbon emissions because the Hong Kong Exchanges and Clearing Limited (HKEx) has conducted a consultation recently, and it should have ended by now. Therefore, I want to ask the Government how the carbon emissions trading platform of the HKEx can promote a low carbon economy and the amount of greenhouse gas emissions which can be reduced. The written question is Question 10 today. However, having read the Secretary's reply, I find it a pity that the reply is rather brief. It is only stated that the consultation ended on 31 August, and that the HKEx plans to issue a consultation conclusion report before the end of this year. As to the impact of the platform on the economy, especially a low carbon economy, the Government has said that it is hard to tell.

Moreover, I also ask whether the Government has estimated the effect of reducing greenhouse gas emissions and the amount of greenhouse gas emissions which can be reduced. Similarly, it is mentioned in the Government's reply that it is not feasible at this stage to give an assessment on the impact of establishing a certified emission reduction futures trading platform in Hong Kong on local or global levels of greenhouse gas emissions.

Therefore, President, although we find that there is a pressing problem, we find that the authorities concerned — both the Government and the HKEx — have not told us any good news. Nevertheless, I agree very much with Honourable colleagues that we should try our best to provide financial incentives in this connection to facilitate the promotion of emissions reduction. Hence, I support the amendment proposed by Mr CHAN Hak-kan. He has also touched upon the research and development of green information technology, the establishment of mandatory minimum energy efficiency standards for products, and legislation and measures such as the Building Energy Codes. President, we have discussed these issues in this Council many times and we strongly support them.

President, Ms Cyd HO's amendment mainly urges the Government to give a detailed account of its preparatory work before attending the Conference and to report the outcome of the Conference afterwards. It also asks the Government to

formulate measures and strategies accordingly. Of course, I strongly support these proposals.

President, in fact, Miss Tanya CHAN's amendment mainly requests the representatives of the Government participating in the Conference to give the Legislative Council an account of the Government's proposals in the Conference and how the agreement reached by the countries will be specifically implemented in Hong Kong. In her speech a while ago, Miss Tanya CHAN said that green groups were really worried that the Secretary would just attend the Conference as a member of the China team, and that he would not bring us any substantive result. That is why she proposes this amendment. I undoubtedly agree.

President, as regards Dr PAN Pey-chyou's amendment, to be frank, I have read it a few times, but I do not quite understand the central ideas. He proposes urging the Government to act according to the paper on Implementation of the Bali Roadmap released by the National Development and Reform Commission. The paper is actually about paving the way. China is a developing country while Hong Kong is a developed economic area. It will be highly problematic for us to hide behind China. Thus, I am not very clear about the gist of his amendment. Nonetheless, he has mentioned quantifying emissions reduction targets and helping local grassroots in very general terms. For sure, I support these general directions.

Mr KAN Nai-wai's amendment proposes formulating a bill. President, a lot of countries have done so. Enacting relevant legislation can ensure that the achievement of reduction targets and lots of areas can be covered. President, I certainly agree to this general principle.

**SECRETARY FOR THE ENVIRONMENT** (in Cantonese): President, I would like to thank Honourable Members for expressing their views on this motion. President, perhaps I will divide my speech into three parts. The first part is an overall discussion on the current issues to be dealt with at the Copenhagen Conference, the overall situation, some substantive figures, the situation in Hong Kong, or what Hong Kong can do given its position if it can also take a part. And, I will explain the implication of our country's latest position to Hong Kong. In the second part, I would like to focus on responding to Honourable Members' questions on the concrete measures to be adopted by Hong Kong to address climate change. I have heard Honourable Members say that we should not just

talk about the issue but must also adopt concrete measures to address the issue. The third part will be a simple conclusion.

Concerning the overall situation, Honourable Members have respectively cited a lot of figures a while ago. However, in my opinion, if these figures are computed on the basis of the formula under the United Nations Framework Convention on Climate Change, that is, the same figures are used, our future discussions will be able to achieve greater clarity. The purpose of citing these figures is not to illustrate how well Hong Kong has done, because all of us actually think that there is plenty of room for improvement insofar as Hong Kong and cities in a better situation are concerned.

Our population accounts for one thousandth of the population in the world and the greenhouse gas emissions in Hong Kong are roughly 47 million tonnes based on the United Nations' method of calculations, that is, approximately equal to the global per capita level (basing on the proportion of our population). If we take the per capita emission as the basis, as revealed by the figures just cited by Honourable Members, the annual per capita emission of 6 tonnes of carbon dioxide or equivalent greenhouse gas emission is slightly lower than the global per capita emission level of around 7 tonnes. In other words, calculating roughly on a global basis, in view of our population size and our per capita emissions level, we are more or less at the middle level. A lot of people will compare Hong Kong with other cities and countries in terms of this figure. As other places usually adopt the country as a unit, we normally follow this practice when making comparisons. For example, our neighbour Singapore is a city and also a country, and its per capita emission is 9 tonnes; it is 10 tonnes in the United Kingdom, and it has been doing better than other developed areas. It is 11 tonnes in Japan, 23 tonnes in the United States and 26 tonnes in Australia. The figure is 6 tonnes in Hong Kong, so Hong Kong is at a lower level when developed countries or cities are compared. Nevertheless, as an Honourable Member has just said and I fully agree that there is much room for improvement in Hong Kong as regards this figure. The reason is that many scientists opine that if we are to deal with global climate change, we must reduce the global per capita figure to around 2 tonnes.

Thus, on the basis of this objective or agreement, people in various parts of the world would like to seek a solution through United Nations conferences such as the Copenhagen Conference, so that everybody in the world can make contributions. I also note the survey cited by Miss Tanya CHAN just now; it

should be a study conducted in Norway which pointed out that there is around 29 tonnes of carbon emission in Hong Kong. I have noted this point and I have talked to my colleagues responsible for handling the matter about the study. First, the study is not based upon the same calculation methods adopted by the United Nations that I have just mentioned. It is also not calculated on the basis of the source of emissions but from the consumers' angle. In other words, it is calculated on the basis of the local population. Furthermore, it fails to reflect fully Hong Kong's status as a re-export zone. As a result, our emission figure (29 tonnes) as mentioned in this study is higher than the emissions level in the United States. I lived in the United States before, so, it seems to me that this figure is different from what we noticed in our everyday life there. Anyway, these data are important; if we participate in the discussions in an international conference, we should at least have a base number in mind. We all approve of the calculation method currently adopted by the United Nations, that is, taking the source as the basis of calculation. By doing so, it would be easier for us to illustrate clearly to various areas and countries that the problem must be solved at source. Thus, I would like to make this point to make people understand our situation now.

When compared with the Mainland, Hong Kong has a higher level of per capita emissions. The Mainland's emissions level is around 4.7 tonnes (Appendix 2), less than 5 tonnes, and its per capita emissions level is lower than that in Hong Kong. Of course, when it comes to total emissions, the Mainland is more or less comparable to the United States, both being the biggest carbon emission areas in the world. Honourable Members have referred to the United Nations Climate Change Conference to be held in Copenhagen very soon. It is actually a United Nations conference for sovereign states. Therefore, it is actually a conference of the parties under the United Nations Framework Convention on Climate Change. Exactly for this reason, the parties should participate as countries, and Hong Kong alone cannot take part as a member and participate in the negotiations on its own. Nonetheless, Hong Kong has always participated in these conferences of the parties, and professional staff or directorate grade staff were assigned to participate. Since we have recently become more and more concerned about this problem, since we consider Hong Kong as a part of China and our country has made many new policies in the light of climate change, we think that if Hong Kong can directly participate as a member of the Chinese delegation, we may be able to enhance our representativeness through participating in the conference or taking advantage of other opportunities within and outside the conference. Hence, we have decided to hold discussions with our country on letting accountability officials participate

in the Conference this year, so I am going to participate in my capacity as Secretary for the Environment.

Besides wishing to participate in the Copenhagen Conference as a member of our country's team, we also note that many other international conferences will be held around the same time as the Conference. One example is the C40 Large Cities Climate Summit, of which Hong Kong is member. We would like to learn from the experience of various countries or places during that period.

I agree with many Honourable Members that attending the Copenhagen International Conference is actually one of our many tasks and we cannot solve all problems merely by attending this Conference. Through this Conference, we would like to participate in a new round of international discussions on climate change, so that Hong Kong can obtain first-hand information and take part more directly. This is our objective.

Although Hong Kong cannot participate directly under the United Nations Framework Convention on Climate Change, we are still able to participate in other regional co-operation efforts. The Asia-Pacific Economic Co-operation (APEC) is an example. Hong Kong has participated as an independent member and has subscribed to the Sydney Declaration of the APEC in 2007. Some may think that the standard of reducing energy intensity by 25% in 2030 is not satisfactory, but it must be noted that the APEC as a regional body includes the representatives of developed regions such as the United States, and developing economies such as the Mainland. So, if it can still make progress and formulate an improved target in the light of the Kyoto Protocol and the Copenhagen Conference, we think that Hong Kong should approve of the target and take part. As a result, after the APEC meeting, we have incorporated the objective of the Sydney Declaration into our policy area.

All of us can see that, under the Kyoto Protocol, China as a non-Annex I country is not required to set any emissions reduction targets. However, as we have noticed, the State Council still announced last week a number of operational targets for the control of greenhouse gas emissions. One very explicit point is that the work ought to be carried out on a voluntary basis, that is, it should not be based on international requirements but on our country's own interests. It is specified that, by 2020, the emissions of carbon dioxide per unit of Gross Domestic Product should be 40% to 45% lower than the 2005 level. Even though energy intensity is still taken as the standard, it is 10 years ahead of the Sydney Declaration of the APEC. Also, the ratio of reduction will be increased from 30% to 40% to 45% (Appendix 2). Of course, as the Premier has said, our

country needs to make painstaking and unprecedented efforts to attain this standard. He has also said that greater efforts will be made in respect of energy conservation, efficiency enhancement, renewable energy development and afforestation. This standard specifically shows us that China generally wants to proactively take a big step forward in response to climate change. We have also observed that, over the past few years, responding to climate change has already been incorporated into the social and economic development plans of our country. The Special Administrative Region of Hong Kong (SAR) thinks that this is very positive, something that should be welcomed. The SAR Government agrees to our country's directions and targets of responding to climate change. Hence, we will proactively co-ordinate such efforts in various areas and try our best to support the realization of our country's objective of reducing carbon intensity. In this connection, I believe the SAR should work with our country to do a good job and take the opportunity to examine its strategies and objectives.

Concerning the efforts to cope with climate change, we believe and agree with Honourable Members that the strength of such efforts should be increased. We also agree that the relevant work must have the full participation, devotion and support of the Government, enterprises and the public. Surely, there will be difficulties and challenges, and sacrifices must be made. Nevertheless, we believe it is worth the while to make sacrifices and efforts for the environment in Hong Kong and the world.

Regarding the specific strategies and measures in Hong Kong, President, we already touched upon them in previous Panel meetings or debates. Yet, let me still respond to a question just raised by an Honourable Member: What are the specific measures adopted in Hong Kong and what are their directions?

As a matter of fact, the measures adopted in Hong Kong for responding to climate change are directed at the sources of greenhouse gas emissions. The aim is to adopt concrete and effective measures to reduce emissions as far as possible. In fact, the directions of the measures actually tally with the remarks just made by Honourable Members. For example, what methods should be adopted to control emissions? Should we enact legislation to set some standards? Should financial incentives be provided to induce people to change their behaviours, thereby reducing emissions? Should we invest in infrastructural development and the construction of facilities so as to reduce emissions in a highly efficient manner? Or, should we develop facilities that can convert waste into energy and promote public education? These are the six major directions. (Appendix 2)

Hong Kong's own measures aside, all of us will certainly agree that emissions reduction through cross-boundary co-operation or business opportunities should be promoted. Regarding concrete measures, if we take a look at Hong Kong's carbon emissions figures — Honourable Members have cited the figures we mentioned before — over 60% of Hong Kong's carbon emission comes from the generation and use of energy; around 16% comes from traffic and transport while the rest mainly comes from waste treatment, such as landfills, and also a handful of industries. In the light of the situation, I agree with many Honourable Members that it is an important task to make our energy clean, that is, reduce carbon emissions. A number of Honourable Members including Mr Jeffrey LAM has remarked that, in 2008, we took advantage of the west-to-east gas supply and facilitated the increased use of natural gas and reduced volume of coal combustion in the future. This can directly reduce our carbon emissions. For sure, the use of natural gas also involves carbon emissions. Therefore, in view of the fact that nuclear energy only accounts for approximately 20% of the generating capacity (though this is not generated in Hong Kong and is made available to us through outside investment only), many Members have questioned whether there are any other ways to expand the proportion of nuclear power generation apart from signing an agreement with the Mainland around the end of September and October this year on a 20-year extension. In this connection, we may need to hold further discussions with the Mainland.

Concerning the use of renewable energy, there will be difficulties if we just rely on Hong Kong alone. However, when we signed the new scheme of control agreements with the two power companies, we already provided greater incentives because the permitted returns for the two power companies' investments in renewable energy would be higher than the returns for their investments in conventional power generation. We expect changes to be made in the direction of using wind and solar energies. A point that may not be easily noticed is that one area in our clean energy mix which is capable of further development is the reuse of the methane produced in landfills. I remember that an Honourable Member commented at a Panel meeting that the methane produced in the three existing landfills was 21 times stronger than carbon dioxide in terms of greenhouse effect. So, we are now working on ways to reduce such gases or reuse them. In 2008, 50% of the methane produced in landfills was used for generating power for landfill operation. In one of the three landfills, the methane produced was used for gas supply. At present, we are considering whether the above method can be adopted in the remaining two landfills to turn waste methane into energy.

Another point is that, when we return to the Legislative Council and ask Honourable Members for funding approval in the near future, Honourable Members may not be able to remember the details of our discussions on climate change today. Nevertheless, I must point out that integrated waste treatment facilities are related to climate change because waste is converted to energy in the incineration process. On the one hand, it reduces the production of methane produced in landfills (which is also a form of greenhouse gas emissions); on the other hand, it can convert waste gas to energy, which causes a reduction in the overall greenhouse gas emissions in Hong Kong and responds to climate change.

Besides the work on clean energy, as Honourable Members have said, energy efficiency is a very important method. Energy efficiency allows people to benefit from the environment and save money. The Government has put a lot of resources into the promotion of energy efficiency, one example being the construction of district cooling systems in infrastructure projects. The system in the new Kai Tak Development can reduce greenhouse gas emissions by 60 000 tonnes a year; it saves 35% and 20% respectively when compared with traditional gas cooling and water cooling systems in individual buildings.

Honourable Members have talked about the expansion of the energy labelling scheme. The old scheme was fully implemented on 1 September (Appendix 2) while the new scheme is now being expanded. The legislation for the implementation of the Building Energy Codes mentioned in Mr CHAN Hak-kan's amendment will be read for the First time in the Legislative Council next Wednesday. The legislation for the implementation of the Building Energy Codes is an important starting point. It has been proven that the standard concerned can help buildings reduce energy consumption. If the legislation can be passed and the architectural sector can encourage the construction of green buildings, as mentioned by Prof Patrick LAU, it will be perfect, and the legislation will set a basic standard. Furthermore, if we can set standards for green buildings in Hong Kong in the future, we will be able to reach a higher and higher level. The two power companies also have energy saving loan funds offering around \$190 million loans within five years for people to carry out energy saving work. Certainly, we cannot omit the mentioning of the Government's investments. Besides allowing tax deductions for capital spending on environment-friendly machinery and equipment, we also launched the Buildings Energy Efficiency Funding Schemes with a funding of \$450 million early this year, and we have received nearly 1 000 applications so far. The Schemes aim to extensively promote energy efficiency in various buildings in Hong Kong. An Honourable Member has said that the Government should set

an example. Actually, people might not be aware of certain things done by the Government in the past. For example, when the Government launched the \$450 million schemes, it also allocated an equivalent amount of money for carrying out energy saving and emissions reduction work in existing government buildings.

A new Internal Circular has also been issued, specifying that energy evaluation must be conducted in all government buildings with areas exceeding 10 000 sq ft (Appendix 2). Also, the second highest Hong Kong or international standard must be reached. This shows that the Government also wants to set an example. I have just referred to the legislation for the implementation of the Building Energy Codes. In the past, work was done on a voluntary basis; among 1 000 buildings constructed within the past 11 years, 72% of the buildings which met the standards were government buildings. Hence, the Government has duly taken a step forward in this connection. Of course, we will proceed to do more in respect of building energy. We are very pleased to see the establishment of the new green building body just mentioned by Prof Patrick LAU. Unfortunately, I was out of town at that time and I could not attend its opening ceremony. We now hope that through the co-operation of the Development Bureau and the Environment Bureau, a set of standards can be set as soon as possible. I know that a joint meeting has been held between the Panel on Environmental Affairs and the Panel on Development of the Legislative Council to discuss the relevant matters. The Secretary for Development and I are well prepared and ready to have joint discussions over this issue.

A number of Honourable Members have touched upon public education and publicity. I agree with them that more efforts must be made in this area. Many people jumble together the air pollution problem and climate change. The two problems are related. But their perception reflects that while they are concerned about air pollution, they may have inadequate understanding of the impacts of climate change. It may thus be necessary to involve the co-operation of some green groups, and we are now working on this area. An Honourable Member has said that we gave inadequate support to the actions (for example, the lights-off campaign) taken by some green groups in the past. Yet, as far as I can remember, since I took up this position two years ago, such campaigns have been held more than once each year, and the Government has always participated fully, thus making Hong Kong the Asian city recording the most massive participation in such campaigns (in terms of the number of participating buildings).

Dr Samson TAM has asked if environmental tips for daily living can be promoted online. In fact, while some green groups have been doing so, the Environmental Protection Department has also posted these tips online, and there is also a website for members of the public to trade goods. In respect of such websites, the Government and green groups have made efforts, and the public have also been doing a better and better job.

On a green economy and employment, I agree with Honourable Member that environmentalism or concerns for climate change can create a lot of business opportunities. Some of the examples I have just cited involve the offer of incentives by the Government. For example, the \$450 million schemes can lead to the emergence of new green industries and provide green business opportunities to new or existing industries, including the engineering and property management sectors and even suppliers of materials. Job opportunities are created on the basis of environmental protection and energy conservation. Energy saving can most effectively promote emissions reduction, and it is not restricted to industries or businesses, as we can also save energy at home. In the past year, the Government started conducting carbon audit on enterprises and more than 100 larger enterprises have taken part in the \$450 million schemes; it is hoped that the schemes would be extended to the public.

President, as we are going to attend the Copenhagen Conference very soon, I am thankful to Honourable Members for expressing their views on this area and I have listened very carefully to their views. Certainly, as many Honourable Members have said, the Copenhagen Conference does not hold very bright prospects because there is still a gap between developed and developing countries, and it is still questionable whether an agreement could be reached. Yet, this will not affect the determination and efforts of the Government to implement the above measures continuously. During this international conference, different countries may still have different aspirations, and there will be a lot of discrepancies. As we have noticed, the core problems may include: Will they still stick to the Convention, Protocol or the Bali Roadmap? Will these be whole-heartedly implemented? Will developed countries continue to agree to take the lead to reduce emissions? Will developing countries agree to the point that they need not have the obligation to set emission reduction targets? How will the principle of "common but differentiated responsibilities" as an Honourable Member has mentioned be realized? In this regard, I believe that the Copenhagen Conference may be the beginning rather than the end, and I hope that the leaders or officials of participating countries can go a step further with a

view to reaching a political agreement. In Hong Kong, we must continue to follow through the discussions today. I will examine the target recently set by our country to find out if our strategies or objectives need any adjustment. I hope that with heated discussions in this Council, or Honourable Members' reminder that the Government must have the determination, work hard and assume responsibilities, the new bills to be introduced or the environmental protection projects to be formulated in the future can have Honourable Members' support.

I so submit. Thank you, President.

**PRESIDENT** (in Cantonese): I now call upon Mr CHAN Hak-kan to move his amendment to the motion.

**MR CHAN HAK-KAN** (in Cantonese): President, I move that Ms Audrey EU's motion be amended.

**Mr CHAN Hak-kan moved the following amendment: (Translation)**

"To add "the United Nations Climate Change Conference 2007 adopted a resolution to launch a negotiation process on the new greenhouse gas emissions reduction plan after the expiry of the Kyoto Protocol in 2012 and expressly require that the negotiations should be completed by the end of 2009; as such," after "That"; to add "and financing preparation" after "legislative programme"; and to add "; at the same time, the Hong Kong Government must formulate more measures, including: (a) to actively promote green economy and green lifestyle; (b) to implement the establishment of a carbon trading platform and enact relevant legislation, so as to further promote carbon emissions trading between Hong Kong and the Mainland as well as the whole world, and encourage professionals in Hong Kong to participate in the work relating to the Mainland's Clean Development Mechanism; (c) to actively promote the development of green information technology (IT), study the energy consumption of IT systems, require all government departments to implement green IT procurement, and support the research and development of green IT in the territory; (d) to study the establishment of mandatory minimum energy efficiency standards for products, so as to ensure that energy-consuming

products such as motor vehicles and electrical appliances are in compliance with the energy efficiency requirements; and (e) to expeditiously introduce to this Council legislation for the mandatory implementation of the Building Energy Codes" immediately before the full stop."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr CHAN Hak-kan to Ms Audrey EU's motion, be passed.

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

(Members raised their hands)

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

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the amendment passed.

**PRESIDENT** (in Cantonese): Ms Cyd HO, as Mr CHAN Hak-kan's amendment has been passed, you may now move your revised amendment. You may speak for up to three minutes to explain the revised terms in your amendment.

**MS CYD HO** (in Cantonese): President, I move that Ms Audrey EU's motion as amended by Mr CHAN Hak-kan be further amended by my revised amendment. In fact, I need not give an explanation because this proposal has merged various suggestions as expected by all of us.

**Ms Cyd HO moved the following further amendment to the motion as amended by Mr CHAN Hak-kan: (Translation)**

"To add "; and (f) to give a detailed account of its preparatory work before attending the Climate Change Conference and report the outcome of the Conference afterwards" immediately before the full stop."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That Ms Cyd HO's amendment to Ms Audrey EU's motion as amended by Mr CHAN Hak-kan be passed.

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

(Members raised their hands)

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

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the amendment passed.

**PRESIDENT** (in Cantonese): Miss Tanya CHAN, as the amendments by Mr CHAN Hak-kan and Ms Cyd HO have been passed, you may now move your revised amendment.

**MISS TANYA CHAN** (in Cantonese): President, I move that Ms Audrey EU's motion as amended by Mr CHAN Hak-kan and Ms Cyd HO be further amended by my revised amendment.

**Miss Tanya CHAN moved the following further amendment to the motion as amended by Mr CHAN Hak-kan and Ms Cyd HO: (Translation)**

"To add "; and (g) the representatives of the Hong Kong Government participating in the Conference to give the Legislative Council and Hong Kong people an account of the Hong Kong Government's participation in the Conference and how the implementation of the relevant agreement will be specifically promoted in Hong Kong" immediately before the full stop."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That Miss Tanya CHAN's amendment to Ms Audrey EU's motion as amended by Mr CHAN Hak-kan and Ms Cyd HO be passed.

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

(Members raised their hands)

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

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the amendment passed.

**PRESIDENT** (in Cantonese): Dr PAN Pey-chyou, as the amendments by Mr CHAN Hak-kan, Ms Cyd HO and Miss Tanya CHAN have been passed, you may now move your revised amendment.

**DR PAN PEY-CHYOU** (in Cantonese): President, I move that Ms Audrey EU's motion as amended by Mr CHAN Hak-kan, Ms Cyd HO and Miss Tanya CHAN be further amended by my revised amendment. I have nothing to add.

**Dr PAN Pey-chyou moved the following further amendment to the motion as amended by Mr CHAN Hak-kan, Ms Cyd HO and Miss Tanya CHAN:**  
**(Translation)**

"To add "; and (h) to follow the paper on 'Implementation of the Bali Roadmap — China's position on the Copenhagen Climate Change Conference' released by the National Development and Reform Commission and appeal to various countries to ensure the full, effective and sustained implementation of the United Nations Framework Convention on Climate Change and, in upholding the principle of 'common but differentiated responsibilities', make corresponding arrangements in terms of mitigation, adaption, technology transfer and financial support, etc, so as to enhance the role of developing countries in the domain of climate change" immediately before the full stop."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That Dr PAN Pey-chyou's amendment to Ms Audrey EU's motion as amended by Mr CHAN Hak-kan, Ms Cyd HO and Miss Tanya CHAN be passed.

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

(Members raised their hands)

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

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the amendment passed.

**PRESIDENT** (in Cantonese): Mr KAM Nai-wai, as the amendments by Mr CHAN Hak-kan, Ms Cyd HO, Miss Tanya CHAN and Dr PAN Pey-chyou have been passed, you may now move your revised amendment.

**MR KAM NAI-WAI** (in Cantonese): President, I move that Ms Audrey EU's motion as amended by Mr CHAN Hak-kan, Ms Cyd HO, Miss Tanya CHAN and Dr PAN Pey-chyou be further amended by my revised amendment. I do not have anything to add.

**Mr KAM Nai-wai moved the following further amendment to the motion as amended by Mr CHAN Hak-kan, Ms Cyd HO, Miss Tanya CHAN and Dr PAN Pey-chyou: (Translation)**

"To add "; (i) to regulate the emission of carbon dioxide from power plants; and (j) to formulate a bill on climate change" immediately before the full stop."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That Mr KAM Nai-wai's amendment to Ms Audrey EU's motion as amended by Mr CHAN Hak-kan, Ms Cyd HO, Miss Tanya CHAN and Dr PAN Pey-chyou be passed.

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

(Members raised their hands)

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

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the amendment passed.

**PRESIDENT** (in Cantonese): Ms Audrey EU, you may now reply and you have one minute 32 seconds.

**MS AUDREY EU** (in Cantonese): President, I listened very carefully to the Secretary's speech, which lasted 26 minutes. I am indeed very disappointed, President, because I already indicated very clearly right from the beginning ..... A reporter asked me, "If you are to put forward a request, what would you like to hear?" I would like to hear that the Government has set an emissions reduction target.

The Secretary has admitted in his speech that there is much room for improvement on the part of the authorities. On whether or not there is any room for adjusting the target, he admitted that carbon/energy intensity had been subject to much criticism. In the end, however, he indicated that consideration would be required to decide whether or not adjustment should be made. Taking cover from the United States, he said the target had already been improved by the Asia-Pacific Economic Co-operation. But now even Barack OBAMA, President of the United States, has come out. He announced on 25 November that they would reduce their emissions by 17% from the 2005 level.

It is already very clear that the energy intensity target is a false target. President, I am indeed very disappointed that the Secretary has failed to provide any response to this. As for concrete measures, there are many options, and in particular, Hong Kong should improve its planning and ventilation design. I also agree to the point made by Mr IP Wai-ming just now that guidelines for outdoor work in very hot weather should be formulated.

Actually, President, there are in fact many concrete measures, but the Government must set a sound target before anything else.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by Ms Audrey EU, as amended by Mr CHAN Hak-kan, Ms Cyd HO, Miss Tanya CHAN, Dr PAN Pey-chyou and KAM Nai-wai, 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.

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion as amended passed.

**PRESIDENT** (in Cantonese): Second motion: Roadmap for universal suffrage.

Members who wish to speak in the debate on the motion will please press the "Request to speak" button.

I now call upon Mr Alan LEONG to speak and move his motion.

## **ROADMAP FOR UNIVERSAL SUFFRAGE**

**MR ALAN LEONG** (in Cantonese): President, I move that the motion, as printed on the Agenda, be passed.

President, following the Central Government's rejection in 2004 of the implementation of universal suffrage in Hong Kong in 2007 and 2008, the Standing Committee of the National People's Congress (NPCSC) again ruled out in 2007 the implementation of dual universal suffrage in 2012, and now an obscure timetable for universal suffrage has been put forth. Although it is still the hope of many Hong Kong people that the Central Government can change its mind on the implementation of dual universal suffrage in 2012, Hong Kong people, who have always been pragmatic, kind and gentle, also accept that if this cannot be done, genuine universal suffrage for the Chief Executive and the Legislative Council must be implemented no later than 2017 and 2020.

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

The Central Government should have responded proactively to such a logical and reasonable attitude adopted by Hong Kong people. Unfortunately, the 2012 electoral arrangements, proposed in the constitutional reform consultation document just unveiled by the SAR Government, is even worse than a "rehashed" 2005 proposal, for it has failed completely to demonstrate to Hong Kong people any intention of and commitment to implementing genuine universal suffrage. Among others, there is absolutely no roadmap leading to genuine universal suffrage, nor is there a direction. It is merely "leading us on a tour round the garden". Following such a carefully calculated design with an ulterior motive will, at best, leave us with a bogus universal suffrage where functional constituency (FC) seats will be retained. Despite the goodwill of Hong Kong people, the Central Authorities have let us down. We have every reason to feel totally disappointed.

Deputy President, any judgment on the authenticity of universal suffrage ultimately hinges on the retention or otherwise of FCs. The constitutional reform consultation document has completely failed to discuss arrangements on how to abolish FC seats in the Legislative Council. On this count alone, we can already assert that people with vested interests have no intention at all to relinquish their political privileges, whereas the powers-that-be are prepared to continue to trade interest with them for power. So long as this mechanism of distribution of political powers, which is seriously tilted towards the industrial and commercial sectors at the expense of the political power of the grassroots, the middle class and professionals, is retained, it is impossible for the public policies in Hong Kong to achieve balance and for the Government to adopt an impartial position in issues relating to the people's livelihood. It will simply be a waste of time should we continue to spend time on this document.

A clear definition on was given by the International Covenant on Civil and Political Rights (ICCPR) a long time ago to the effect that every citizen shall vote "by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors." (end of quote) The United Nations Commission on Human Rights stated specifically a long time ago that FCs are in breach of the principle of equality and not completely consistent with Article 25 of the ICCPR. Over the past decade or so, the rights of Hong Kong people were apparently classified as a result of FCs. Deputy President, let me cite an example. Under the present election system for the Legislative Council,

I have two ballots as an elector in the Hong Kong Island and the Legal constituency; whereas Uncle CHEUNG in Tsz Wan Shan can cast only one ballot in direct elections in Kowloon East. Although we are both Hong Kong citizens, I have the right to elect two representatives to make my voice heard in this Council, whereas Uncle CHEUNG has only one ballot, and so he can only select one representative. In a civilized society, we can absolutely not tolerate such an unequal system for the distribution of political powers and allow a handful of people to enjoy privileges.

Deputy President, it is absolutely impossible for a system whereby a person's function is used to determine his or her right to elect or be elected to comply with the principle of "universal and equal" suffrage. Perhaps this is the reason why Ms Maria TAM, a former member of the Basic Law Drafting Committee, has recently pointed out that the definition of universal suffrage shall be determined by the Central Government, not the International Covenants on Human Rights, whereas Ms LAU Pui-king, a Hong Kong Deputy to the National People's Congress (NPC), stated that universal suffrage could be "universal but unequal", and Prof RAO Geping, Deputy Director of the Institute of Hong Kong & Macau Studies, even considered that FCs could co-exist with universal suffrage. These remarks basically serve to defend the retention of FCs and create "bogus universal suffrage" with Chinese characteristics, which deviates greatly from the "genuine universal suffrage" members of the public very much hope to see. Hong Kong people should really see things in their correct perspective and refrain from leaving things to chance and harbouring wishful thinking that the proposals outlined in this consultation document can lead us to "genuine universal suffrage".

Deputy President, having worked in this Council for more than five years, I have gained a profound understanding of the absurdity of the mode of operation of this Council, which is far from being fair. The electorate base of FC Members is confined merely to a certain FC. The role of FC Members is mainly to be accountable to this handful of electors. On the contrary, geographical constituency (GC) Members returned through direct elections are obliged to take care of the needs of different people and balance differences between various groups, or even their conflicting interests. In considering various policies and issues relating to people's livelihood, they must act in the interest of the majority public.

The FCs and the separate voting system have led to the frequent occurrence of the majority obeying the minority in this Council, which is absolutely absurd.

Even if no one votes against a Members' Motion, but if FC Members abstain from voting, we can have 44 Members voted in favour of the motion and 15 Members abstained from voting, thereby leading to the most unfair scenario in which the motion will ultimately be negated. In other words, 220 000 people of the privileged class can veto the wish of the 3 million-odd members of the public at large. There have been 43 motions relating to the well-being of the majority of Hong Kong people that have thus failed to be passed in the third Legislative Council.

At present, only 220 000 eligible registered electors are qualified to vote in FCs, whereas the remaining 3 million-odd electors do not enjoy such a privilege. Even if some people in society still hold that FCs still have some retention value, their arguments are no more than "FCs account for 80% of the Gross National Product", "FCs retain the professional voices in the Legislative Council", "FCs contribute to the long-term interest of Hong Kong", and so on. Deputy President, I think these people are making all these excuses just to justify themselves. In this world, only Hong Kong practises FC elections, whereas other democratic countries and regions will not adopt such an undemocratic method. Can we say that the legislatures in such places as the United Kingdom and the United States have failed to defend the sectoral interests in those places? Can we say that there is a lack of professional voices in the legislatures of these places, not to mention that there is currently no shortage of professionals among the 30 directly elected Members of this Council?

There is simply no need keep the FCs in order "to retain the professional voices in the Legislative Council". What is more, FC seats may even lead to certain sectors of the community, which do not currently enjoy any special privileges, striving for the establishment of new FCs, so that they can join the rank of "parties with vested interests" to seek an alternative shortcut in search of more privileges.

Deputy President, if Hong Kong is to truly achieve harmony, FC seats must be abolished expeditiously and a "universal and equal" political system be re-formulated. Given that the United Nations has long since drawn a clear definition for universal suffrage, I hope the public can pay serious attention to the proposals put forth in this constitutional reform package and gather their strength to say "no" to such an unjust and undemocratic system in order to fight for "genuine universal suffrage".

Deputy President, the Civic Party already put forth a practical roadmap for universal suffrage in September. On the Legislative Council elections, we proposed that FCs of similar nature or with a relatively small number of electors be merged in 2012 to return 30 Members, separate voting be abolished expeditiously after the 2012 elections, seats returned by universal suffrage be increased not later than 2016 and, at the same time, the number of FC seats be reduced. As regards the Chief Executive election, the Civic Party proposed that the electorate base of the Election Committee (EC) be broadened, all directly elected District Council (DC) members be added to the EC to enhance democratic elements, the existing "DC representative" seats in the EC be abolished and, at the same time, the Chief Executive Election Ordinance be revised to abolish the restrictions on prohibiting political party members from assuming the post of Chief Executive.

Deputy President, apart from the Civic Party, many academics, think tanks and community organizations have also put forth their roadmaps on universal suffrage, and yet the Government went ahead, despite opposition, with "rehashing" its 2005 constitutional reform proposal. This is most disappointing. In its consultation document, the Government has even failed to consult the public whether the traditional FCs should be abolished. What is more, the Government has turned a blind eye to the public's aspiration for abolishing FCs over the years. On the contrary, it has even proposed that more FC seats be added in 2012. Under the pretext of increasing democratic elements, the Administration is actually paving the way for the permanent retention of FC seats secretly. Through this constitutional reform consultation, Hong Kong people can see more clearly the difference between "genuine universal suffrage" and "bogus universal suffrage. I believe the majority public will stand by "genuine universal suffrage" and vigorously resist the harms of "bogus universal suffrage" on Hong Kong.

Deputy President, to restore order, the Government must give a clear commitment, through a constitutionally binding declaration, that the Chief Executive must be elected by universal suffrage not later than 2017, with the nominating threshold not higher than the one adopted in 2007, and that the Legislative Council must be formed by universal suffrage not later than 2020, with all FC seats abolished at that time. With a clear direction and destination, the arrangements for 2012 will be made to pave the way for achieving genuine universal suffrage for the two elections.

At this historical moment of Hong Kong's democratic movement, Hong Kong people should say "no" clearly to FCs. I appeal to those with vested interests to demonstrate their courage in refusing to behave like pampered fops enjoying political privileges and say "no" to such privileges.

Deputy President, I so submit.

**Mr Alan LEONG moved the following motion: (Translation)**

"That, the Chief Executive Mr Donald TSANG Yam-kuen publicly promised the people of Hong Kong during his 2007 election campaign that he would settle the issue of universal suffrage once and for all, but he has not put forth a complete roadmap for universal suffrage in his policy address this year, completely breaching his election pledge; in this connection, this Council strongly requests the Government to seize the opportunity of the constitutional reform consultation to give an account to the public on the roadmap for universal suffrage, and make an undertaking that the option for genuine universal suffrage will be implemented no later than 2017 and 2020, and this option shall comprise the following principles:

- (a) the methods for selecting the Chief Executive and electing all Legislative Council Members shall comply with the internationally recognized standards of 'universal and equal' suffrage, and members of the public should enjoy the right to free elections;
- (b) the basis of the composition of the nominating committee for the selection of the Chief Executive shall encompass a wide range of public opinion, the nomination threshold should not be too high and, on the premise of implementing an open and universal nomination procedure, arrangement should not be made to screen out candidates or exclude certain political forces from standing in the elections; and
- (c) regarding the election of the Legislative Council, functional constituencies shall be completely abolished to achieve the goal of fair election."

**DEPUTY PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr Alan LEONG be passed.

**DEPUTY PRESIDENT** (in Cantonese): Two Members will move amendments to this motion. This Council will now proceed to a joint debate on the motion and the two amendments.

I will call upon Ms Emily LAU to speak first, to be followed by Ms Cyd HO; but no amendments are to be moved at this stage.

**MS EMILY LAU** (in Cantonese): Deputy President, Hong Kong people have become very impatient after waiting for so long, and many of them have asked me to speak for them. Deputy President, many people are feeling very angry, because their opinion has been ignored by the SAR Government again and again. Deputy President, this consultation should have been launched early this year. However, it is not launched until now because someone has acted like a tortoise and gone into hiding — Deputy President, I do not think so because the launch of the consultation will achieve the effect of whipping up rolling waves.

Deputy President, a public hearing will be held by the panel this Saturday from 9 am to 1.30 pm and from 2 pm to 4.30 pm. Deputy President, I enquired with the Clerk just now and found that 187 applications had been received, and more were expected. The Clerk has already told the Chairman of the panel, Mr TAM Yiu-chung, that he can also express some of his views later, and a certain children's chorus and a certain association of quality broiler dealers might also be present. However, many organizations which are desperate for the implementation of dual universal suffrage in 2012 will also attend the hearing. Deputy President, they will come here to face each other. While the Clerk has arranged for 89 seats, more than 100 applications are waiting to come here as of this minute. Deputy President, such hearings might need to be held in the Hong Kong Stadium in the future.

Last Saturday, I went to The Hong Kong Polytechnic University (PolyU) to attend a forum organized by several community organizations. I had no idea if the Secretary had been invited to attend because he either declined to attend or refused to send his colleagues to attend the students' events attended by me on several past occasions. Deputy President, I was shocked when I arrived on that

day — I was there a few minutes earlier because I do not have the habit of being late — for I saw that the venue was filled up with nearly 200 people. Ronny TONG, who also attended the forum, did not know how to get there, because PolyU had many lecture theatres. Deputy President, there were also many people standing there, and they remained so for a couple of hours discussing politics. Can we say that the people have no interest in politics?

Deputy President, we gather from the messages received through many channels that the people are desperate for the implementation of universal suffrage. According to an opinion survey conducted by the Democratic Party recently, more than 50% of the interviewees called for the implementation of dual universal suffrage in 2012 at the latest. The position of the Democratic Party is very clear. We have already told the Chief Executive and people who are willing to listen that dual universal suffrage must be implemented in 2012. Just in case it is really impossible to do so, the Democratic Party will still be prepared for discussions. But then, the Government will have to tell us how, according to the Central Authorities, universal suffrage will be implemented in 2017 and 2020, because we can see what it is really like if it is shown to us. In other words, the cat will have to be let out of the bag. Deputy President, of course, I am referring to the notions of implementing universal suffrage, not you. Just let us take a look and we will see. If everyone can rest assured that the International Covenants on Human Rights of the United Nations will be adhered to, and universal suffrage will really be implemented in 2017 and 2020, the Democratic Party will be more than pleased to discuss with the Government this so-called interim proposal and the approach to be taken in 2012 and 2016.

However, Deputy President, both the media and other people are not interested in all this, why? Because they will consider the job done only when an option is put forth by the Government, and so the option must be laid on the table. After putting forth an option not based on universal suffrage, why does the Government still force the Democratic Party to discuss this option when everyone knows it all too well that universal suffrage will not be implemented indefinitely? Deputy President, why am I saying this? In a question raised to follow up an oral question asked by Mr WONG Sing-chi today, Ms Cyd HO said that she had been cheated by the Central Authorities many times. In his reply, the Secretary even said, "..... if you always think that you are cheated ..... there is nothing I can help." Deputy President, it is not simply a question of Ms Cyd HO being cheated, it is about millions of people being cheated. Let us look at the Secretary's reply. He said that, regarding the forming of the Legislative

Council by universal suffrage in 2020, a "Chief Executive returned by universal suffrage will gain the support of the general public ..... will lead Hong Kong society in solving this controversial issue". This was what the Secretary read out a few hours ago.

Deputy President, what did Donald TSANG say when he ran in the coterie election? He said that he would "do something big", that he would work out an ultimate proposal for universal suffrage, that he would sort out this problem, which has been perplexing Hong Kong for decades, for us. Deputy President, when his words still rang in our ears, he even added, "What Emily LAU wants can only be found in heaven?" When did he visit heaven?

Deputy President, the universal suffrage that we have been striving for can be found everywhere, from Asia to America, Europe and Africa. The Secretary cannot do anything to help Cyd HO and 7 million Hong Kong people, who have been cheated. Am I right? Has the Chief Executive breached his election pledge in doing so, as questioned by Dr LAM Tai-fai the other day? It was already outrageous that he stood in the coterie election; now he has even failed to live up to his words.

Therefore, Deputy President, today, we demand that dual universal suffrage must be implemented in 2012, otherwise, the Government must give us an undertaking. However, like the reply to the question raised by us before, the authorities have stated categorically that no such undertaking will be made. I find it extremely irresponsible, and shameless, so to speak, of the Government. We were told only a few years ago that the authorities would help us resolve this issue, but now it is said that they are looking for someone who has credibility and public support to address this issue. Although it is always difficult to resolve this issue, the definition of universal suffrage has long since existed. But then, he can still say that some people prefer "one person, one vote", while some "one person, two votes", and both are possible. So, let us wait until 2017! What an answer is that? How can members of the public put their hearts at ease?

This explains why 187 people would like to come to this Council. What I hope to see most is 1 887 people coming here to make representations. People must make their voices heard. We also hope that members of the public will participate in the procession to be held on 1 January. However, Deputy President, the democratic elections we are talking about are not simply one-person-one-vote elections. We have been told by some members of the

public that they feel very confused and there are a lot of things they do not understand. Nor do they know what has happened. I have told them that it does not matter, for democracy is about debate, competition, and plurality. However, democracy also stresses politeness and respect for divergent views.

I was not present at the procession held on 1 July this year, but I learnt that Ms Cyd HO was verbally abused by some people — during the procession, some people kept hurling expletives at her. Later, I was told that clips of such scenes had even been uploaded onto the Internet. Some people were extremely frightened that some people dared not make noises even though they had been verbally abused. May I ask if this is a manifestation of democracy? Therefore, Deputy President, I would like to say that what we want is, of course, one-person-one-vote elections. However, we want something more, too. We also want the rule of law, and we must respect divergent views and look after the disadvantaged. All these are part and partial to a grand democratic system. We hope the pan-democrats can hold their heads high and tell the public that we respect all these core values. The public need not be afraid. They can boldly speak out what is on their minds. They will not be attacked on all sides; nor will they be chased after and verbally abused by some people relentlessly.

Deputy President, the position of the Democratic Party is very firm. We call for the implementation of dual universal suffrage in 2012 and appeal to members of the public to join our procession on 1 January. What is more, I appeal to the public to "crowd" the Legislative Council. Ladies and Gentlemen, you should not be afraid. At this critical moment, you must stand up with us and tell the Central Authorities and the SAR Government what is on your minds. I believe people of this generation will see democracy.

**MS CYD HO** (in Cantonese): Thanks to Ms Emily LAU for her concern. I was not the least bit frightened. Moreover, there were some interesting dialogues between the people who booed at me and me. Members are welcome to visit YouTube for viewing.

Deputy President, constitutional reform should not be discussed out of thin air. Moreover, our proposed constitutional reform is not introduced for its own sake; neither is it for the sake of doing some follow-up work in order to comply with the decision made by the National People's Congress (NPC). There must be needs in terms of people's livelihood and governance behind the reform.

Deputy President, why did I raise the issue of poverty gap when the Chief Secretary for Administration gave a statement on constitutional reform in this Council in November? It was because many policies in Hong Kong were tilted towards those with political privileges to facilitate their retention of economic privileges. This had caused a sense of being aggrieved among many hardworking grass-roots people every day. They complain, "Although expenses on clothing, food, housing, transportation are so high, wages are miserably low."

Why would such a situation emerge? Why would the current legislation on minimum wage nearly turn into legislation for the protection of employers in paying very low wages rather than protecting workers in receiving reasonable incomes to support their living? This is attributed to our policymaking structure which in turns leads to our tilted policies. This explains why I asked the Chief Secretary the other day whether the District Council (DC) package could resolve the problems, given the growing size of the poor population and worsening poverty gap. However, it was really amusing that, on hearing the expression "poverty gap", which mirrored deep-rooted conflicts in society, our government official stopped listening attentively and, as a result, got my question wrong and gave the reply "yes" right away.

Although democratic elections might not be able to resolve the problem of poverty gap immediately, they can definitely help us elect a governing team which understands what an impoverished plight is, which is determined and sincere in resolving the problem of poverty gap in Hong Kong.

This is the plight currently confronting our grass-roots people. Then, what impact will it have on the new generation? The new generation is currently facing such problems as insufficient university places, difficulty in making loan repayments, and so on. Even the 1% risk rate, which is considered trite, is still being charged. In addition, there is no way out for associate degree holders; the unemployment rate of youths has reached 25%; the single model of secondary schools has failed to meet the different needs of youths during adolescence; and primary schools do not have sufficient resources to support these people in overcoming their learning disorders. Many adolescent students who have left school for various reasons are not given a second chance.

All these have become pressing problems and must be addressed expeditiously. Moreover, our accountable Government must work out fair, just and equitable solutions to the problems. As 2012 is fast approaching, Hong

Kong people cannot wait anymore. Neither can these problems be delayed for another 10 years, such that we have to wait until 2020 before the Legislative Council and Chief Executive can be returned by universal suffrage. All these problems must be resolved promptly.

Deputy President, many people will ask these questions: Why should we talk about 2012, now that we already have a timetable? Why should we talk about a roadmap or the implementation of dual universal suffrage promptly? Deputy President, it is imperative to do so. If we accept this wrong change in direction or if the direction taken by us today will make FCs, which are absolutely unjust, last forever and grow bigger and bigger, then democratization will only become more and more difficult to achieve. This is why we, as members of this generation, are obliged to voice out the needs of Hong Kong.

Deputy President, there are ways to measure whether the Government's reform proposals are compatible with the agenda of democratization. They include two principles and four directions. The two principles are: first, whether the public enjoys more power, and second, whether Members elected and the Legislative Council formed are more accountable to the public.

The DC package cannot pass the test of these two principles. The Secretary often says that these DC members are accountable to 3 million-odd people. However, he has omitted two words, namely "separately" and "respectively", for he should have said hundreds of people are "separately" accountable to 3 million-odd people. But the fact is, each DC member has only hundreds or a thousand ballots in their own constituencies. Under this system whereby an entry ticket to the Legislative Council can be gained through such a small constituency, they will be compelled to put the interest of the small constituency to which they belong before public interest. After being elected and gaining the entry tickets, who will be at the second level to which they are accountable? Still, it has not come to the turn of Hong Kong people. Rather, it will be the turn of their own political parties which elected them and the office in Western District. All in all, it will still not be the turn of Hong Kong people. Let me cite an example. Should KAM Nai-wai run in DC elections again, we would ask him whether he would support the nomination of Ms Audrey EU as a candidate to run in the Legislative Council elections, and he would definitely vow that he would be more than willing to do so. But unfortunately, Audrey EU did not win in the elections in the end, and it would simply be impossible to tell who was responsible for her defeat as polling was by secret ballot. When the

electoral college for the Legislative Council is only 400-strong, it would simply be impossible for the electors of small constituencies and the public to monitor if there is any exchange of political benefits. Therefore, the DC option is not compatible with these two principles.

As regards the four directions for the Legislative Council to move towards democratization, first, the existing traditional functional constituencies (FCs) — I follow the Secretary in using the word "traditional" for differentiation purposes — should be abolished or, at least, reduced. However, the present proposal is not heading in this direction. Second, even if these FCs are retained, the electoral base in respective DCs must be expanded to 3.37 million. However, these traditional FCs lack a direction for relevant reform. Third, it is the abolition of the separate voting mechanism in the Legislative Council. As pointed out by Mr Alan LEONG just now, a motion can still be carried even if no one votes against it. What kind of a mechanism is this? Fourth, it is the removal of the restrictions on the introduction of private bills by Members. The NPC decision does not have such restrictions, does it? So, why can a proposal not be made for reform? All this points to the fact that at the end of the day, the bottomline is manipulation, whether or not constitutional reform is to be introduced. If it is said that democracy cannot progress because the pan-democrats refuse to compromise, we can also say, conversely, that democratization can hardly move an inch should the Central Government refuse to give up manipulation.

Deputy President, there is one more amendment I have proposed in connection with the nomination mechanism of the Chief Executive election. Actually, many mechanisms can be distorted. Therefore, whenever such a danger arises, the power should most preferably be handed back to the people. This is why I propose that a person who is nominated by 3% of registered electors should also be nominated by the nominating committee — we affirm the retention value of this committee — the committee will have to confirm the candidacy of that person. Why is the threshold set at 3%? This is because turnout rates in Hong Kong usually do not exceed 60%. Moreover, even the Registration and Electoral Office affirms that candidates gaining 5% of ballots should be considered to be solemn and serious and eligible to get back their election deposits. 5% of the 60% turnout rate happens to be equivalent to 3% of eligible electors. This was how the calculation was made. If candidacy is considered solemn and serious, there is simply no reason to refuse to allow such persons to become candidates.

Deputy President, when it comes to commitment, the Secretary indicated in his reply today that my mentality of feeling frequently being cheated is not helpful to me at all. However, if Members take a look at the Basic Law, which is so specific and solid, and its commitment to Hong Kong people, they will find it amazing that hurdles after hurdles can be imposed by the interpretation made in 2004 and the decision made in 2007. The interpretation and decision are actually the product of one-party dictatorship. It will really be unrealistic if we rely on the Central Government, which is engaging in one-party dictatorship, to let go to allow Hong Kong to make democratic progress. Therefore, Deputy President, I am extremely pessimistic. I will not believe until we have universal suffrage. Even the humble request made by us today for a specific commitment with binding effect might not be met.

Deputy President, despite my appeal for Members' support, I know that my call will not receive any response in this Council, given its composition. Therefore, I would like to invite the public to take to the streets on 1 January to state their positions with their feet.

**SECRETARY OF CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): Deputy President, in this motion today, Mr Alan LEONG calls on the Government to seize the opportunity of the constitutional reform consultation to give an account to the public on the roadmap for universal suffrage. In this connection, it is imperative for the Special Administrative Region (SAR) Government to state its position on two aspects: First, the aim of the consultation is to further democratize the two aspects systems for 2012 and consult the public and the community on this direction; second, the implementation of dual universal suffrage in 2012 will not comply with the decision of the Standing Committee of the National People's Congress (NPCSC). The formulation of a roadmap for universal suffrage by the current-term Government will also go beyond the authority conferred on us.

Regarding the issue of universal suffrage, actually, the NPCSC made a decision in December 2007, making clear that universal suffrage may be implemented for the Chief Executive in 2017 and for the Legislative Council in 2020. Furthermore, appropriate amendments may be made to the two electoral methods in 2012. Therefore, our first step to take now is to strive for democratic progress in 2012, so as to pave the way for the implementation of universal suffrage.

The proposals put forth in this consultation document embrace new democratic elements in the following three aspects: First, we have already striven for a timetable for universal suffrage in 2007; second, although the half-and-half ratio between members returned by functional constituencies (FCs) and members returned by geographical constituencies (GCs) through direct elections shall remain unchanged, we have already made it clear that no "traditional" FCs will be created, and it is proposed that the room should be expanded for elected District Council (DC) members to elect from among themselves members to the Election Committee (EC) and the Legislative Council, with a view to enhancing the democratic elements of these two electoral methods; and third, we will further enhance the election among DC members for returning the Legislative Council District Council FC seats, and increase the number of seats returned by GCs through direct or indirect elections to 60%.

Members have kept discussing the principles of universal suffrage and mentioning universal and equal suffrage. These debates, whether being held at present or during the oral question time this afternoon, have given me a feeling of familiarity because discussions on these matters have started since the launch of the public consultation on the Green Paper (Green Paper) on Constitutional Development in July 2007.

Regarding the International Covenant on Civil and Political Rights (ICCPR), particularly Article 25, specially mentioned by Mr Alan LEONG again today, I must also reiterate that a saving provision for Article 25(b) of the ICCPR was made by the British Government in 1976 when the ICCPR was applied to Hong Kong. In its Note dated 1997, the Central Government also notified the Secretary-General of the United Nations that the saving provision made years ago would continue to apply to Hong Kong. Therefore, the basic rationale is that Hong Kong's attainment of universal suffrage does not originate from the ICCPR. Rather, it is because the Basic Law itself has a provision on eventually attaining universal suffrage.

As regards the principles of universal and equal suffrage, it has been made clear during the public consultation on the Green Paper and the submission of the report by the Chief Executive to the NPCSC in 2007 that the considerations and principles regarding the following three aspects must be complied with: First, the basic policies of the State regarding Hong Kong; second, the four principles on constitutional development, namely looking after the interests of different sectors of society, facilitating the development of the capitalist economy, complying with

the principle of gradual and orderly progress and being appropriate to the actual situation in Hong Kong; and third, the principles of universal and equal suffrage.

Therefore, our understanding of the principles of universal and equal suffrage is the same.

The Green Paper has made clear that while conforming to the general international understanding of "universal suffrage", we should also develop our electoral system having regard to the particular needs and aspirations of the people, the uniqueness of our socio-economic situation, and our historical realities.

The SAR Government has time and again stressed that the appropriate electoral method eventually implemented for universal suffrage must comply with the principles of universal and equal suffrage. This is indisputable.

As regards the selection of the Chief Executive by universal suffrage, the NPCSC Decision has made clear that the Chief Executive will be selected by "one person, one vote" in 2017. The Decision has made clear that, for the selection of the Chief Executive by universal suffrage in 2017, the composition of the nominating committee should make reference to the formation of the EC. It has also made clear that after a certain number of candidates are nominated by the nominating committee according to a democratic process, all eligible electors in Hong Kong will select the Chief Executive by universal suffrage, that is, by "one person, one vote".

Therefore, we can facilitate the transformation of the EC into a nominating committee before 2017 if the composition of the EC in 2012 can be properly dealt with at this stage. The remaining issue that needs to be addressed is how to stipulate the democratic procedures of the nominating mechanism in 2017.

In my opinion, Members here need not worry whether or not the democratic procedures and the nominating mechanism established at that time will be acceptable because any proposals put forth by the fourth-term SAR Government will have to be passed by two thirds of all the Members of the Legislative Council. If Honourable Members still remain in the Legislative Council by then, they will hold a vote crucial to supporting or vetoing the proposals.

As regards the models for implementing universal suffrage for the Legislative Council, a clear account was already given during the public consultation on the Green Paper in 2007 and, in summarizing the views upon the conclusion of the consultation, we already indicated that people inside and outside the Legislative Council were still divided over the abolition of FCs. The situation has remained unchanged to date.

The NPCSC has merely outlined the model for the selection of the Chief Executive by universal suffrage, it has not taken further steps to give a clear account of the model for the formation of the Legislative Council by universal suffrage. As regards the abolition or otherwise of FCs, it is impossible for Hong Kong society to achieve a consensus overnight.

Today, we see that views in this Council are divided, at least in two aspects. Some Members hold that "traditional" FCs should be abolished immediately or FCs should be expanded to cover 3.3 million electors. However, there are also some who consider that "traditional" FCs should be retained.

This is why we can still not reach a consensus on this issue at this juncture. Given this situation, the SAR Government has put forth the DC package at the present stage with a view to striving for more room for democracy in the composition of the Legislative Council in 2012.

Actually, Members can see that out of the existing 30 FCs, we have selected the District Council FC — which has the largest democratic elements and the broadest electorate base — in order to widen the composition of the Legislative Council in 2012. The seats of the remaining 29 FCs will be frozen because we believe this can help the Legislative Council move towards universal suffrage progressively.

Deputy President, today, Ms Cyd HO has proposed, among other things, establishing a mechanism whereby the public will nominate candidates for the Chief Executive election. However, I must point out that Article 45 of the Basic Law does not provide for such a mechanism, whereas the nominating committee will be responsible for nominating the candidates.

Ms Cyd HO has also called for the abolition of the separate voting mechanism in the Legislative Council and the removal of the restrictions on the introduction of private bills by Members in 2012. Actually, the former will not comply with the Decision made by the NPCSC in 2007, that is, the decision of retaining the existing voting mechanism in 2012, while the latter involves the provision of Article 74 of the Basic Law. Both the Decision of the NPCSC and the existing provisions of the Basic Law are constitutional laws, which cannot be amended lightly.

Summing up, the SAR Government appreciates the public's aspiration for attaining universal suffrage at an early date. In the report submitted to the NPCSC in 2007, the Chief Executive already reflected clearly that, according to an opinion survey, half of the people in Hong Kong hoped to achieve dual universal suffrage in 2012. The Chief Executive also made it clear to the Central Authorities that this opinion should be taken seriously and given consideration.

Meanwhile, however, about 60% of the people in Hong Kong indicated at that time that, if the Chief Executive could not be returned by universal suffrage in 2012, they would accept that the Chief Executive be returned by universal suffrage in 2017.

Given that we have already got a specific timetable for universal suffrage in 2017 and 2020 in accordance with the NPCSC Decision in 2007, and the timetable has gained extensive acceptance in Hong Kong society, what we must work hard to achieve now is to move forward for democratic progress in Hong Kong in 2012 and refrain from marching on the spot.

Deputy President, I will further respond to the views expressed by Members later on. Thank you.

**MR RONNY TONG** (in Cantonese): Deputy President, except for last year, I would move a motion every year to discuss the issue of constitutional reform in my last five years as a Member of the Legislative Council. This year, Mr Alan LEONG was luckier than me for he succeeded in drawing lots. I thought I could avoid the issue of resignation *en masse* by Members from each of the five GCs, which was reported extensively in newspapers and magazines, but I found out

after withdrawing my motion that WONG Yuk-man succeeded in drawing lots. There is no way for me to escape! Deputy President, this is God's will.

Deputy President, it is stated explicitly in the Basic Law that there will be universal suffrage. Even the Central Government has said that there will be universal suffrage. Chief Executive Donald TSANG has even promised that the issue of universal suffrage will be resolved once and for all during this term. The pan-democratic camp says that we must have universal suffrage. Hong Kong people keep saying every day that they must have universal suffrage. Even the establishment says that we will have universal suffrage. However, Deputy President, although we move a motion on universal suffrage every year, in this constitutional reform consultation, both the Chief Executive and Secretary Stephen LAM said that "you cannot decide what to do in order that universal suffrage can be implemented". This is something we cannot do! He said, "Just go ahead expressing your views. The information collected will be handed over to the Chief Executive of the next term" — but who will become the next Chief Executive is still unknown — he can throw the information into a thrash, place advertisements or whatever he chooses to do.

Deputy President, I do not understand the logic. Although everyone agrees that there will be universal suffrage and a consensus has been reached, why are we not allowed to mention it? Secretary Stephen LAM is even more ridiculous. He said that our power is limited. Deputy President, I read the Basic Law again yesterday. Actually, I can even recite it from the end back to the beginning. Nothing of this sort is mentioned there. Both Annexes I and II expressly provide that amendments to the selection methods must be made with the endorsement of a two-thirds majority of all the Members of this Council and the consent of the Chief Executive, and they shall be reported to the NPCSC for approval or for the record. What part of the Basic Law mentions that the power of the Chief Executive is limited?

Deputy President, all these are the tricks of Donald TSANG. He submitted a report to the NPCSC in 2007, but no one knew what the report was all about because he refused to disclose it. Subsequently, the NPCSC declared that there would be no universal suffrage in 2012 and no one should even mention this again. Moreover, restrictions were imposed on us. Deputy President, what are the justifications? Why can the Chief Executive not prepare another report and submit to the NPCSC after today or the consultation? Why can he not act

like "Long Hair" and say "Buddy, the situation in Hong Kong has changed. What actually happens here is, given that everyone in Hong Kong agrees that universal suffrage should be implemented, why can we not discuss what to do in order that we can have universal suffrage? Why can the Chief Executive not prepare another report?".

As regards a "five-step mechanism" for constitutional reform, sorry, such a "five-step mechanism" cannot be found in the Basic Law. So, please rewrite it again. The Basic Law merely has a "three-step mechanism". If someone insists that the Basic Law has a "five-step mechanism", please do not use this as an excuse, saying that Hong Kong people cannot discuss today what should be done in order that universal suffrage can be implemented. Deputy President, after the unveiling of this proposal, "Long Hair" and I attended a radio programme this morning. "Long Hair" said "there is no point in talking about it" — he is absent from this meeting today, probably because he really believes "there is no point in talking about it", and so he has decided not to say anything about it. But actually, he should explain to the public. Regarding the Chief Executive election, how many people in the 800-strong EC are directly elected by people across the territory? Deputy President, you are not a directly elected Member. There are only 30 directly elected Members, and they are the directly elected Members of this Council. If the democratic element is to be enhanced, should the number of Members directly elected by people across the territory not be increased?

We, Members belonging to the pan-democracy camp, propose that all the directly elected DC members be included, and in this way, they will then become directly elected representatives. But, the Government has proposed that the number of EC members be increased by 400, and yet 300 of them will have to be returned by a coterie election, whereas the remaining 100 elected from among DC members. But still, these are not direct elections; they are merely indirect elections. Despite an increase of 400 members, only 100 of them are indirectly elected. How can it be said that the democratic element has been enhanced! More importantly, because of the additional 400 members, the threshold should also be raised accordingly. In other words, the threshold has to be raised even though the democratic element is reduced, so how can this proposal be hailed as one moving in the direction of universal suffrage? I can see this fact even though I do not know how to do calculations.

Now, it is even said that universal suffrage is the same as unequal suffrage. When I was driving a car the other day, I heard Ms LAU Pui-king making this remark in a radio programme, and I nearly got my car crashed. "Please concentrate on your studies, my little friend! Why do you not study well? The universal suffrage mentioned here is not what you think." Deputy President, these are all nonsense. Why? Secretary Stephen LAM still insists that the International Covenants on Human Rights do not apply. If they are truly inapplicable, why does he still insist that universal suffrage should embrace unequal suffrage, for he is being self-contradictory?

Deputy President, this morning, I pressed the "Request-to-speak" button in an attempt to put a supplementary question to Secretary Stephen LAM. However, the President did not allow me to speak, probably because I have already asked too many questions. Actually, the question is simply about the fact that FCs are simply incompatible with Articles 25 and 26 of the Basic Law. Has the Secretary read the Articles? While it is stated clearly in Article 25 that everyone is equal, it is stated clearly in Article 26 that everyone has the right to vote and the right to stand for election. The worst shortcoming of FCs is the failure to take account of the right to stand for election. What is the point of explaining to me what "equal" means in Article 25 of the Basic Law? The establishment of FCs is already in breach of the provisions of the Basic Law.

Deputy President, as advocated by "Long Hair", the more the truth is debated, the clearer it becomes. Though some matters are readily understood, we should, nonetheless, speak them out, because not every Hong Kong people have time to find out what the constitutional reform consultation is all about. Deputy President, we must spare no time in explaining to the public, but still the Government is obliged to present us with a roadmap for universal suffrage. Thank you, Deputy President.

**DEPUTY PRESIDENT** (in Cantonese): Time is up.

**MR LEE CHEUK-YAN** (in Cantonese): Deputy President, I felt extremely outraged after listening to the speech delivered by Secretary Stephen LAM just now, in which he said that our debates had given him a feeling of familiarity. Does he really think that we very much want to debate with him? If not for the failure of the constitutional system to move forward over the years, the Secretary would not have this feeling of familiarity!

The mention of the feeling of familiarity by the Secretary reminded me of the Duracell commercial. He should really be called "Dura LAM", for he is even more powerful than Duracell. While Duracell batteries will be used up very quickly, the batteries for him as a "human recorder" can last forever. Being paid more than \$200,000 a month to be a "human recorder", he even dared to tell us that he had a feeling of familiarity. Not only is he "rehashing" the constitutional reform proposal, even his speech is a rehash of his old speeches. Of course, this explains why he has the feeling of familiarity.

Since the Secretary said that he had a feeling of familiarity, I would like to show him something he has never seen before. Deputy President, rectifying the pronunciations of words has recently become a fashion. But what I am going to do is to rectify the names. The Bureau headed by the Secretary is called the Constitutional and Mainland Affairs Bureau (政制及內地事務局). However, this constitutional reform launched by Henry TANG has become "something dangling in the air". Therefore, the Bureau should be given a new name of "Constitutional is Mainland Affairs Bureau (政制'乃'內地事務局)". The Government has surrendered our final say, and even our say, on constitutional affairs to the Central Authorities. As a result, the Bureau has now become "something dangling in the air", not knowing where to go. Thanks to Secretary Stephen LAM, the Bureau is now given the new name of "Constitutional is Mainland Affairs Bureau". That is all I want to say. Actually, it is unnecessary to engage in a debate today because it is simply a waste of time to debate with the Secretary.

Indeed, this is heartrending. It is precisely because a diagonal stroke (pie) is missing from the word "及" that Hong Kong has lost its momentum, that is, it has basically no final say.

I would like to read out an article written years ago to let us see how miserable it is for Hong Kong to have retrogressed to such a state nowadays! On 18 March 1993, the People's Daily carried an article on the comments made by LU Ping, the then Director of the Hong Kong and Macao Affairs Office, "The composition of the legislature after the third term should be decided entirely by Hong Kong, provided that it has the endorsement of two-thirds of all the Members of the Legislative Council and the consent of the Chief Executive, with a report made to the Standing Committee of the National People's Congress. The consent of the Central Authorities is not required. The future development

of democracy in Hong Kong is entirely within the autonomy of Hong Kong. The Central Government will not intervene." The commitment made at that time was recorded in history. But now, how far have we retrogressed? On that day, we only heard Henry TANG repeating that "the Decision of the NPC is a solemn decision". He repeated this statement for 40 to 50 times. Actually, everything is to be decided by the NPC, leaving Hong Kong with no scope for discussion and consultation at all.

However, is the NPC Decision correct? LU Ping already undertook that there would be no interference years ago. Now, the "three-step mechanism" has turned into a "five-step mechanism". Must we accept even though there has been retrogression? Must Hong Kong people suffer in silence?

This is why both Ms Emily LAU and Ms Cyd HO complained that they had really been cheated for too many times. He is like a slick, unfaithful lover who knows it all too well that the young girls cheated by him can do nothing at all. This is the fact. He has completely failed to solemnly address the issues of whether the framework is correct and whether the people should be cheated for so many times. He has completely failed to do so. Now, we have retrogressed to such a state that the NPC Decision is treated as an idol and unchangeable. I really want to ask the Secretary where the rights of Hong Kong people have gone.

The second retrogression is that the present discussion is even more retrogressive than the previous one held in 2007. Our request is that we should at least discuss the roadmap for universal suffrage and the model of implementing universal suffrage in 2017 and 2020. As I have often said, let us put aside the midway point for the time being if we are to discuss the issue of the terminus. However, it was obviously pointed out by Henry TANG that the NPC had not authorized Hong Kong to address the model of universal suffrage for 2017 and 2020. However, if we look up the records of history, we will find that his remarks have, once again, gone against his previous comments made in the Legislative Council, that is, the authorities undertook during the debate held in the Legislative Council in 2007 that the timetable and roadmap for universal suffrage would be discussed. At that time, even QIAO Xiaoyang welcomed various sectors to discuss the roadmap for universal suffrage in the hope that a consensus could be reached, so that countless discussions can be subsequently activated in Hong Kong. The situation is even worse this time, as we are not

even allowed to mention it. As a result, there is nothing we can do to address this issue. So, is it even worse?

Third, the Secretary was sometimes so timid that he dared not even say what is meant by universal and equal suffrage. During the question time today, I heard the Secretary say that some people would like to have "one person, one vote", while some would like to have "one person, two votes". The Secretary then went on to say that the democratic camp opposed "one person, two votes", as this is not universal and equal and people's right to stand for election will be exploited. However, he dared not express his own views. He was so timid that he dared not even state his own position. Does he dare to say that the "one person, two votes" is a deprivation of the right to be nominated, which is not universal and equal? He dared not say so. Therefore, no one can tell the Administration's position, for it will never dare to state its position. However, if it refrains from stating its position, how can we believe in it?

Therefore, the final conclusion is emphatic. Maybe Ms Maria TAM of the DAB is right — the definition of universal suffrage shall be decided by the Central Authorities. Upon hearing this, I have to rectify the English name of 民建聯 (Democratic Alliance for the Betterment and Progress of Hong Kong) as Democracy According to Beijing. This really lives up to its name as it has made it very clear that democracy is to be decided by the Central Authorities.

Thank you, Deputy President.

**MR CHEUNG KWOK-CHE** (in Cantonese): Deputy President, after a wait of four years, the Government has put forth a constitutional reform proposal again. However, it is a great pity that we are once again let down by the proposal. After the long wait of four years, Hong Kong people's aspiration for democracy has become increasingly strong, and their loud call for universal suffrage has become more and more impassioned. However, the Government has chosen to engage in perverse acts and put forth this backtracking constitutional reform proposal in an attempt to implement bogus universal suffrage to be manipulated by the Government and push democracy into an eternal abyss.

There are innumerable defects in the constitutional reform proposal which are worth criticizing. Being a Member returned by FCs, I believe I am most qualified to criticize this system for its unfairness and injustice. On behalf of the Hong Kong Social Workers' General Union and co-workers in the social welfare

sector, I make it clear that we will definitely not cling to these privileges. We fully support the abolition of any form of FC elections once and for all, including Members to be elected from among DC members in the future, as proposed by the Government.

Arguments for the unfairness of FC elections are simply innumerable. At present, 30 Members of the Legislative Council were returned by geographical constituencies (GCs) through direct elections, which means that they have an electorate base of more than 3 million. But, what about the remaining 30 Members returned by FCs? FC Members have an electorate base of only 200 000 or so. We can see that the number of electors holding corporate votes in a few constituencies, such as the Finance, Insurance, Heung Yee Kuk, Agriculture & Fisheries, and Transport sectors, is only slightly more than 100. The power held by these Members, who were elected by only 100-odd electors, has turned out to be exactly the same as that held by Members directly elected by an average of more than 100 000 electors!

Furthermore, since the reunification, Members from quite a number of constituencies were elected uncontested and automatically. One can thus imagine that these elections must be coterie elections. To put it somewhat crudely, the seats were bestowed on them by the Government. They can do anything in this Council to defend the Government's policies and motions.

In fact, when the "nine New Functional Constituencies", a brainchild of Chris PATTEN, were introduced into the Legislative Council in 1995, the number of registered electors of the nine FCs was in excess of 1 million, five times that of the number of registered electors today. Why would a government established after the reunification be even more undemocratic than a colonial government?

Furthermore, the issues of concern to a competent Legislative Council Member ought to be the interest of the people across the territory. They must act in the overall interest of Hong Kong. However, FC Members, given their abnormal ecology, are merely required to be accountable to the electors of their respective constituencies. It does not matter even if the interests of their constituencies are not in line with the wishes of the rest of the Hong Kong public.

Supporters of FCs would say that introducing people from different sectors into the Council would help balance the interests of different sectors in society. However, this could only be a beautiful excuse for the Government to confer privileges on these people while failing to account for the unfairness of this electoral system. For instance, we see that the Education Constituency has nearly 90 000 electors. But why is it given only one seat, the same as the Finance Constituency, which has only 132 electors? Does the Finance Constituency have a louder voice than other constituencies?

At present, there are more than 200 000 registered FC electors in Hong Kong. Actually, these electors hold more rights than ordinary people because they can hold two or more votes. The Legislative Council Members elected by them would simply stifle "one person, one vote" elections, thereby creating a coterie of political elites. This would also lead to a ridiculous situation in which one person may hold multiple votes. Because of the existence of corporate votes in FCs, the holding and subsidiary companies of a business establishment may make multiple registrations with the EC. As a result, a company may hoard many voting rights in its own constituency. In other words, the more subsidiaries a company has, the greater influence it will have in its own constituency.

In fact, as early as 1995, the United Nations Human Rights Committee already criticized the electoral systems in Hong Kong, saying that FC elections were in breach of the provisions of the International Covenant on Civil and Political Rights and obviously tilted towards the business sector. Therefore, the existence of FCs not only mirrored the unfairness of our electoral systems, but also posed the biggest obstacle to universal suffrage.

I would like to emphasize that I am merely dissatisfied with the existing FC system. I have no intention to target any specific Member, because we can see that some FC Members are actually serving Hong Kong people wholeheartedly rather than solely serving the interest of their own constituencies. Electors are also sharp-eyed. I believe FC Members who have good performance in serving on this Council and are committed to serving Hong Kong people can also win even if they turn to direct elections. There is no need for them to seek alms given away in contempt.

(THE PRESIDENT resumed the Chair)

The Hong Kong Social Workers' General Union started to fight for direct elections in 1988 in the mid-1980s, when Hong Kong people's aspiration for democracy started to take root. Now, after more than two decades and the baptism of elections repeatedly, I believe electors have already matured and are capable of electing a Chief Executive and Legislative Council that can truly represent them. Coupled with our clean and fair electoral and voting systems, society is actually fully prepared. It is not difficult at all for dual universal suffrage to be implemented in 2012.

Based on the firm beliefs of social workers and their perseverance, we will continue to strive for the implementation of dual universal suffrage, which is also the aspiration of 60% of the electors in society. Therefore, the Chief Executive is obliged to continue to relay our aspirations to the Central Authorities till the last second.

Thank you.

**MR LEUNG YIU-CHUNG** (in Cantonese): To start with, President, I would like to reiterate that I resolutely insist on my position of striving for the "implementation of dual universal suffrage in 2012". I believe the call for the expeditious implementation of universal suffrage and the return of political power to the people is also the established position of the majority of Hong Kong people for many years. Moreover, it also represents the basic rights to democracy enjoyed by every Hong Kong citizen.

The constitutional reform consultation launched by the SAR Government this time around has not only failed to heed the strong call by the majority of Hong Kong people for the implementation of dual universal suffrage in 2012, the Government has also refused to present us with a roadmap for universal suffrage. Instead, it has only offered us a fake halfway package with an unspecific terminus, or even without a final stop. The present consultation conducted by the Government is not only a "birdcage consultation", it is even more of a "self-castrated consultation". This is why I will definitely not support it.

I appeal to Hong Kong people in support of democracy to participate in the rally on New Year's Day, that is, 1 January, to jointly fight for the universal suffrage that we should have long since enjoyed.

In this Council today, President, I would like to refute, in particular, two major fallacies persistently spread by the Government recently. First, the Chief Executive, Donald TSANG, has repeatedly pointed out that "the NPCSC has already ruled out the implementation of dual universal suffrage in 2012, and hence, the full implementation of universal suffrage in 2012 is 'impossible'".

President, I must point out that according to Constitution of China and relevant laws, it is not impossible to change decisions made by the NPCSC. For instance, Article 62(11) of the Constitution provides that the NPC has the power to "alter or annul inappropriate decisions of the Standing Committee of the National People's Congress". Furthermore, as a power organ of the State, the NPCSC is certainly in a position to alter the resolutions previously passed by it.

Actually, as a responsible government, particularly so for the SAR Government, the Chief Executive is duty-bound to reflect the wishes of Hong Kong people to the Central Authorities from time to time. Furthermore, the NPCSC does not prohibit the Chief Executive from submitting another report on the position of Hong Kong people on universal suffrage, for this can allow the NPCSC to understand the wishes of Hong Kong people in a timely and accurate manner and make its latest decisions in the interest of Hong Kong people. Therefore, it is all the more imperative for the Chief Executive to reiterate again to the NPCSC the resolute position of Hong Kong people of calling for the implementation of dual universal suffrage in 2012.

Even if the issue of the implementation of dual universal suffrage in 2012 is put aside, the Chief Executive still cannot shirk his responsibility of reflecting to the Central Authorities the call by Hong Kong people for a specific timetable and roadmap. I think the Chief Executive's act only shows that he is seeking to shirk his responsibility.

Insofar as a roadmap for universal suffrage is concerned, as early as the restructuring of the Commission on Strategic Development, the Chief Executive already indicated publicly that constitutional development would be discussed by the Commission and it was planned that a roadmap for universal suffrage, that is, the steps towards universal suffrage and proposal for implementing universal suffrage, would be proposed in early 2007. However, the Chief Executive has

recently pointed out that he has no authority to put forth an ultimate proposal on universal suffrage. Is it an act of refuting one's previous convictions?

It is even more impressive that when the Chief Executive ran for re-election in 2007, he publicly declared to all the people of Hong Kong that he would "do something big" on the issue of constitutional development. His remarks can be described as very impressive. He even undertook unequivocally in the Chief Executive election forum that should he be re-elected, he would resolve the issue of universal suffrage once and for all in the five years to come. What now? To date, where have the timetable and roadmap for universal suffrage and the model of universal suffrage that we have been yearning for gone? Actually, Donald TSANG has even told us that he will refuse to put forth an "ultimate proposal on universal suffrage" and that he cannot possibly present it to us for discussion. What sort of commitments are they?

President, after reading the resolution of the NPCSC in 2007 again, I found that it is actually stated in the resolution to the effect that "the Chief Executive is required to submit reports to the NPCSC at suitable moments, so that the NPCSC can ascertain the specific contents of dual universal suffrage". Therefore, I cannot see any excuse for the SAR Government to refuse to reflect clearly to the NPCSC the call of Hong Kong people for the implementation of dual universal suffrage in 2012 and the specific call for a roadmap for universal suffrage at this critical moment. I believe only through calling on the NPCSC to reconsider the issue of dual universal suffrage can the political deadlock currently confronting us be effectively broken.

President, the second fallacy put forth by the SAR Government recently was the one raised by Secretary Stephen LAM. He said to the effect that "as the Government has responded to the call by pan-democrats for a timetable for the implementation of universal suffrage in 2005 and disallowed appointed DC members from electing Legislative Council Members, the pan-democrats should support the Government's present proposal and refrain from upping the ante persistently".

President, I must point out unequivocally that Hong Kong people and the democrats have not raised their thresholds. Our positions and requests are consistent, specific and firm.

If Members have not forgotten, the mainstream public opinion and request of the democratic camp in 2005 was that dual universal suffrage be implemented in 2007 and 2008 and that the Government should at least present us with a timetable and roadmap for universal suffrage for discussion. Even the Government admitted in its concluding report submitted to the NPCSC during the consultation held in 2007 on constitutional development that the mainstream public opinion was for dual universal suffrage to be implemented in 2012. Therefore, our present insistence on implementing dual universal suffrage in 2012 is merely a continuation of our past aspiration as well as an extension of our position over the years for implementing dual universal suffrage expeditiously. How can the Secretary say that we "keep upping the ante"?

President, politics is everyone's business. The prerequisite for the democratization of the constitutional system is to reflect the specific aspirations of the majority of Hong Kong people. This is why I hope the Government can stop evading public opinion and, what is more, distorting public opinion. Otherwise, the voices of public grievances will only continue to grow, and it will become even more difficult for the Government to maintain its integrity and governance. President, I so submit.

**DR MARGARET NG** (in Cantonese): President, I would like to follow up the comments made by Mr LEUNG Yiu-chung just now. I think the Secretary was lying when he accused us of continuing to up the ante. This Government is very fond of putting words in people's mouths with lies. Therefore, I would like to present a booklet immediately. President, in this booklet, which is about "why we should oppose the Government's constitutional reform package", we explained to our supporters on 16 December 2005 why the Government's 2005 package should be opposed. The booklet made it clear that tens of thousands of Hong Kong people had taken to the streets to join the rally on 4 December calling for the Government to put forth a timetable and roadmap for universal suffrage.

Second, why do we accuse the Government's package of violating the principles of universal suffrage? Apart from the added element of appointed DC members, there was also the element of reviving indirect elections. Therefore, it was a retrogression in democracy. After the rally on 4 December 2005, Donald TSANG indicated that the biggest compromise that could be made would be to abolish the appointment system gradually. It was what I wrote in my column in

the *Apple Daily* at that time: "Is it for the sake of the appointment system that we stage our rally?". We cannot deceive people because this was what was documented at that time. President, why should we continue talking about this and that? Because if we do not keep talking, put things on record or print them out, we will be wronged by this Government, saying that we have not talked about this before. Donald TSANG clearly promised during his election campaign that "I would have a design, a timetable and a roadmap". Despite his remarks, it was amazing that Chief Secretary Henry TANG could have told us here that he would merely mention the timetable, which had already been given us. Why should we stir up so many troubles by asking for a roadmap now? All these are aimed at wronging people.

President, why do we have to talk about a roadmap for universal suffrage, or a roadmap for genuine universal suffrage today? This is because we have seen that the Government is paving the way for the gradual emergence of a roadmap for bogus universal suffrage slowly. President, we already mentioned a roadmap for universal suffrage in 2005 precisely because we were worried that we could take only one step at a time, and we had no idea when we could reach our destination. In 2007, we had yet to truly doubt the Government would say something like universal suffrage could co-exist with FC seats. We merely wished to point out that many people had yet to pay attention to the real significance of universal suffrage. Therefore, when I proposed a motion calling for the Government's elucidation during the last Legislative Session, I reprinted a booklet pointing out that universal suffrage meant universal and equal suffrage. At that time, the Government had gradually started to reveal its real intention. The real revelation came in the Green Paper of July 2007, where there were *inter alia* many check boxes. I wonder if Members of the pan-democratic camp still recall that we had to explain to people everywhere at that time. Why must it be made so complicated? It was because the Government had tempered with universal suffrage by adding some elements to give people an impression that universal suffrage does not mean universal and equal suffrage. Therefore, some people wrote articles to express their comments at that time. For instance, in an article carried in the *South China Morning Post* in October 2007, Ms Christine LOH pointed out that the added element was aimed at paving the way for distorting the definition of universal suffrage in the future. Subsequently, I also wrote an article on 27 July 2007 on the significance of the Green Paper, pointing out that it sought to give universal suffrage a new definition.

While these words still rang in our ears, the Interpretation by the National People's Congress (NPC) was made on 29 December 2007, the day when the

timetables for 2017 and 2020 were handed to us. We have already been told by ZHANG Xiaoming that FCs are of great value, for they contribute 90% of Hong Kong's GDP and, therefore, should be retained for good. This is why I pointed out during the debate that it is unacceptable for the Central Authorities to undertake that the Chief Executive can be selected and the Legislative Council be formed by universal suffrage in 2017 and 2020 respectively while the definition of universal suffrage is being secretly amended by the Central and SAR Governments.

Therefore, we must make everything clear and put it on record. Such a view has been formed subsequent to the Green Paper published in 2007 and the NPC's Interpretation that paved the way. In introducing the constitutional reform package this time around, Chief Secretary Henry TANG confessed frankly that FCs were inconsistent with the principle of universal and equal suffrage. So, we have to ask the Chief Secretary, given that FCs are inconsistent with the principle and the constitutional reform package has to pave the way for the future implementation of universal suffrage, what has he actually done? What reply will be given as the NPC's Interpretation allows reducing the number of FC seats? What is the latest answer, President? The answer is that no solution can be given for the time being, as the matter can only be resolved after the selection of the Chief Executive by universal suffrage in 2017. In other words, from now on, one can say shamelessly that, even though he is not complying with the principle, he can tell Members not to harbour any false hope before the selection of the Chief Executive by universal suffrage in 2017. These are the unspoken words, the hints foreshadowing later developments, the so-called hidden agenda, or the hidden roadmap. Therefore, today, we must say it loudly that a genuine roadmap means that screening cannot be allowed in the selection of the Chief Executive by universal suffrage in 2017 and that all FC seats must be abolished in the forming of the Legislative Council by universal suffrage in 2020. Otherwise, the Government will keep telling lies, wronging people and confusing them. Thank you, President.

**MR ALBERT HO** (in Cantonese): President, debates on the cardinal issue of democracy have been going on in Hong Kong for more than one quarter of a century. As a Member of this legislature for 15 years already, I have participated in many debates on this issue. At the very beginning, we discussed the pros and cons of democracy, whether it is suitable for Hong Kong, and whether it is conducive to our stability and prosperity. At that time, even some

trade unions, such as the Federation of Trade Unions, discussed whether democracy would scare capitalists away, and whether the ballot box would make us lose our means of living.

Later, as people realized that it was impossible to resist the trend of democracy or democracy as a universal manifestation of human rights, they no longer dared to argue over the pros and cons of democracy. Instead, they started to debate the definition of democracy, whether democratic elections should always be based on "one person, one vote", and whether democracy is all about "universality and equality". President, all is nothing but common sense. In an advanced, civilized and open society, all these questions are no longer discussed. But the Secretary still has the face to discuss them in the debate today. Many people will thus wonder what is wrong with a person who keeps citing all such arguments. Is there something wrong with his intelligence? Or, is there something wrong with his integrity? I certainly know that the Secretary is helpless and must let his bottom command his brain. But still, I hope that he can give Hong Kong and the whole world some arguments that are more logical and sensible. Sadly, I do not believe that he is capable of doing so.

Regarding Mr WONG Sing-chi's oral question today, I do not think that it can elicit any concrete replies. The point is actually very simple. How can universal suffrage and FCs co-exist? In case universal suffrage is really implemented, will it still be necessary and possible to allow the continued existence of such a freak called FCs, and the distorted election based on privileges? When giving his replies earlier today, the Secretary discussed the concept of universality and equality again. He obviously thought that universality is very simple. To him, universality may at most mean one vote for one person or two votes for one person in some cases. As for equality, he may think that it simply means the implementation of "one person, one vote" in all functional sectors. Is that not fair? He has omitted one concept, one which he does not dare to mention. This is the more significant and inalienable concept of equality, which advocates votes of equal value. Is he brave enough to mention this concept? Are all votes of equal value? He does not dare to mention this concept.

If votes are not equal in value, there cannot be any equal election. In that case, universality will be rendered largely meaningless because there is no equality in the very first place. Whenever I hear the mentioning of equality in such debates, I will invariably think of *Animal Farm* written by George

ORWELL. In this novel, it is mentioned that while all animals are equal, some animals are more equal than others. This means that certain "big guns" are more equal than others. This is a morbid phenomenon that distorts the conventional interpretation of language and common sense, under which power supersedes the truth.

From paragraph (ii) in part (a) of the Secretary's main reply, we can already notice what is going on and what tricks up their sleeves. On top of the concepts of universality and equality, they added, "As far as an individual jurisdiction is concerned, ..... it can also develop its electoral system having regard to the particular needs and aspirations of its people, the uniqueness of its socio-economic situation, and its historical realities." (I have cited the exact wording of his main reply today.)

President, we naturally know that there are many different forms of democratic electoral systems in the world. But all such systems are characterized by the principle of universality and equality, the principle of equal value for all votes. All votes must be of equal value, whether the people have any "particular needs and aspirations".

Speaking of the people's aspirations, should the notion that some are more equal than others be regarded as one of the factors determining the designs of the electoral systems? Speaking of the uniqueness of the social situation, should we, in the words of ZHANG Xiaoming, allow capitalists or certain functional sectors to enjoy more equality because of their significant contribution to our GDP or economic productivity? Do people know what is meant by "being more equal"? This means more privileges.

Speaking of historical realities, are they talking about Beijing's dislike for a legislature returned by genuine universal suffrage which may make it impossible for the Chief Executive selected by a coterie to govern Hong Kong in an executive-led manner, thus leading to the emergence of a democratic political entity antagonistic to the one-party dictatorship in Beijing? Is this the political reality they are talking about?

President, there is simply too much sophistry. It is indeed not easy to give a clear reply in seven minutes. However, Secretary, you really should not keep talking about the principle of so-called gradual and orderly progress. If the two decisions of the NPC are perceived as a birdcage, in the sense that the ratio of

directly elected seats to FC seats must not change, you will see that ..... It is clearly stipulated in the Basic Law that in the context of the first 10 years following the reunification, gradual and orderly progress shall denote a continuous increase in the proportion of directly elected seats. But, today, you have told us that gradual and orderly progress shall be confined to inside the birdcage, and that this is already a form of democratic progress. This is simply calling a stag a horse, right? How can there be any progress, however small, when there is such a birdcage? Therefore, President, if there is no roadmap (*The buzzer sounded*) showing us the finishing point, I would think that it is pointless to hold any such debates.

**DR RAYMOND HO** (in Cantonese): President, on the 26th of last month, the Panel on Constitutional Affairs convened a special meeting to discuss the *Consultation Document on the Methods for Selecting the Chief Executive and for Forming the Legislative Council in 2012*. At this meeting, I put two questions to Mr Stephen LAM, Secretary for Constitutional and Mainland Affairs. The first question was about the retention or otherwise of the FC seats in the Legislative Council. I asked the Secretary to tell me which part of the Basic Law mentions the total abolition of such seats. The second question was about the definition of universal suffrage. In the end, the Secretary did not give me any reply, or, maybe, he did not have any opportunity to do so.

First, regarding the definition of universal suffrage, some maintain that it should mean a system of "one person, one vote" geographical direct elections. But others think that it is also in keeping with the principle of universality and equality to give two votes to one person, so that he can vote in geographical direct elections and FC elections. As a matter of fact, the professional sectors in the FCs of the Legislative Council are presently composed only of eligible electors in the respective professional sectors. But the electorates are already quite large. In the case of the Engineering sector I represent, for example, there are close to 14 000 eligible electors. The system of "one person, one vote" is likewise adopted, and eligible electors are found in various districts, including Hong Kong Island, Kowloon, the New Territories and the Outlying Islands. In that sense, there is substantial universality, and the representativeness of the sector may not compare any less favourably with that of geographical constituencies (GCs). Therefore, there are in fact lots of disputes over definitions. The Legislative Council Election in 2008 is an example. The number of votes for the candidate who obtained the smallest number of votes in GCs was just about 19 000. As a

matter of fact, in every election in the past, I invariably had to compete very fiercely with other candidates before I could win.

Since the Basic Law does not provide any clear answer in this regard, we must expeditiously launch discussions on the definition of universal suffrage and whether FCs are in compliance with the definition.

I am consulting the Engineering sector on the methods for selecting the Chief Executive and for forming the Legislative Council in 2012 proposed by the Government earlier on. At this stage, I wish to express my personal views on the proposals contained in the consultation document. Regarding the method for selecting the Chief Executive in 2012, one of the proposals in the consultation document involves an increase of 100 seats for each of the four major functional sectors in the Election Committee (EC). This in effect means an expansion of the EC membership from 800 to 1 200. The 100 additional EC members from the political sector are to be drawn mostly from DC members. The EC members from this sector are to be elected from among elected DC members. But appointed DC members will be excluded from the election. This will reduce appointed DC Members to second-class DC Members. But appointed DC Members have likewise been doing their utmost to serve their respective districts. So, the proposed electoral arrangement is unfair to them.

In regard to the threshold of nominating a candidate in the Chief Executive Election, the consultation document proposes to maintain the threshold at the existing level of one-eighth of the EC's total membership. This means an increase from 100 nominations to 150. For the purpose of encouraging more people to run in the Chief Executive Election, can the Government consider lowering the threshold to 100 nominations, with the proviso that there must be at least 15 nominations from each sector? As regards the other 40 nominations, they can come from any sector. And, to prevent individual candidates from monopolizing nominations and hindering others from obtaining nominations, the Government should consider the idea of capping the number of nominations at 200 per candidate. Or, it may also consider the possibility of not disclosing the identities of nominators.

Regarding the method for forming the Legislative Council in 2012, the consultation document proposes to increase the number of Legislative Council seats from 60 to 70. The 10 new seats are to be shared equally by FCs and GCs.

The five new FC seats and the existing seat for the DC FC, totally six seats, shall all be elected from among elected DC members. Under such an arrangement, the six seats for the DC FC will account for 17% of all the 35 FC seats in the Legislative Council. The Members concerned will be as influential as a political party. Strictly speaking, the DC FC is not quite the same as professional sectors. They are not quite the same as industrial and commercial functional sectors either. Will the Government's proposal rock the balance between functional sectors and DC representation in the Legislative Council, thus contravening the principle of "balanced participation"? Another point is that a person needs only to obtain a certain number of votes in a district in order to be elected as a DC member. Therefore, in some cases, candidates may still be elected even though the number of votes obtained by them is not very large. But they will have the chance to elect from among themselves representatives to the Legislative Council, meaning that they may well be able to join the Legislative Council by running in direct elections.

We do not wish to see any situation in the future, under which a very significant portion of the Agendas of Legislative Council Meetings are about some relatively minor issues because there is a large proportion of Members elected from among DC members.

As a matter of fact, the NPCSC already set down a timetable in 2007, specifying that the Chief Executive may be selected by universal suffrage in 2017 and all Legislative Council Members may be elected by universal suffrage in 2020. That being the case, I think we should expand the electorate base as much as possible at this stage, rather than marking time. If universal suffrage can really be implemented for the Legislative Council Election in 2020, FCs should be abolished all in one go. It is not desirable to see any disputes over the addition, reduction and merging of certain FCs in the coming few years. Therefore, I maintain that all FCs must be abolished at a suitable time. If universal suffrage can be implemented for the Legislative Council Election in 2020, FCs should be abolished all in one go, so as to avoid endless disputes in the process, for this will adversely affect the atmosphere in Hong Kong. And, this will not be good to Hong Kong either.

President, I so submit.

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

**MR LEUNG KWOK-HUNG** (in Cantonese): President, a few years ago, I once called Stephen LAM "Stephen GOEBBELS", meaning that he was very much like GOEBBELS, the Minister of Propaganda of Nazi Germany. What maxim did GOEBBELS uphold? "A lie told a thousand times shall be the truth." Honestly, I am sorry for him because he must rack his brain trying to defend a corrupt and rotten regime. This will result in personality transformation. Honourable Members of this Council abhor functional bodies, dismissing them as a hindrance to the cause of democratization and an evil. However, none has had the courage to point out that there is an even greater functional body. What is this functional body? It is the Communist Party of China, which is the greatest multi-function organization. It claims to represent all the 1.3 billion people in China.

I have also heard Members talk about a roadmap. As far as I am aware, "roadmap" is a very well-known term in the arena of world politics. On the day he was elected, Bill CLINTON avowed that he would try to settle the Middle East Question. Consequently, he drew up a roadmap to form the basis of peace negotiations between Israel and Palestine. In no time, CLINTON left and George W BUSH came to power. At present, the one in power is Barrack OBAMA. The roadmap drawn up by the Americans years ago has never been followed. The Israelites have continued to build settlements in the Gaza Strip on the West Bank of River Jordan, slaughtering many Palestinians. Inside Israel, they practice racism, dividing people into four classes. I am terrified by all this.

This Special Administrative Region Government has been talking about a roadmap for several years. Where has the roadmap led us to? It has led us to the argument that FCs are compatible with universal suffrage, and that their existence can be accommodated by universal suffrage. This is the same as saying that beasts are human beings and human beings are beasts.

What are we discussing today? We are discussing whether Hong Kong people should have the right to elect Legislative Council Members, members of lower-level representative assemblies and even the Chief Executive under the principle of universality and equality. Some argue that we have been upping the ante all the time. But, in fact, we have been forced to lower our asking prices to

comply with their demands, buddy. It was once said that there would be universal suffrage in 2012. Time flies, and 2012 is fast approaching. Are they ashamed of themselves when presenting such arguments? The pan-democrats in Hong Kong have been oppressed by them, repeatedly deceived by them, thus missing many opportunities. The apologists of these people have been so unblushing, and they have repeatedly eaten their own words. The political party to which the President belongs — the Democratic Alliance for the Betterment and Progress of Hong Kong, not the Communist Party — has repeatedly revised its party platform. This is more than obvious.

May I ask the boss of Secretary Stephen LAM, that is, Donald TSANG, to explain to us the basis on which he tells Beijing that Hong Kong people do not like democracy and the implementation of dual universal suffrage in 2012? He claims that his observation is based on opinion polls. Let me bet with him. The ballot box is our basis. Resignation *en masse* to trigger a *de facto* referendum is what we want to do. This is surely happening regardless of what they think.

Honestly, I am not in any mood to speak today. Karl MARX was a true believer in one maxim: Follow your own path, and let others talk. They think that since some in the pan-democratic camp are against or do not support resignation *en masse*, resignation *en masse* or a *de facto* referendum will not take place. This will surely take place, I must say. Taking this opportunity today, I wish to ask all those Hong Kong people who aspire to elections based on genuine universality and equality to make use of the ballot box to give a smack on the face to GOEBBELS and his boss Hitler, Stephen LAM, Donald TSANG and the Chinese Communist Government. One must depend on oneself to defend one's dignity. Our voting process will be peaceful and orderly. *(The buzzer sounded)* We want to recover our dignity. I hope that all can catch this point. Can you catch it? Can you get it?

**PRESIDENT** (in Cantonese): Mr LEUNG Kwok-hung, time is up.

**MR LEUNG KWOK-HUNG** (in Cantonese): Will he cast a vote?

**MS AUDREY EU** (in Cantonese): President, many Members belonging to the democratic camp have pointed out in today's debate that Hong Kong people have

been cheated time and again by the SAR Government and the Central Government on the issue of universal suffrage.

I wish to cite another example here to explain why we say that we have been cheated. This example, President, is related to a publication entitled *"Introduction to the Basic Law of the Hong Kong Special Administrative Region"* (Introduction) published by the Party School of the Central Committee of the Communist Party of China, with Mr WANG Shuwen as the Chief Editor. In this publication, the issue of universal is mentioned. Recently, we have been arguing that the implementation of universal suffrage should preclude the existence of FCs. But, in response, the Government has asked us to point out the part of the Basic Law that mentions this point. It even argues that universal suffrage and indirect elections are not mutually exclusive.

President, I have gone through the Introduction published by the Party School of the Central Committee of the Communist Party of China, with Mr WANG Shuwen as the Chief Editor. In Section 2, Page 270, the method for forming the Legislative Council and its tenure are mentioned. The Introduction discusses how the ratio of directly elected seats to indirectly elected seats should be determined. It points out that in the Basic Law, there is a broad principle on this issue. It goes on to quote Article 68 of the Basic Law, "The method for forming the Legislative Council shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The ultimate aim is the election of all the members of the Legislative Council by universal suffrage." The Introduction mentions three points in this connection. First, the actual situation must be considered. Second, equal attention must be paid to the interests of all social strata. And, third, President, the principle of gradual and orderly progress must be followed.

The Introduction says, to this effect, "The electoral systems in the Hong Kong Special Administrative Region can neither stay put in the electoral system for the Legislative Council in 1991 nor develop too quickly. To stay put is tantamount to ignoring some Hong Kong residents' demand for greater democratic participation and the ultimate aim of electing all the members of the Legislative Council of the Hong Kong Special Administrative Region in the future." The Introduction continues, "The reason is that if no attempt is made to phase in the conduct of direct elections and create the necessary conditions step by step, so that Hong Kong residents can enhance their awareness of political

participation and amass electoral experience, it will not be possible to achieve the ultimate aim." The ultimate aim here is the implementation of universal suffrage. The Introduction also reasons, "Neither is it feasible to ask for the immediate implementation of universal suffrage to elect all Legislative Council Members, that is, the immediate implementation of direct elections based on 'one person, one vote' to elect all the Members of the Legislative Council." This means that no attempt should be made to implement "one person, one vote" in direct elections overnight.

The Introduction points out, "Electoral arrangements are one form of democratic politics, and as such, they must be compatible with the level and aim of social development." It explains, "For more than a hundred years since its establishment in 1843, the Hong Kong Legislative Council has never had any elected members. But it is now requested that once the Hong Kong Special Administrative Region is established, all Legislative Council Members must be directly elected. This will preclude gradual and orderly progress. Such development will be much too hasty." Therefore, President, it is very clear that the ultimate aim of universal suffrage under discussion should be the implementation of direct elections based on "one person, one vote".

On Page 273 of the Introduction, the meaning of gradual and orderly progress is also discussed, and some examples are cited. Why is there a need for gradual and orderly progress? This is related to the gradual increase in the number of directly elected Legislative Council Members. In the first Legislative Council, such Members should account for 33% of the total membership. In the second Legislative Council, they should account for 40%. And, in the third Legislative Council, the percentage should be 50%. The increase is gradual. These are the requirements set down in the Basic Law to comply with the principle of gradual and orderly progress.

Since the composition of the first three Legislative Councils is set out in the Basic Law, the proportion of directly elected Legislative Council Members should be increased accordingly in a gradual and orderly manner. However, due to the decision of the Standing Committee of the National People's Congress (NPCSC), progress is no longer possible. The reason is that the ratio of directly elected Members to FC Members must remain unchanged according to the decision. Therefore, the Government's allegation that we have been upping the ante incessantly is nothing but defamation, because at the very beginning, the democratic camp actually asked for the implementation of universal suffrage in

2007 and 2008. For all these reasons, and in accordance with the Basic Law, universal suffrage should have been implemented in 2007 and 2008. Dual universal suffrage should have been implemented.

President, the party platform of your political party also mentioned this at the very beginning. And, this was also the perception of all. But then, following the interpretation of the Basic Law by the NPCSC, the year was changed to 2012. And, now, there has been another change. It is said that universal suffrage may be implemented in 2017 and 2020. However, when we ask for a definition of universal suffrage, the Secretary and others reply that the definition may also cover FCs. And, they also say that nothing is certain at this stage, and more discussions are required. But the records are very clear. The Introduction published by the Party School of the Central Committee of the Communist Party of China with Mr WANG Shuwen as the Chief Editor states very clearly that as originally conceived, universal suffrage should mean direct elections, not indirect elections. And, the basis should be "one person, one vote".

Therefore, a moment ago, Mr Ronny TONY turned so angry that he simply grasped a copy of the Basic Law, grumbling that a three-step process had been turned into a five-step one. President, we now realize that the goal of the match can actually be moved at any time they like. The Central Government and the SAR Government have doubtlessly cheated the people of Hong Kong. They have time and again moved the goal. They have even sprayed salt on our wound, accusing the pan-democratic camp of being increasingly unreasonable. According to them, at the very beginning, we asked for a timetable only. They claim that after the authorities have put forward a timetable, we begin to ask for a roadmap in addition. Just now, Dr Margaret NG also produced a pamphlet, and she noted that we did also ask for a roadmap. On my part, I also pointed out what happened in this very Chamber in the past. In October 2005, Chief Executive Donald TSANG announced his policy address right here. The democratic camp then moved an amendment to the Motion of Thanks, requesting the Government to put forward a timetable and a roadmap for the implementation of universal suffrage. In October 2005, Mr Ronny TONG also pointed out that even if the Government abolished the system of appointed membership, it would not have our support because there must be a timetable and a roadmap for the implementation of universal suffrage. In the radio programme "Letters to Hong Kong" in November 2005, Mr LEE Cheuk-yan likewise stated our demand for a roadmap.

As a matter of fact, as shown by various evidence, we have always been asking for a roadmap.

**MR JEFFREY LAM** (in Cantonese): President, the decision made by the Standing Committee of the National People's Congress (NPCSC) on 26 April 2004 regarding Hong Kong's constitutional development states, "Any change relating to the methods for selecting the Chief Executive of the Hong Kong Special Administrative Region and for forming the Legislative Council of the Hong Kong Special Administrative Region shall conform to principles such as being compatible with the social, economic, political development of Hong Kong, being conducive to the balanced participation of all sectors and groups of the society, being conducive to the effective operation of the executive-led system, being conducive to the maintenance of the long-term prosperity and stability of Hong Kong."

And, in December 2007, the NPCSC made a further decision on when universal suffrage can be implemented in Hong Kong. In the briefing session, the Deputy Secretary-General of the NPCSC, QIAO Xiaoyang, gave recognition to the value of FCs. He pointed out that as proven by practical experience, the system of FCs was conducive to the balanced participation of the various social strata and sectors in Hong Kong and also to the development of the capitalist economy.

As a matter of fact, since the implementation of FC elections in 1985, Members returned by FCs have been providing valuable advice to the public and the Government with all their professional expertise and networks of personal connections. They have been making immense contribution to Hong Kong's overall economic development, the promotion of employment and the monitoring of government policies.

Hong Kong is a pluralistic and externally-oriented society, and its people all want to express their divergent views and promote the development of society. FC Members represent different walks of life in society and the various social sectors. They also serve the function of connecting and uniting the various social sectors, playing a balancing role in parliamentary politics. In this way, the legislature is able to conduct in-depth studies on different topics, especially issues of a professional nature. On its part, the Government can listen to the

views of different sectors, and this can enable it to balance the views of all sides and look after their respective interests in the course of policy formulation, legislative enactment and resource deployment.

President, as a matter of fact, during the several economic crises experienced by Hong Kong in the past, FC Members could invariably play the role of assisting in revitalizing our economy in their respective professional sectors. The Mainland/Hong Kong Closer Economic Partnership Arrangement (CEPA) implemented with effect from January 2004, for example, is the fruit of the joint efforts of different functional sectors. For many years, we had expressed our request to the Government, and it also made positive efforts to ask the Central Authorities to implement the arrangement. As FC Members can best understand the problems faced by their respective sectors, they are able to put forward effective solutions that can help bring forth the satisfactory implementation of CEPA and the continuous expansion of its coverage.

President, the existence of FCs is well justified. Many members of the public recognize their value and support the retention of FC seats. The original motion proposes to abolish FCs on the ground that they cannot comply with the principle of universal suffrage and the requirements on "universality and equality" set out in international conventions. I wish to point out that GC elections based on "one person, one vote" is not the only form of universal suffrage. Universal suffrage can take many different forms. Actually, some in society have even proposed to form FCs by universal suffrage. In many opinion polls conducted in the past, more than 50% of the respondents expressed support for this idea. This proves that the notion should merit our in-depth exploration. I cannot understand why some people have categorically gainsaid the usefulness of functional sectors and refused to discuss this proposal, which can actually command a certain degree of public support. They are not prepared to hold any negotiations. Their attitude is certainly not conducive to the reaching of a consensus on constitutional reform in this legislature.

Many people are worried that if all FCs are abolished and all seats in the Legislative Council are returned by direct elections held in GCs, the Legislature Council will be unable to hear the voices of many sectors. Is this in line with the spirit of democratic and balanced participation? Will the Legislative Council be

able to have access to extensive professional expertise to help promote Hong Kong's economic development?

President, Hong Kong needs to overcome three hurdles before it can implement universal suffrage: the passage of the relevant package by a two-third majority in the Legislative Council, the consent of the Chief Executive and the approval of the NPCSC. If all of us simply stick stubbornly to our respective positions and refuse to consider and explore other feasible options, I am afraid that Hong Kong's constitutional development may have to mark time once again. The pace of introducing universal suffrage will also be slowed down. Is this what the public wish to see? I hope Members can put aside their differences and seek common grounds, so that the Legislative Council can reach a consensus on constitutional reform as early as possible to materialize universal suffrage.

President, I so submit.

**MR WONG TING-KWONG** (in Cantonese): President, the SAR Government has said clearly, "At this stage, the current-term SAR Government has only been authorized by the NPCSC to determine the methods for selecting the Chief Executive and for forming the Legislative Council in 2012. As regards how the two electoral methods should be amended for attaining universal suffrage, this is beyond what the current-term SAR Government has been authorized to deal with." For this reason, the motion proposed by Mr Alan LEONG and the respective amendments of Ms Emily LAU and Ms Cyd HO are clearly beyond what the current-term Government has been authorized to deal with.

The motion and the amendments all request the abolition of FCs in the Legislative Council Election. However, at this stage, there are still divergent views in society on the retention or otherwise of FCs. Since the various social sectors have not yet reached a consensus, it will be much too hasty to decide to abolish all FC seats. As the National People's Congress (NPC) has already made it clear that the election of all Legislative Council Members by universal suffrage may be implemented in 2020 at the earliest, there is still sufficient time for discussions. I think the discussions on this matter can be deferred until a later time.

However, I still wish to give my recognition to the value of FC Members in the Legislative Council. First, there are currently 30 FC seats in the Legislative Council. The Members concerned represent different functional sectors. Apart from the business sector, there are also other professional and labour sectors. These Members speak on behalf of different sectors and industries in the legislature. This can help us balance the interests of all sides in Hong Kong, to the benefit of our social and economic development. Hong Kong has been a commercial society. A sound business environment has been the main reason for its ability to induce foreign enterprises to make investments in Hong Kong. A person from one functional sector has in fact told me that if there are no representatives to speak on behalf of his industry in the legislature, it will be very difficult for them to do any business. He has told me that the abolition of FCs will be followed by a worsening business environment. For example, when the Government wanted to introduce a goods and services tax, some FC Members organized a parade for those affected. Some 10 000 people took part in the procession, thus bringing pressure to bear on the Government and succeeding in persuading it to withdraw the plan of introducing a goods and services tax. Some businessmen have told me that if the plan of introducing a goods and services tax had not been withdrawn, the retail sector would suffer a 5% loss in business volume at the very least.

President, precisely because industry representatives are able to make their voices heard both inside and outside the legislature and also because Members can explain the conditions of different industries to the Government and the various social sectors, Hong Kong has been able to maintain a sound business environment conducive to our economic development.

In the past one year, Hong Kong was battered by the financial tsunami. Small and medium enterprises (SMEs) encountered many business difficulties. When SMEs encountered business difficulties, businessmen were not the only ones affected. The broad masses of employees all sustained far greater impacts, and the economy of Hong Kong was far worse. At that time, different FC Members explained the crises faced by their respective functional sectors to their colleagues in the legislature. They also advised the Government to take various measures, such as the establishment of SME loan schemes to assist SMEs in obtaining bank loans to tackle their liquidity problems. Today, one year later, many people from the SME sector have told me that such schemes have helped

them most enormously. They all request the continuation of such schemes to help the industries concerned to tide over their most difficult periods. If there were no FC Members to explain the conditions of their functional sectors in the legislature, how could the Government implement any effective measures to cope with the impacts of the financial tsunami? If the lips are gone, the teeth will be cold, as the saying goes. If SMEs were caught in business difficulties at that time, all economic activities in Hong Kong would be affected. The unemployment rate would likewise rise.

In fact, FC Members have been providing this legislature with lots of professional advice all these years. As I pointed out at the beginning of my speech, while we may continue to hold discussions on the retention or otherwise of FCs, we must at the same time give recognition to their value and the contribution made by FC Members to Hong Kong and the Legislative Council.

With these remarks, I oppose the original motion and the amendments.

**MISS TANYA CHAN** (in Cantonese): President, just now, I heard Honourable colleagues from various sectors talk about FCs and I also wish to talk about them.

Earlier on, Chief Secretary for Administration Henry TANG called on Hong Kong people to stop wrangling and to board the train called democracy in 2017 and 2020 as soon as possible. Frankly, it raised goose bumps on my skin on hearing that. The constitutional reform proposal does not mention the roadmap for implementation of universal suffrage and it does make any reference to how FCs will be abolished either, so may I ask how Hong Kong people can believe that the Central Authorities and the SAR Government are sincere in introducing genuine democratic universal suffrage? How can we believe that the train called democracy in 2017 or 2020 will bring true democracy and genuine universal suffrage? The Decision of the NPC concerning 2017 and 2020 and the rehash of the previous constitutional reform proposal remind me of the final episode of the drama series "Beyond The Realm Of Conscience" broadcast recently — maybe some Honourable colleagues just have had their dinner but this drama series is not about "feeling sleepy after meals" — the theme song of this drama series has a line that reads, "Believe not what you see or what you hear".

The facts have shown that my concerns are not unfounded. Ever since the release of the constitutional reform proposal, offensives have been launched. We begin to see various people come out to make comments on FCs, including our Ms Maria TAM, a Hong Kong Deputy to the NPC, who took the lead in defending the Basic Law by saying to this effect, "If the formation of FCs is consistent with the principle of equal and balanced participation, it can be considered as universal suffrage and ultimately, it is surely up to the Central Government to lay down the definition of universal suffrage.". A Mainland member of the Committee for the Basic Law, Mr RAO Ge-ping, made it even clearer by saying that the universal suffrage to be introduced in Hong Kong in the future would be universal suffrage with Chinese characteristics. He even hinted it was very likely that FCs may be retained. However, in fact, FCs run counter to the principle of universality and equality and we in the Civic Party and our friends in the pan-democratic camp have already said a lot about this. It turns out that the NPC promise of universal suffrage in 2017 and 2020 is nothing more than a promise for a "Grade A counterfeit" universal suffrage. Hong Kong people who think that they will get universal suffrage soon really have to be more sober.

In fact, I think young people really have to show concern for this matter. When I was young, I thought that at the latest, there would be universal suffrage in my middle age, which I am now in. However, it turns out that I am still campaigning for universal suffrage even now. Within 12 years — it is possible that FCs cannot be abolished even if I give the Government 12 years of time. I wonder if universal suffrage would be in place by the time I am old.

FCs run completely counter to principles of democracy. Any option that attempts to retain FCs is bogus universal suffrage. In the programme "A Week in Politics" aired last week, a tallying concerning FCs was made: According to a report of the Human Rights Monitor in 1998, a Hong Kong businessman could have as many as 31 votes and many other such instances could be found. Ordinary members of the public can only have one vote but the powerful and privileged class can hold many votes. In such sectors as the business sector and the labour sector, rich people can establish a number of companies and trade unions, thus putting under their command several and even scores of votes. Within the confines of separate voting, the wishes of Hong Kong people are often hijacked by the minority privileged class, so the majority was forced to follow the wishes of the minority. According to the 2007-2008 Annual Report of the

Catholic Monitors on Legislative Councillors, in the last session of the last Legislative Council, 43 motions relating to people's livelihood and public interest were negatived, including those on alleviating the disparity between the rich and the poor, regulating franchised bus fares and legislating to strengthen the protection for the rights and interests of property buyers. Even today, there was also an oral question concerning this matter just now, but it did not elicit any result either. How can such a system be considered universal and equal?

President, we believe that FCs only serve to divide the interests in Hong Kong. The numbers of electors in some FCs are very small. For example, there are only 178 units in the Transport Functional Constituency, 132 in the Financial Services Functional Constituency and most of the votes are in the hands of companies, business associations and organizations. We are not going to talk about those professional sectors. The organizations in them can exert pressure on Members who belong to them. In order to protect sectoral interests or even just the interests of their bosses, these Members are asked to vote against motions relating to the livelihood of all members of the Hong Kong public.

Just now, Mr WONG Ting-kwong also mentioned loans for SMEs. Members all know that under the existing classification of FCs, there is no FC for SMEs. Many people may ask, "You are talking about balanced participation on the one hand and balancing interests on the other, so why not balance our interests as well?" Why are there no FCs for young people and SMEs? The numbers of voters in the first and second Commercial Functional Constituencies only stand at 1 040 and 1 814 respectively and we all know that SMEs account for 90% of the companies in Hong Kong. 90% of all companies are SMEs. I believe the number of registered SMEs stands at more than 2 854, but why can they not play a part? Why can they not have a Member to represent their sector? This method of classification is totally unfair. Why are the interests of just a minority represented? This is neither balanced participation nor balancing interests. Coming back to the loans for SMEs, in fact, I have also joined the relevant panel and so has Mr Ronny TONG. I believe that if we are concerned about the interests of the public, there is no need to differentiate between which sector one represents and all of us would lobby hard for the public. We are all directly-elected Members and of course, we will lobby on their behalf and will not say that something only involves the interests of SMEs or some other people.

However, according to past records, instances of the majority being forced to follow the wishes of the minority have indeed occurred.

FCs cannot be described as democratic at all and any election that retains FCs is bogus universal suffrage. I hope very much that Hong Kong people will wake up at this juncture and refuse to be cheated by the Central Authorities or our SAR Government. Just now, both Dr Margaret NG and Ms Audrey EU cited a lot of evidence to show that the Hong Kong Government had become a big liar, that it had not honoured many of its promises and did not remember what it had heard.

Although we can foresee that the motion moved by Alan today will surely be negated under the constraints of separate voting, under the spirit of doing the impossible for the sake of righteousness and pursuing genuine universal suffrage, we will steadfastly vote in support of the motion. Thank you, President.

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

**MR CHEUNG MAN-KWONG** (in Cantonese): President, Stephen LAM said that the debate on the constitutional reform today sounded familiar. Such a comment is shameless, and also pathetic. The other side of the coin to the shamelessness of Mr Stephen LAM is the sorrow of Hong Kong people.

Why do I say that this is shameless? Because the Central Government, and even the colonial government of the past, have suppressed democracy for Hong Kong people for a full 25 years. Now, Hong Kong people are still waiting for democracy and universal suffrage. They are still waiting even now and no end is in sight. That he could still say smugly that this sounded familiar is shameless.

The second shamelessness is that although the SAR Government and Donald TSANG kept bragging that he would do something big, in the end, they failed to deliver on their promises and his underling, Stephen LAM, has gone so far as to say that this debate sounded familiar, so this is also shameless.

The third shamelessness has to do with the royalist parties, in particular, the FCs. They have already kept their privileges for a full 25 years and have had free lunches for as long a time. However, they are still unwilling to let go of their grip, saying that this debate sounded familiar, so this is being shameless. What is even more shameless is that the existing political system and the existing FCs are tantamount to collusion in politics between the Government and businesses and doing evils for the sake of privileges. They are still keeping Hong Kong people's aspiration for democracy and universal suffrage under their feet. They even look smug, saying that this debate sounded familiar. This is the most shameless thing of all.

What is the sorrow of Hong Kong people? Hong Kong people have striven hard for democracy for a quarter of a century. They have changed from being hopeful to being disappointed, and from being disappointed to being desperate. Many people have striven hard from their youth to their middle age and from middle age to old age. An 80-year-old person has never had the experience of voting for the Chief Executive even once in his whole life or living under a system of full universal suffrage. This sorrow has been borne by Hong Kong people altogether for a quarter of a century.

Another sorrow of Hong Kong people is that originally, universal suffrage is a human right but they cannot get it despite having striven hard for it for 25 years. This is a right that has been infringed and trampled upon. This is the great sorrow of Hong Kong people. This great sorrow created by this shameless Government and this kind of shameless politics will only eventually lead to a desperate, radical and all-out reaction. This kind of reaction is getting stronger and stronger and increasingly targets the suppression of democracy by the Central Government.

Why does this debate sound familiar? Because the authorities keep dragging their feet. Stephen LAM said, "The pro-democracy camp keeps upping the ante.". Why does the pro-democracy camp keep voicing the aspirations in its heart? Because the Central Authorities and the SAR Government have been cheating us.

The Joint Declaration cheated us, saying that the legislature would be formed by election and in the end, one election developed into three, including the elections of GCs, FCs and the Election Committee (EC).

The Basic Law also cheated us, making us think that there would be universal suffrage after 2007 or 2008, but little did it occur to anyone that since Hong Kong people started to campaign for universal suffrage in 1988, through 1997, 2007, 2008, 2012, 2017 to 2020, all these long years have only brought a long string of deceptions and disappointments.

I still remember clearly that when Dr YEUNG Sum learnt that there would be a timetable concerning the elections in 2017 and 2020, he said to me, "I can now withdraw from the political circle. I have been championing democracy all my life and finally, there is a timetable.". Little did it occur to him that the universal suffrage in this timetable will only have universality but not equality. This is universal suffrage as defined by China and to Hong Kong people, the greatest sorrow is having no more hope. For this reason, struggle is inevitable, resistance is inevitable and radicalism is inevitable.

Stephan LAM, today, in uttering such shameless remarks as "sounded familiar" and such tarnishing comments as "the pro-democracy camp keeps upping the ante", you have antagonized Hong Kong people and you are an enemy of universal suffrage. In the end, in the process of Hong Kong people striving for democracy, your hindrance is the greatest obstacle to democracy in Hong Kong.

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

**MR FREDERICK FUNG** (in Cantonese): President, I do not know how to inveigh others but I know how to present reasoned arguments, given that I have studied political science. I have studied social policies in The Chinese University of Hong Kong (CUHK) and in the United Kingdom. In fact, in political science and in democratic countries, some terms and names have clear definitions, so we cannot change them privately. Be it the legislature, among the powerful and privileged and even such power organs as the NPCSC, they cannot change the meanings of universally accepted terms. They can use some other terms, but they cannot use the same term to refer to another definition.

President, I will try to give the Secretary a brief explanation of the two terms "functional" and "universal suffrage" according to my understanding, what I have learnt in university and what I remember throughout all these years. In

fact, in the past, elections by functional groups also existed in Western European countries and the so-called democratic countries, particularly before the Second World War and they could also be found in the United Kingdom and the United States. I remember that before the First World War, women could not vote in the United States, as was the case in the United Kingdom. After the Second World War, all people, both men and women, can vote. In the past, election by functional groups could also be found in the United Kingdom but after the Second World War, election by functional groups was abolished. If these elections by functional groups were direct and universal elections, I think these so-called democratic countries in the West should not and would not have considered election by functional groups unreasonable, unfair and unequal and abolished them accordingly.

Election by functional groups has several attributes. No matter if the people concerned are returned by "one person, one vote" or by 3.6 million people, they all have the following attributes: First, the elections of FCs in Hong Kong now under discussion are based on the distinction of professions. At present, we have two types of elections, one along the line of professions and the other along the line of geographical areas, that is, the District Councils (DCs). In the past, before direct election was introduced into the DCs, the DCs represented geographical interests and FCs represented professional interests, so why was a change made in the 1980s? I remember the British-Hong Kong Government said that the appointments as Members of the Legislative Council were made according to these two important functions, one being the professional function and the other being the geographical function. In the end, the appointed seats were changed into elected seats, so the elections of FCs and the election of Members from among DC members came into being. Back then, we also had a by-election to elect a Member to the former Legislative Council and the election of Members from among DC members also evolved into direct elections through GCs.

Concerning the elections by FCs, it is obvious that firstly, if the functions are defined according to the conventional professions, professional and sectoral interests are involved and secondly, screening is necessary. Given the hundreds of thousands of occupations in Hong Kong, which ones should be chosen? If we choose one, we have to forego another and even if we choose the other one, we cannot choose a third one. For this reason, the decision on choice of professions is, in fact, based on some sort of conviction that this particular profession serves

special functions, so special powers are conferred onto it to let it join the Legislative Council, make decisions and vote on policies affecting the Government. This is the second attribute. The third attribute is that if FC election is not by universal suffrage, then apart from voting in the relevant FCs, the people concerned also have votes in the elections by universal suffrage. Consequently, these people have two kinds of votes at the same time while other people only have one vote. Consequently, some people have two votes.

I can see the attributes of FCs and I can also see the attributes of the elections by universal suffrage in democratic countries, namely, fairness and equality. By equality, I mean "one person, one vote" and the situation of some people having one vote while others have two does not exist. Fairness means that each vote carries equal value or each vote has nearly equal value. It is not possible to really achieve a ratio of 1:1. Sometimes, the ratio can be 1:1.01 or 1.02. For example, there are 1 million people in one region but 1.2 million in another but the number of seats for each of them may not be exactly proportional. Such a situation may occur. However, the situation would not be like the one described by us now, that is, some people have one vote while others have two.

Apart from fairness and equality, another attribute is that whoever is legally defined as a voter has an equal right in voting, making nominations and running in elections. This point can be achieved through elections by universal suffrage but not through elections of FCs. If I do not belong to a certain FC, I cannot be nominated; if I do not belong to a certain FC, I cannot vote and if I do not belong to a certain FC, I cannot run in its elections.

In view of this, we can see very clearly that the elections by FCs and those by universal suffrage are different in nature. I agree that elections by universal suffrage can be differentiated into universal suffrage by direct election or indirect election. For example, the presidential elections of the United States are universal suffrage by indirect elections or indirect elections within universal suffrage. Another example is the presidential elections in the Philippines, which may be universal suffrage by direct election, or indirect elections within universal suffrage. For this reason, I would not argue with you whether the election is direct or indirect, but what I would argue with you is that universal suffrage surely cannot be election by FCs because the several attributes spelt out by me

just now cannot be found in the elections of FCs. Sometimes, insofar as attributes are concerned, FCs can run directly counter to universal suffrage. Even if the elections of FC are turned into universal suffrage with "one person, one vote", the situation of some people having one vote while others have two as described by me just now would still arise. In addition, the issues relating to the right of nomination and the right to run in elections cannot be resolved either. If they cannot be resolved, according to my understanding, Members can look at all the works on political science. How possibly can the elections of FCs be described as universal suffrage? I believe this is unjustifiable unless this is found in the dictionaries of communism or the Communist Party, which would say that elections of FCs can be equated with universal suffrage. I have studied political science for many years, but I may have to go back to CUHK to ask whether CUHK has made any mistake. Have the professors there made a mistake or has CUHK made any mistake when choosing its textbooks and did it choose some kind of alternative textbooks? I am really baffled.

I hope that when establishing a democratic system in Hong Kong, the SAR Government and the Central Government will present their arguments founded on the facts concerning some fundamental values, basic definitions, basic understandings, basic views and basic practices relating to things that are not new or known only recently. If the arguments are correct, we would agree with them; if they are not, we have to correct them. I think if some people still insist that even the existence of FCs can be equated with universal suffrage and no matter what kind of voting arrangement is adopted in respect of FCs, it can be equated with universal suffrage, I can neither understand nor explain this because this is not the fact. I hope Honourable colleagues in the Liberal Party can be like me — I have studied in CUHK for three years but I think Members do not have to do so — they can find a few books and read them, can they not? Thank you, President.

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

**MR PAUL CHAN** (in Cantonese): President, I wish to take this opportunity to talk about my preliminary views on the Consultation Document on the Methods

for Selecting the Chief Executive and for Forming the Legislative Council in 2012 (the Consultation Document) published by the Government and give an account of how I will deal with this consultation.

When considering the methods for selecting the Chief Executive and for forming the Legislative Council in 2012, we cannot but take into account the Decision on Issues Relating to the Methods for Selecting the Chief Executive of the Hong Kong Special Administrative Region and for Forming the Legislative Council of the Hong Kong Special Administrative Region in the year 2012 and on Issues Relating to Universal Suffrage (the Decision) made by the Standing Committee of the National People's Congress (NPCSC) at the end of December 2007. Constitutionally, the Decision is legally binding and it also restricts our scope in making changes in respect of the aforesaid issues. It also mentions that if the number of seats in the Legislative Council is to be increased, the half-and-half ratio between Members returned by FCs and Members returned by GCs through direct elections shall remain unchanged.

First of all, I would like to talk about the method for forming the Legislative Council in 2012. On increasing the number of seats in the Legislative Council, I think there are merits. After serving as a Member in the Legislative Council for one year, I appreciate the fact that the workload of the Legislative Council is very heavy and sometimes, the schedules of various meetings would even clash with one another, so it is not possible to find time for all of them. Increasing the number of seats appropriately can enable more people with aspiration and ability to share the work and would enhance efficiency. In addition, increasing the number of seats is also favourable to the political development in Hong Kong as more people can run in elections and be elected, so that more political talents can be nurtured for Hong Kong.

Regarding what kind of additional FC seats should be introduced, I believe it is not desirable to consider doing so with the existing FC seats or introduce any new seats to represent the interests of some other sectors because this will lead to the situation of "easy to give but difficult to withdraw". As regards the question of to which sectors seats should be allocated, there is also great controversies in society, so it would not be easy to reach an objective and convincing conclusion. Take the medical sector as an example, Chinese medicine practitioners and dentists have both demanded that FC seats be accorded to them. However, in the face of similar demands from other sectors, should we increase the seats for

the medical sector? In the event that we really want to increase the seats for the medical sector, should we give the seat to Chinese medicine practitioners or dentists?

The Consultation Document proposes that the five new functional constituency seats be allocated to the DCs and consideration should be given to having all of them elected from among elected DC members. Although this proposal is not very satisfactory, honestly, I cannot think of any other better alternative. Therefore, I will consider it seriously. The merit of this proposal is that elected DC members are accountable to their voters since in the final analysis, they have gone through the baptism of democratic elections. I notice that a lot of different views on this proposal have been expressed in society in the past two weeks. I have paid a lot of attention to these views and will take them into careful consideration. I can say that if there is any other even better proposal during the consultation period, I will surely consider it.

Some people are worried that this proposal will blur the line between the Legislative Council and DCs and think that Legislative Council Members elected by elected DC members from among themselves will be influenced by local interests in their consideration of various issues. I think this concern is justified, but it may not always be the case. As a Legislative Council Member from the Accountancy Functional Constituency, although I am concerned about the issues relating to the development of my sector, in serving in the Legislative Council, most of my energy and time are devoted to handling matters related to Hong Kong as a whole. After joining the Legislative Council, naturally, I have to face issues relating to Hong Kong as a whole. If elected DC members only concern themselves with local interests after joining the Legislative Council, how possibly can they face the next election? Because the public will not approve of these Members and in the legislature, they do not have any future.

Therefore, although I agree that DC members who have been baptized by democratic elections can be candidates or voters in the election, I can by no means agree with letting appointed DC members or other people take part in the election through such a channel.

As for the selection of the Chief Executive in 2012, no matter if the number of members in the EC is 1 200 or 1 600, in fact, none of them can be argued as a magic figure. The most important point is to ensure an appropriate nomination

threshold to enable people with aspiration but different political views to take part in the election and to ensure that the election process is open, fair and impartial. Regarding the proposal in the Consultation Document on maintaining the nomination threshold at one-eighth of the total membership of the EC, I believe that although further appropriate relaxation can be considered, the threshold cannot be set too low because ultimately, the selection of the Chief Executive is a solemn election that should not be trivialized.

In the future, I will organize forums on the Consultation Document and invite friends and representatives from various political parties or groups to attend them. Members of the accountancy sector will also share their opinions and views. Since what the Government has published is a Consultation Document and a proposal will be put forward only after the conclusion of the consultation, I will wait until the Government has put forward a specific proposal before consulting my sector on its voting intention, and then vote according to the mainstream view of my sector.

President, as regards FCs, although I agree with abolishing all of them in one go in 2020, I know that on this issue, the views in my sector are highly divergent and there is also a great deal of controversy. For this reason, on this issue of retaining or abolishing seats returned by FCs, I will also fully consult my sector before making a decision according to the mainstream opinion of my sector.

President, I remember that at the beginning of this year, during the motion debate on public consultation on the 2012 constitutional development proposed by Dr Margaret NG, I said that our wrangles over this issue of universal suffrage in the past were attributable to the serious lack of mutual trust between Hong Kong society and the Mainland authorities, thus making any progress in the whole cause difficult. In view of the developments in connection with this issue in the past few months, there is indeed little cause for optimism. I sincerely hope that all of us can achieve a breakthrough, so as to push the constitutional system of Hong Kong forward.

President, I so submit.

**MR IP KWOK-HIM** (in Cantonese): President, the consultation period on the methods for selecting the Chief Executive and for forming the Legislative Council in 2012 (the two electoral methods) began on 18th of last month. The DAB welcomes this and sincerely hopes that this time, a consensus can be reached and the revisions to the two electoral methods for 2012 can be passed in the Legislative Council, so as to take forward the development of a democratic political system and hopefully, we will not march at the same spot again.

Democracy is desirable and the reason for wanting to develop a democratic constitutional system is to establish a good democratic system. The development of the constitutional system in recent years and in particular, the recent incidents relating to the consultation on the constitutional system, all tell us that radical, wayward and hegemonist people who are involved in closed-door politics and "The Gang of Four" activities, who promote anarchism and wave the banner of democracy while taking anti-democratic actions are no good. In the process of developing democracy, it is necessary to prevent the train of democratic constitutional reform from being hijacked and going onto the wrong track.

The DAB believes that the development of democracy should comply with the stipulations of the Basic Law, take into account the actual situation in society, proceed gradually and in an orderly manner, respect the views of members of the public in various sectors, cherish the efforts made by various sectors of society in the past and seize the opportunities for development. All parties must have sincerity and assume their due responsibilities in order for the introduction of dual universal suffrage to be truly taken forward.

Now, Hong Kong has again reached a critical moment when it can further develop democracy. In 2005, constitutional development could not make any headway but after more than two years' of discussion by society, in 2007, we eventually succeeded in securing a timetable for implementing dual universal suffrage in 2017 and 2020 as well as the opportunity to enhance the democratic element in 2012. We have now reached the third step in the "five-step programme" for constitutional development. The Legislative Council and various sectors in Hong Kong society should all cherish this outcome that has not come by easily and express their views and proposals on the two electoral methods for 2012, so as to take forward the development of a democratic system in a pragmatic way.

The consultation proposal put forward by the Government recommends that all the five newly added FC seats be allocated to the District Council

Functional Constituency and be returned through election by DC members from among themselves. The views in society in this regard are divergent. The DAB has considered this proposal seriously and come to the view that since the electorate base for the elected members of DCs consists of more than 3 million voters, this proposal will enhance the democratic element in a very great measure.

When Ms Cyd HO delivered her speech earlier, I heard her allege contemptuously that elected DC members were only representatives from constituencies with some 1 000 voters each and therefore, this process amounted to a small-circle election of DC members electing representatives from among themselves. However, I still have a vivid memory of the scenes in the Kwun Lung Constituency in the District Council Elections in 2003. A Ms HO who had never set foot in that constituency before and who had never served the people in the district won by a margin of 64 votes. She flashed a V sign with her hand held high and kept shouting, "Democracy's Victory. People's Victory". However, four years later, Ms HO did not run in the election again. For this reason, some people criticized her for her desertion. It is really difficult for me to understand why today, Ms HO can be so brazenfaced to criticize the representativeness of DC members and challenge the popular mandate of DC members. I really cannot help but demand justice for DC members in this legislature.

This consultation proposal has addressed the allegation relating to the constitutional reform proposal of 2005 that the Government had wanted to engage in vote planting. For this reason, appointed DC members will not be able to take part in the FC elections of the Legislative Council. The DAB believes that this is conducive to reaching the broadest-based consensus among various sectors in society.

The DAB supports increasing the number of members in the EC appropriately and also hopes that the EC of 2012 can undergo a smooth transition in becoming the nominating committee for selecting the Chief Executive by universal suffrage in 2017. As to the question of the proportion by which the EC should be expanded, there is not yet any consensus in society. The DAB holds that expanding it to 1 200 members will be more favourable to the transition to 2017 than expanding it to 1 600 members.

During the consultation period, the DAB will study and collect public opinions in earnest and it will also actively consider any proposal that has the

prospect of securing the support of two thirds of Legislative Council Members and is conducive to the development of democracy.

Regarding the roadmap for universal suffrage, the DAB holds that the Decision of the Standing Committee of the National People's Congress (NPCSC) on Issues Relating to the Methods for Selecting the Chief Executive of the Hong Kong Special Administrative Region and for Forming the Legislative Council of the Hong Kong Special Administrative Region in the year 2012 and on Issues Relating to Universal Suffrage (the Decision), which was promulgated in 2007, has confirmed the timetable for dual universal suffrage, so the roadmap for universal suffrage can be made more specific in accordance with the Basic Law. In 2012, we can enhance the democratic elements of the EC for selecting the Chief Executive and in the Legislative Council. In 2017, dual universal suffrage can be implemented, including that for the Chief Executive and in 2020, the election of Members of the Legislative Council by universal suffrage can also be implemented. We hope that Honourable colleagues in the Legislative Council can join hands in making efforts together.

As regards the amendments proposed by Ms Emily LAU and Ms Cyd HO respectively, we believe that they run counter to the Decision of the NPCSC. For this reason, the DAB will oppose the amendments and Mr Alan LEONG's original motion.

I so submit.

**MR LEUNG KWOK-HUNG** (in Cantonese): I would like to ask Mr IP Kwok-him to clarify a question. Are the remarks he has just made the same as what they had said previously in respect of the implementation of dual universal suffrage in 2007 and 2008 and cannot be realized? I respect him very much.

**PRESIDENT** (in Cantonese): Mr LEUNG Kwok-hung, this is a question derived from the debate. Your speaking time in this motion debate is past. Will you please sit down.

(Mr LEUNG Kwok-hung remained standing)

**MR LEUNG KWOK-HUNG** (in Cantonese): I really want to believe him.

**PRESIDENT** (in Cantonese): Please sit down.

**MS MIRIAM LAU** (in Cantonese): President, the Liberal Party has all along been supporting the forward development of the constitutional system in Hong Kong, which can in no way remain stagnant. This stance is very clear. As regards the consultation document on constitutional reform released by the Government last month, we basically consider that it can promote democracy and merits our agreement. And as shown in a public opinion poll conducted by the Liberal Party recently, over half (51.5%) of the respondents consider that the entire constitutional reform package is compatible with the principle of gradual and orderly progress and has enhanced the democratic elements.

Since the rejection by Members from the pan-democratic camp the constitutional reform package proposed by the then Government in 2005, causing the constitutional development in Hong Kong to remain stagnant, many people have felt very disappointed and hope that some achievements can be made in the constitutional reform this time around, so that the development of our constitutional system can be taken forward in accordance with the principle of gradual and orderly progress enshrined in the Basic Law.

But very regrettably, some Members from the pan-democratic camp are reluctant to discuss some issues presented before us and focus our discussion on the electoral arrangements for 2012. On the contrary, they insist on discussing the concrete arrangements for 2017 and 2020 first. Worse still, they indicate that they do not care about the future in the long run and will not feel sorry for any lack of progress. I think such tendency is not constructive, nor is it what the general public would wish to see.

Regarding the original motion which urges that the electoral package for selecting the Chief Executive should comply with the internationally recognized standards of "universal and equal", it seems that there is no problem at all. However, as the saying goes, all roads lead to Rome. In order to achieve the above goal of universality and equality, is there one single package only? I, unlike Mr Frederick FUNG who has read political science, have not studied this field at all. But some people who major in political science have told me that

there is still room for discussion. It is not the case as what Members from the pan-democratic camp or the democratic camp have said just now that there is one single package for universal suffrage only. We still have 12 years before the actual implementation of universal suffrage for the Legislative Council. During the interim, we do have plenty of time and should discuss in detail how the goal of implementing universal suffrage for the Legislative Council can be achieved. Now, Members from the pan-democratic camp or the democratic camp say they are very tolerant and prepared to listen to others' views, but the actual situation is not like this. They have advanced one single view, and that is, we will be regarded as non-democratic if we do not concur with them. I thus find it not so democratic but very authoritative. I wonder if this is really the case. However, as far as democracy is concerned, I think we should be able to listen to others' opinions and have room for discussion.

Moreover, the electoral methods for Hong Kong should find the legal basis in the Basic Law, and reference should not be merely made to international standards. Article 68(2) of the Basic Law, which is about the electoral method for forming the Legislative Council, is written as follows: "The method for forming the Legislative Council shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The ultimate aim is the election of all the members of the Legislative Council by universal suffrage." And as stated in the decision made by the Standing Committee of the People's National Congress (NPCSC) in 2004, "the electoral methods should be compatible with the social, economical and political development of Hong Kong and conducive to the balanced participation of all sectors and groups of society." As we can see, the constitutional development in Hong Kong should conform to the principles of gradual and orderly progress as well as balanced participation.

However, it seems that the original motion, which merely refers to the international standards, has ignored the principles put forth in the Basic Law and the decision made by the NPCSC. As such, I am afraid this is not feasible.

As for the question of whether or not FCs should be abolished, we have been arguing about this question for many years. The Liberal Party has already made it clear that the existing electoral method for FCs should, by all means, be amended in 2020. We also agree that their representativeness and recognition should be enhanced. This explains why over the years, we have been striving for widening the electorate base of FCs. Therefore, we also find it questionable

and are very disappointed that the latest constitutional reform package is silent on widening the electorate base of the existing FCs. We hope that the Government, having listened to our views, can forge ahead in doing what is right and make amendments accordingly.

However, if one should jump to the conclusion that FCs are problematic at the mention of it and liken them to the original sin, then I can hardly agree with him. It is because FCs are meant to pool people from various professions and specific areas in society — not just lawyers — to provide services and make contribution to the community of Hong Kong by using their expertise. However, the view that they are the original sin has simply ignored the contribution made by Members returned by FCs over the years, which is very unfair to them. Therefore, the Liberal Party will not support the original motion. Regarding the two amendments, as they have the same viewpoint as the original motion and still focus on the implementation of dual universal suffrage in 2012, which, as we all know, is impossible, the Liberal Party will not support them, either.

The Liberal Party, on the contrary, considers that we should be pragmatic and focus our discussion on the electoral package for 2012. Although some progress has been made in the Government's proposal, there are still many areas which merit deliberation. For example, many people are worried that the so-called "DC package", under which five new FC seats will all be returned through election among elected DC members, will blur the line between the Legislative Council and DCs. As revealed by a survey conducted by the Liberal Party, 44% of the respondents are worried about this. They also agree that DC members should only have the right to vote rather than the right to be elected, so as to attract more competent persons in the community to join this Council.

Regarding the five new district-based seats returned through direct elections, as shown by our telephone survey, nearly 70% of the public support unanimously that they should be returned through election from a territory-wide grand constituency, while only 10% of the respondents do not agree to it. Therefore, we hope the Government can take these views into serious consideration.

President, we have discussed the constitutional reform of Hong Kong for many years. The Liberal Party considers that we should listen to various views and handle them seriously, and discuss the electoral arrangements for 2012 in a

rational manner, so as to avoid causing further obstruction to our constitutional development. Thank you, President.

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

**DR PRISCILLA LEUNG** (in Cantonese): President, I think there will be continued discussion on today's topic and we may have to engage in the same every week. I also agree that democracy is in fact a universal value and an ideal as well. However, when democracy is implemented in different countries and regions, it will have different features — democracy implemented in India, Taiwan, the United States and even the Western Europe has its own features. Therefore, I, after all, consider that the road of democracy in Hong Kong should be paved on our own. I do not subscribe to the view that Hong Kong's system of universal suffrage in future will entirely be determined by Beijing. I think this is not the case. Rather, I think the democracy and political system of Hong Kong in future will ultimately be created by the people of Hong Kong. However, what features will be created? How can we prove that the road of democracy is feasible in Hong Kong? How can we make the public and the Central Authorities want to have such democracy in Hong Kong as well? How can we turn democracy into something which is lovely rather than scary and repugnant? I think this is the direction which merits our consideration.

As for today's topic, many Honourable colleagues have some expectation in respect of the timetable and roadmap for universal suffrage and have made it very clear in a detailed manner. In fact, I wish to raise two views. The first one is a legal point of view. Let us take a look at the decision made by the NPCSC on 29 December 2007 because after all, this is the so-called timetable under the framework. Recently, I have heard repeatedly that there will not necessarily be any relationship between the electoral system for 2012 and that for 2017 and 2020, which is more or less the same as what the Government has mentioned. Seemingly, the timetable is very clear, stating that we can definitely implement universal suffrage for selecting the Chief Executive in 2017 and electing all Legislative Council Members in 2020.

Let us take a look at the exact wordings, which are written as follows: the election of the fifth Chief Executive of the Hong Kong Special Administrative Region in the year 2017 may be implemented by the method of universal suffrage. As for the Legislative Council, the decision made by the NPCSC is: the election of the Legislative Council of the Hong Kong Special Administrative Region may be implemented by the method of electing all the members by universal suffrage, but this should be implemented after the Chief Executive has been selected by universal suffrage. Therefore, we have deduced that universal suffrage for the Legislative Council may be implemented in 2020. However, as far as legal terms are concerned, according to the meaning of "may" in the laws in China, "may" can in fact be interpreted as something that can be achieved at the earliest. If we put in efforts, we may achieve it. Therefore, I wish to point out that this will not necessarily happen actually. Universal suffrage for 2017 and 2020 may not necessarily occur. On the contrary, we should make it very clear that only if we really put in efforts can we take the road of universal suffrage.

Secondly, is 2012 not related to 2017 and 2020? I personally do not agree to such an argument, either. Every step we take is in fact to pave the way for our next step. No matter this road is wrong or right, we should figure out what road we are going to take in 2012, and by that time, there will be some qualitative changes. Moreover, I also think that universal suffrage or constitutional reform in Hong Kong should develop from quantitative changes to qualitative changes. At present, a lot of suggestions have been put forth among the public. For example, can the merger of FCs be the first step, or can FC seats be reduced term by term? For one thing, I consider that it is in fact not quite feasible to merge FCs as it is extremely hard to do so. And for another, it is not quite possible to reduce such seats in an orderly and gradual manner as none of them will be prepared to take the lead in such abolition. Therefore, I have all along considered that we should make qualitative changes to reform FCs first, starting from the electorate base. I even think that "one person, two votes" is not at all an evil, provided that it is just a transitional arrangement. If each member of the public can have two votes and make a further step for such a transitional arrangement which is relatively imperfect, I even hope that "one person, several votes" can be achieved in future.

I always encourage Members returned by FCs, especially those who are currently returned by FCs but strongly believe in universal suffrage, such as Dr

Joseph LEE, "Mr LEE Kwok-che", Mr CHEUNG Man-kwong, Mr CHEUNG Kwok-che and Dr Margaret NG. I think if they come forth to stand in elections by universal suffrage, they can experience what it actually is. They should take the lead. I do not see the need for them to occupy FC seats anymore. We should have more people to come forth. We should have more Members returned by FCs to come forth. After being Members for a term, they should have the courage to come forth, which is in fact a kind of qualitative changes. Once there are qualitative changes, they can in turn influence people from other sectors, who will become not so reluctant and scared about universal suffrage in future.

Coming from the legal sector, I also agree that it is in fact a culture among FCs or some professions to look down upon universal suffrage. Up till now, I still find that some people are laughing at us for coming forth to stand in elections by universal suffrage. They simply laugh at us and look down upon us. I hope we can, from the root of such culture, prove that this system is sound, as long as a transition is arranged. Therefore, if we can only give a green light to it on the condition that all FCs be abolished at once, we will never be able to take the first step for 2012. According to my anticipation, it may not be the case as we imagine that universal suffrage can definitely be implemented for selecting the Chief Executive in 2017 and electing all Members of the Legislative Council in 2020. Certainly, there should also be some sort of delay.

In my opinion, the DC package has taken a crooked track, which is not heading straightly in a direction which I consider better for democracy in the constitutional reform. But what is the political reality? That is, DC members in Hong Kong are very supportive of it now. Therefore, we must (*The buzzer sounded*) .....

**PRESIDENT** (in Cantonese): Dr Priscilla LEUNG, your speaking time is up.

**DR PRISCILLA LEUNG** (in Cantonese): ..... face up to this political reality. Thank you.

**MR ALBERT CHAN** (in Cantonese): President, talking about universal suffrage, time flies and it has been 20-odd years since we started striving for direct elections in 1988 in the mid-1980s. When standing in the District Board (DB) Election in 1985, my political platform was to strive for universal suffrage in Hong Kong and abolish the appointment system of DBs.

President, 24 years have passed. My daughter was born in 1985 and is now 24 years old. She has just got married this year. I started striving for democratic universal suffrage in Hong Kong before her birth. And now, my daughter is already grown up and has completed her studies in university. She has come out to work and even got married. But universal suffrage is still not in sight. I wonder when my grandchildren are born — it should be very soon and perhaps in the next few years — will universal suffrage be achieved by that time? When we participated in a march a few years ago, an old man placed an advertisement, wondering if he could see universal suffrage before he died. We have striven for universal suffrage for more than one generation. Also, we have striven for abolishing the appointment system for more than one generation. But this is still not in sight.

Several Honourable Members have spoken in defence of FCs, commending those Members returned by FCs for their contribution. Appointed Members have also made contribution, right? Is it the case that the 7 million people in Hong Kong have made no contribution? Do they dare say that the contribution made by appointed Members and Members returned by FCs is greater than that made by the 7 million people? If they have guts, do say it. Who established Hong Kong? Was it established by those Members returned by FCs? Where does their money come from? Who offer them jobs? Who are the customers of these businessmen? Therefore, in commending Members returned by FCs for their contribution to society, is it the case that the 7 million people in Hong Kong have made no contribution at all? As for those people who have no right to vote in the FC elections, have they made no contribution to Hong Kong at all? Such logic can thus be regarded as reams of rubbish.

When it comes to the political system, we have to talk about whether such system is universal, equal and reasonable. In the past, people commended MAO Zedong for his great contribution to China, while some might say that the Cultural Revolution had done enormous harm. If we discuss an issue

selectively, there are bound to be discrepancies. However, President, this is the way with this system. Once people identify a point, they will keep on arguing about it. Therefore, I always describe FCs as political parasites, characterized by their inability of pursuing independent growth and reproduction. Rather, they have to live with some organisms, their hosts, in order to keep growing. "Long Hair" said that they were roundworms and fecal worms. They should be clear about what kind of worms they are, right? If they are capable of growing and developing independently, they need not be parasites or fecal worms. Rather, they can come forth to strive for empowerment and mandate by the people in an independent and dignified manner.

President, some Members said that DC members are strong in representativeness. President, I became a DB member in 1985 and have been so ever since. During the period, I have witnessed the deterioration of DCs, which can be regarded as a breeding ground where political corruptions and the worst elements of society are found. Many DC members make use of their positions in DCs to obtain public money and divide it as political loots. In my district, during such festival days as Christmas, Mid-Autumn Festival and Chinese New Year, DC members will take turns to give away presents. They make use of some district problems to get public money for division as political loots and transfer of interests in their districts. They may also organize some activities for the elderly, with a view to making use of public money to establish their own personal networks at the district level. Of course, many DC members do have ideals, who still wish to fight for the rights of local residents. But the question is that under such a system, they are not conferred any genuine power to enable them to do so. DC is still an advisory body. The Government will treat DCs as God if it likes; if it does not, it will regard them as faeces and even insult them. The Government is particularly good at flattering DC members when it needs their support and ignoring their views if their support is not required. DCs have endorsed a lot of motions, but the Government has simply turned a deaf ear to them. If the Government really recognizes DCs, why does it still go ahead with something which is not supported by DCs, especially problems and development issues relating to their districts?

Therefore, if you really recognize the status and representativeness of DCs and their members, you should confer on them with an official power of making political decisions. In this way, DCs can become genuine administrative councils at the district level, rather than continuing to be advisory bodies in law.

President, in this Chamber, some public officers, in particular, are extremely good at bullying people on the strength of their master's power and position. They were apologists of the British Empire in the past. And now, they may rely on certain powers and positions — accountability officials, browbeating others by virtue of their powerful connections and pretences as agents. If they consider that the constitutional reform proposal is agreeable to the public, then conduct a referendum, so as to allow the people to make their decision through referendum. They should no longer yell loudly that the constitutional reform proposal is supported by 60% of the public. They should conduct a referendum, so as to allow Hong Kong people to make a solemn decision through the ballot box. "Eunuch LAM", if you dare do so, I would express my hearty admiration for you and will no longer call you "Eunuch LAM".

**PRESIDENT** (in Cantonese): Mr Albert CHAN, your speaking time is up.

**MR WONG YUK-MAN** (in Cantonese): Call him "Grandpa".

**MR LEUNG KWOK-HUNG** (in Cantonese): Call him "Grandma".

**MR WONG YUK-MAN** (in Cantonese): President, I wonder how many times shall we repeat today's motion debate in the Legislative Council again? Buddy, you said it sounded familiar. Indeed, most of the content is more or less the same. I have some records here made since the reunification. Let us put aside those of the Provisional Legislative Council for the time being. Since 1998, we have conducted 17 motion debates in total to urge for dual universal suffrage or expeditious implementation of dual universal suffrage, or abolishment of FCs. Of course, as we all know, the outcome is that all these motions were negated.

Such record shows that under an unjust establishment, it is extremely difficult to strive for democracy. No matter how much effort we have made, the result is that no progress can be made. On the contrary, the more you get, the more you want. You can be so bold to say that "I have secured a timetable". Is this timetable secured by you? Certainly, it may not be secured by your

instructions or opinions. Otherwise, you will claim credit for it. With a "rehash" of the 2005 constitutional reform package, you say, "I will implement this constitutional reform with my utmost sincerity". Oh! You are simply "telling lies without blinking your eyes", insulting public opinions. Frankly speaking, we can describe such a government as "shameful", which is already very generous to you, right?

As early as four years ago, the Government asserted that this DC package had an electorate base of more than 3 million voters. Buddy, please cease advancing straw arguments. No matter what you say, these Members of the Legislative Council, who are supposed to be returned by election from among DC members, will eventually be returned by indirect elections, right? There is nothing to do with direct elections at all.

If this is a transitional package, you should at least pretend to do something, such as enhancing the democratic elements of some FCs, enlarging the electorate base or announcing the abolishment of those appointed DC seats. Such acts will not violate the Basic Law. But you have done nothing. Then, how could you say that you would implement this so-called constitutional reform with your utmost sincerity?

The proposal on the method for selecting the Chief Executive is even worse — which will transform the 1 200-member Election Committee (EC) into a nominating committee in 2017, with the threshold increased by 15%. After that, each sector should meet such a threshold of the same ratio in order to get an admission ticket. Citing horse racing as an example, we should let horses enter the starting gates, so as to enable them to take part in the race (a race meet will be held tonight). However, in case they are not allowed to enter the starting gates, how can they take part in the race? Even if they have participated in the race, no sure win can be guaranteed. Nonetheless, you should at least let the horses enter the starting gates first, right? But you simply refuse to do so. This is in fact a foolproof initiative which is so carefully calculated, with many restrictions imposed. Eventually, as we will see, everything is done merely to pave the way for those candidates hand-picked by Beijing. This is absolutely against the spirit of universality and equality.

Mr LAM — I will not call you "Eunuch LAM", or I may change to call you "Grandpa LAM" — you have defamed Members from the democratic camp

repeatedly, alleging that they keep on upping the ante. As a matter of fact, taking the League of Social Democrats as an example, we have drawn up a constitutional reform proposal since our establishment in 2007. We have all along been urging for the same thing, which is very simple, nomination of the Chief Executive should be jointly signed by the people of Hong Kong. One can then stand as a candidate. It is very clear. And the method of polling is also stated in our constitutional reform proposal. Regarding the Legislative Council, we propose an increase in the number of seats from 60 to 70, but all of them should be returned by universal suffrage. We agree that reference can be made to the two electoral systems adopted by the Japanese. We can adopt a "single seat, single vote" electoral system or even a proportional representation system in small constituencies, provided that such seats are returned through direct elections of "one person, one vote".

However, no matter how rational and reasonable the democratic camp's aspiration for implementing dual universal suffrage is, both the Central Authorities and the SAR Government have simply turned a blind eye to the keen aspiration for democratic universal suffrage by the people of Hong Kong. Worse still, they even play tricks and talk nonsense in respect of these so-called definitions of universal suffrage.

Having failed to strive for dual universal suffrage in 2007 and 2008, the democratic camp has no alternative but to seek the second best, dual universal suffrage in 2012. But now, being restricted by the NPCSC decision, they can only make an even more humble request, urging the Government to submit a roadmap for universal suffrage. But the SAR Government pays no heed to it all the same. It even says that the current-term Government is not allowed to act *ultra vires*, refusing to submit a roadmap and remaining stubborn till the end.

Turning to Stephen LAM and Henry TANG, they speak nonsense in a frivolous manner and look down upon public opinions. In view of such a government which acts against the public's wishes and has no more integrity, what expectation can Hong Kong people have? Therefore, up to this moment today, if the democratic camp does not make a prompt decision and lead the public to embark on a political confrontation, when will be an appropriate time to do so?

Originally, I have something to tell the democratic camp in conclusion. However, in order to achieve unity and due to my dialogue with Chairman HO, I just put it aside for the time being. Nonetheless, I wish to give you a book — which is not really a book — let me introduce a magazine to you. Have you ever read *Nan Feng Chuang*? Yes or no? The latest issue — "主意道路與變革", have you read it? No.

All communist parties in the world have collapsed. But some communist parties which managed to survive are still striving for self-improvement, hoping that they can secure seats through democratic universal suffrage. They also long for an opportunity to revive one day. The communist party in Russia, which had 150 million members originally, has only over a hundred thousand members left. It also has to struggle to be elected to the parliament through universal suffrage. The Communist Party of China (CPC) ..... This magazine is published by the Nan Feng Press Group of the CPC of China. Its articles are mainly related to self-examination. They do understand that it does not work if they keep on going along this road rigidly. Rather, they do hope to make a fresh start.

The SAR Government is even worse than its master — the CPC of China. Others are making every endeavour to improve themselves and exploring some new thinking. You said that you have read this magazine. You should take a look at this issue. We are really readers of this magazine, for we have started reading it a long time ago. We grasp the current trend of thinking in the Mainland, noting that the CPC knows that it will definitely collapse without self-improvement. On the contrary, the SAR Government is so slow-witted that it only knows how to guess its master's intention. It simply acts against the public's wishes and turns a blind eye to the keen quest for democratic politics by several million people in Hong Kong. How dare you conduct a consultation on such a constitutional reform proposal? Do you know how shameful it is?

Four years have passed since then. This proposal is more or less the same as the previous one. The only difference is that appointed members are not allowed to vote. This is the so-called progress. How dare you say so?

**PRESIDENT** (in Cantonese): Mr WONG Yuk-man, your speaking time is up.

**DR JOSEPH LEE** (in Cantonese): President, as mentioned by Mr WONG Yuk-man, we have had discussions on today's topic in this Chamber for a long time. I do not know whether I am a worm, a monster or anyone. However, I am very clear about one thing. I have to respond to Dr Priscilla LEUNG as she has mentioned my name just now. Moreover, the colleagues I know should be "CHEUNG Kwok-che" rather than "LEE Kwok-che", as well as CHEUNG Man-kwong and Margaret NG.

In my opinion, no matter what other colleagues have said just now or whether we are talking about qualitative changes or quantitative changes, this is not a philosophical discussion. Actually, we want the Government to address one question, and that is, the NPCSC has promised us that there will be direct elections for selecting the Chief Executive and forming the Legislative Council in 2017 and 2020 respectively. As for the next term in 2012, even if the four of us, who are monsters, worms, something hackneyed or nothing at all, come forth to stand in direct elections, it does not imply that the Legislative Council will have 60 Members returned by direct elections. Neither does it imply that FC Members in the Legislative Council will be returned by direct elections. I just wish to raise this point. It is not the case that if we, Members returned by FCs, come forth to stand in direct elections, there will be direct elections. Our objective is to, through our influence in the establishment or this Council, make the Government understand the significance of abolishing the FCs and 60 or more than 60 Members in the Legislative Council being returned by direct elections. As such, this is not a question of qualitative changes or quantitative changes. Even if all the 30 Members who are returned by FCs come forth to stand in direct elections now, it does not imply that there will be direct elections in the Legislative Council — this is a very serious fallacy in logic.

I think during today's debate, Mr Alan LEONG, Ms Emily LAU and Ms Cyd HO have mainly expressed their hope for the expeditious implementation of direct elections in 2012, 2017 and 2020. Regarding the consultation on constitutional reform proposed by the Government this time, we are keen to see its sincerity, hoping that it will cease to say that we only focus on the resignation en masse and do nothing else. Rather, it should show us very clearly that we can engage in discussions on how best to make use of these two months to expand the room, to expedite the pace of democratization and to enhance the democratic elements. This is exactly a question of qualitative change and quantitative

change. Nevertheless, it does not mean that if Members returned by FCs dare to come forth to stand in direct elections, we will have direct elections. This logic is entirely wrong. Thank you, President.

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

**PROF PATRICK LAU** (in Cantonese): President, with respect to the Consultation Document on the Methods for Selecting the Chief Executive and for Forming the Legislative Council in 2012 released by the Government recently, what I have to do is of course to consult the professionals in the sector represented by me. Before any result comes out of the consultation, we should be open about the roadmap for universal suffrage and likewise we should remain open about the constitutional reform. As Members from FCs, our most important task is to convey the views of our respective sectors. There are many people in my sector who have reservations about the total abolition of FC seats. On the motion today, I would like to make an analysis of the issue of the abolition or otherwise of FC seats from various perspectives.

President, when examining the issue of the abolition or otherwise of FCs, we must be clear about two related issues. First, the definition of universal suffrage, and this means not direct elections but universal suffrage, and whether or not FC elections can comply with the principle of universal suffrage. Second, the role and functions played by Members from FCs.

Article 68 of the Basic Law clearly states: "The method for forming the Legislative Council shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The ultimate aim is the election of all the members of the Legislative Council by universal suffrage." The Standing Committee of the National People's Congress (NPCSC) published a Decision on 29 December 2007, stipulating that the number of Members returned from FCs and Members elected by geographical constituencies through direct elections shall be in equal halves until 2020 when all Members may be returned by universal suffrage. As stipulated in Article 158 of the Basic Law, the NPCSC has the ultimate power to interpret the Basic Law, therefore it is clear and

indisputable that the Legislative Council can be formed by universal suffrage starting from the year 2020.

The issue of contention in the motion today is whether or not FC elections can comply with this principle. The mover of the original motion proposes that under Article 25 of the International Covenant on Civil and Political Rights, every citizen shall have the right and the opportunity to vote and be elected at elections which shall be by universal and equal suffrage. But that is not what the Basic Law says.

As a matter of fact, views opposing FCs consider that the present arrangement whereby the 230 000 voters from FCs who each have one more vote than the 3.4 million voters as a whole does not comply with the principle of universal and equal suffrage. On the other hand, there are views in support of FCs which say that the right to vote in the FCs should be extended to enable each person be given a vote, that is to say, each person will have a vote to elect a geographical constituency representative and another to elect a FC representative. They ask if this will comply with the principle of universal and equal suffrage. Does this merit study?

President, there are also views like what is being proposed in the motion today and that is, a complete abolition of FC seats will mean compliance with the principle of universal suffrage. But what I would like to point out is that, this is exactly the second issue pointed out by me just now: What kind of roles and functions should be played Members returned from FCs in this Council?

Seen from past history, the aim of introducing FC elections in 1985 was to replace the practice of appointing businessmen and professionals to the parliamentary assembly and to give some democratic credentials to the parliamentary assembly. However, the role played by these Members was still that of conveying the views of Hong Kong people and making contribution by applying their expertise in giving professional advice. As a matter of fact, when FCs elections were introduced, it was at a time when talks between China and Britain were stuck in a stalemate and in the view of many academics, the 30 FC seats could show that both China and Britain agreed that the composition could balance the interests of various sectors in society. This is what was called

balanced participation and it was regarded as a means of maintaining prosperity and stability in Hong Kong after the return of sovereignty to China.

Since 1985, there have been numerous changes to the composition of the FCs and they were made so that public confidence in the future development of Hong Kong could be maintained in the economic sphere and in the professional sectors. And so there are views that as the historical significance of FC seats is changing all the time, should such seats be preserved or completely abolished in keeping with such changes of the times?

But the fact is that FCs are a *fait accompli* and the Basic Law stipulates that any change to the election methods of the Legislative Council shall only be made with the consent of two thirds of the Members of the Legislative Council. Members returned by FCs will have to take into account the interests of the people of Hong Kong as well as voters in their respective constituencies and they will have a hard time making a decision on abolishing FC seats. So as Prof Anthony CHEUNG, a Member of the Executive Council has said, powers once devolved are hard to recover. This is exactly the case of the British Parliament which cannot abolish the House of Lords all through these years, and can we say that there is no universal suffrage in Britain?

President, due to the time constraints, I can only support my analysis with these few points. I will be glad to examine the issue of constitutional reform in greater detail during the consultation period in the hope that the Government can come up with a method to form the Legislative Council that complies with the Decision made by the NPCSC on 26 April 2004 and which is conducive to balanced participation from all quarters, the underlying principle. I so submit. Thank you, President.

**MR LEE WING-TAT** (in Cantonese): President, I have several wishes — the Secretary is not here right now but I have jotted down some notes and the Secretary can make clarifications later.

Firstly, Dr Priscilla LEUNG mentioned that there is this word "may" in the Decision that election of the Chief Executive by universal suffrage may be introduced in 2017 and the election of the Legislative Council by universal

suffrage may be introduced in 2020. It requires our effort to achieve the "may" therein, but it is not certain. I do not know if this comment represents the view of the Central Authorities because these days, a lot of people want to speak for the Central Authorities. However, at least, we asked the Chief Secretary for Administration, Mr Henry TANG, in this Chamber and we also met with the Chief Executive and asked two questions before the release of the consultation document: Is the passage of the proposal for 2012 a prerequisite for universal suffrage in 2017 and 2020? The answers were in the negative. For this reason, I hope the Secretary will clarify this because the comments made by Dr Priscilla LEUNG sounded quite authoritative. I do not know if such authority is true or not because at present, a lot of people are posing as spokespersons for Beijing. For this reason, I hope the Secretary can state the Government's position and the Decision as he understands it.

Second, I think the question of whether there is universal suffrage in the United Kingdom as raised by Prof Patrick LAU just now is not entirely wrong. Insofar as the universal suffrage in many countries is concerned, to some extent, the representative assemblies at some levels are not entirely elected by universal suffrage. However, I hope Prof LAU will note that the powers of the House of Lords in the United Kingdom are subjected to great constraints. Since Tony BLAIR came to power, in fact, many seats for Members of Parliament from the nobility in the House of Lords have been abolished. At present, the House of Lords is only responsible for a process called "putting off the legislation". Unless Prof LAU thinks that the role played by Members returned by FCs as suggested by him will not be vested with the same power as Members returned by universal suffrage — please bear in mind that the powers of the House of Lords are different, so please do not confuse the two.

I do not wish to repeat the views on FCs voiced by many friends in the pro-democracy camp. I think the Democratic Party has been very active in studying this issue. In 2003 or 2004, when we put forward a proposal on full-scale universal suffrage to the Government, the proposal we designed was one based on the German model — Secretary Stephen LAM also understands why we wanted to do that — we understand that the operation of the legislature requires various types of representatives. However, we believe that if universal suffrage is adopted to elect Members, the same approach can be adopted to elect by universal suffrage Members who are professionals in the business sector. In fact, this kind of Members can also be found in our legislature, only that they are

not so common. In the past, there were Mr James TIEN, Mrs Selina CHOW and Dr HUANG Chen-ya. Such people could also be found in other FCs. I do not know what historical factor has led to the decrease in this kind of participation. I do not think that in the legislatures of other countries practising universal suffrage, all the people in them are teachers. I do not think the situation is like this, nor do I find all the people are social workers. Why can other countries and regions accomplish this but not Hong Kong? Because our FCs enjoy too much protection but I do not want to use some strong terms to describe this. However, I think that if the method of entry to the legislature is so protective, naturally, no one would try other avenues that are comparatively speaking more demanding and risky.

The former Chairman of Ms Miriam LAU's party was also elected by universal suffrage and it was a more difficult process. Of course, it was difficult because if one does not want any hard work, there is no alternative but appointment, is there? Another point is that the Government often refuses to answer one question, that is, it is very difficult for a legislature with FCs to form a collective force to either co-operate with or monitor the Government. In fact, this legislature is really strange. Sometimes, I would tell the Secretary that the Democratic Party has been treating him quiet well. How? Because no matter if the Democratic Party supports or opposes him, he only has to discuss with one person and this is equal to talking with all the nine of us. Is this not great? The DAB was nice too because it also has 12 Members — or is it 11? I seldom see any region or country whose legislature cannot establish a mainstream view despite dozens of rounds of discussions. In fact, this is a big problem in the governance of Hong Kong. I do not know what the views of Mr LAU Kong-wah or Mr TAM Yiu-chung are, but this is a very big problem because without constant or assured support (or a coalition), it is very difficult for a government to operate. Sometimes, I can see Mr WONG Kwok-hing chide the Government even more harshly than I do. Perhaps recently, I have become gentler. I do not know if this grouping or combination is a force that supports or opposes the Government. It may have never occurred to the Government that so long as there are FCs formed by these individual interests or trades, it will not be possible to form a stable government coalition to support government policies.

The thinking of the Democratic Party is that we do not mind the fact that there is a large coalition of political parties supporting the Government whereas we assume the role of the opposition because only in this way will rational

discussion be possible. Otherwise, those royalists will sometimes get benefits from the Government but when they chide the Government harshly, they want to distance themselves from it. When I see these people who support the Government, I am really baffled.

In view of this, I hope the Government will take a long-term vision on this issue. This is not just an issue relating to the electoral methods. In fact, the declining quality of governance displayed by the Government is also attributable to these sectoral elections and this kind of divisive situation.

President, I have one more point to make. I do not hold much hope that this constitutional reform package would stand any chance of being passed here. I am pessimistic because firstly, as many Honourable colleagues pointed out, this cannot be considered a progressive proposal, particularly with regard to its method of calculation. I am not talking about the differences between the present proposal and that in 2005, rather, it is very disappointing that so little progress has been made four years down the line. Moreover, there are not many Legislative Councils to go before the introduction of full universal suffrage in 2020. If we still move so slowly, many Honourable colleagues would criticize that this is not gradual and orderly progress and later on, they would say that this is tantamount to reaching the goal in one leap. I have heard many such claims ever since I was a young man in 1991 and now, my hair is turning grey, though not quite bald yet, all these claims are platitudes. The debate in 1991 was also like this. At that time, when Mr James TIEN was having a war of words with me, did he not say that democracy was a scourge? However, he has now improved a little and he no longer says this. This issue has been raised repeatedly for a full 18 years and not the slightest progress has been made. From where can progress come? It comes from the determination of the Government and the Central Government. If there is a lack of determination to get this done, it can drag on for many years and the dissipation of energy in society will not end.

Thank you, President.

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

**MR CHAN KAM-LAM** (in Cantonese): President, we often say that as a matter of principle, Hong Kong's constitutional development must be based primarily on the provisions of the Basic Law and the decision of the National People's Congress (NPC). According to the NPC decision, universal suffrage may be implemented for the selection of the Chief Executive in 2017 and the election of Legislative Council Members in 2020. Manifesting the NPC's support for and faith in the constitutional development of Hong Kong, the decision sets out a clear timetable as assurance for achieving the ultimate goal of universal suffrage. At the beginning of the debate, Mr Alan LEONG remarked that only a very vague timeframe is mentioned in the consultation document. I think his remark is both incorrect and a distortion of the truth. We find it very hard to believe that a highbrow honourable barrister should have said something like that. After setting down a timetable for the introduction of universal suffrage, the Central Authorities now allow Hong Kong people to discuss the formulation of a concrete constitutional reform package with an open attitude. Hong Kong people are allowed to discuss how they can move towards universal suffrage step by step and design their own route of constitutional reform. By doing so, the Central Authorities have displayed full confidence in Hong Kong and responded positively to Hong Kong people's aspiration to democracy. Mr Alan LEONG thinks that the Central Authorities have let Hong Kong people down. Why does he say so? Is this another attempt to come between Hong Kong people and the Central Authorities? Alan LEONG himself is precisely the one that is calculating and ill-intentioned.

As a matter of fact, it is stipulated very clearly in Articles 45 and 68 of the Basic Law that the methods for selecting the Chief Executive and electing the Legislative Council must be specified in the light of the actual situation and in accordance with the principle of gradual and orderly progress, with the ultimate aim of achieving universal suffrage. Therefore, "gradual and orderly progress" is a legal requirement governing the implementation of universal suffrage in Hong Kong.

By gradual and orderly progress, it is meant that the implementation of universal suffrage must follow a certain order and some specified procedures. This means a step-by-step approach that goes from the easy to the complicated. The constitutional reform package put forward in 2005 could not be passed. If the package put forward in 2009 is likewise vetoed, the constitutional development in Hong Kong will be plunged into a state of stagnancy. In that

case, we will have to introduce universal suffrage in 2017 and 2020 all in one go, in contravention of the requirement on gradual and orderly progress set down in the Basic Law.

Another point is that the passage of a constitutional reform package for 2012 is not only a legal requirement governing the introduction of universal suffrage in Hong Kong but also an objective requirement for Hong Kong's constitutional development. The passage of such a package is also in line with the actual situation in Hong Kong. Any outcome must be preceded by a development process. An outcome not preceded by such a process will be devoid of practical experience and a thorough understanding. With a development process based on gradual and orderly progress, we can ensure that the system of dual universal suffrage eventually rolled out will be a well-developed system based on practical experience and trials. We do not wish to see that a universal suffrage package formulated after overcoming all the difficulties is still subject to disputes over whether it is reasonable and how it should be amended. Such disputes will only prolong the process of democratization. The year 2012 is a midway stop that cannot be skipped. If we still mark time at this midway stop, it will only take a much longer time for us to reach the terminus of full universal suffrage.

All democratic political systems in the world have undergone their respective development processes. Hong Kong's constitutional development is marked by its unique historical and objective circumstances, so it is likewise impossible for us to achieve all in one go. The realities in Hong Kong are such that its constitutional development can only follow a peaceful evolutionary process if it is to avoid any social turbulence. A constitutional reform package for 2012 can serve a transitional purpose in the course of Hong Kong's constitutional development, with the result that constitutional reform in Hong Kong can move forward smoothly. This is a development that all Hong Kong people wish to see, something that is quite independent of the will of individual radical political parties or groupings.

The existence of divergent views on the pace of democratization in society is perfectly understandable. If we really aspire to democracy, we should respect divergent voices, rather than adhering stubbornly to our personal views, setting down our own conditions of democratization and forcing others to accept them. This is not democracy in its true sense. Therefore, we maintain that while we may hold discussions on what model of universal suffrage we should adopt at the

end of the day, we must in the meantime finalize a constitutional reform package for 2012 as soon as possible. The reason is that while the passage of a constitutional reform package for 2012 is a legal and objective requirement for the implementation of dual universal suffrage in Hong Kong, the passage of such a package is also in line with the aspiration of most Hong Kong people and an unavoidable path leading to the implementation of a democratic system based on universal suffrage in Hong Kong. The Central Authorities have expressed unequivocal support for constitutional development in Hong Kong. Members must not think that by adopting an extreme position, they can change the Central Authorities' decision on the introduction of universal suffrage in Hong Kong. All the steps and the framework have been set down. Members must accord priority to the interests of the public, put aside their differences and conduct rational discussions on the constitutional reform package. They must discuss how they can join hands to promote Hong Kong's democratization within the existing parameters.

With these remarks, President, I oppose the motion.

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): Mr Alan LEONG, you may now speak on the two amendments. You have up to five minutes.

**MR ALAN LEONG** (in Cantonese): President, I am very grateful to Ms Emily LAU and Ms Cyd HO for moving their respective amendments to my motion. I will support both amendments. But I shall spend a few minutes explaining why I would support them.

First, regarding Ms Emily LAU's amendment, I wish to point out that it actually represents the very peaceful and rational position held by Hong Kong people. While striving to achieve the implementation of dual universal suffrage in 2012, this amendment also urges the Government to at least undertake to implement genuine universal suffrage no later than 2017 and 2020 if the former cannot be done. There are still 12 years to go before 2020, so even if we now

set down a target for the gradual withdrawal of FCs from the legislature, our request is in no way excessive. I therefore strongly hope that the Central Government can value and take this position very seriously. The reason is that in case even such a rational position is completely ignored, I am afraid a pro-democracy movement may really break out. It is not advisable to deny Hong Kong people an opportunity to voice their positions at this critical moment and turn down this consultation document that leads them nowhere.

As for Ms Cyd HO's amendment, it also has my support. President, I wish to point out in particular that her amendment proposes to abolish the separate voting mechanism in the Legislative Council. Admittedly, under the framework of the decision made by the NPCSC on 29 December 2007, this may not be possible. But I must say that this will be possible after 2012. Even if we decide to amend the separate voting mechanism at a time as early as 2013, it will still be possible for us to do in theory.

Why do I support this proposal? Because the separate voting mechanism, coupled with FC elections, has indeed played a very significant role in enabling those with vested interests under the existing political system to wheel political deals with those in power, with the result that policies not desired by the former, relating to the people's livelihood or other aspects, can be warded off.

As mentioned earlier, according to the analyses done by some organizations, as many as 43 motions relating to the people's livelihood and well-being were negated by the third Legislative Council, and the reason is that when it comes to Members' Motions in the Legislative Council, the majority must always obey the minority, meaning that 3 million geographical constituency electors must obey 200 000 FC electors. For this reason, I support the fourth point in Ms Cyd HO's motion, that is, the point on abolishing the separate voting mechanism in the Legislative Council. As for her fifth proposal, the proposal on removing the restrictions on the introduction of private bills by Members, it also arouses all sorts of feelings in me. Before I joined the Legislative Council, during the colonial times, we frequently discussed the Protection of the Harbour Ordinance. It was precisely a Private Members' Bill. Under the existing legislation, there are various constraints which limit the powers of Legislative Council Members and belittle the Legislative Council. Looking at this from the perspective of those in power who want complete control over the Legislative Council, we can of course understand why there is such an arrangement and why

they want to retain FCs. But what we want to do is to change this unfair mechanism, so that we can once again see harmony and the smooth implementation of policies in Hong Kong. Therefore, President, I support the two amendments.

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): President, I am very grateful to the large number of Members who have expressed their views on the issue of constitutional reform to both Members and the Government. I believe these views expressed by Members would be helpful to narrowing down our differences and reaching a consensus on the issue of constitutional reform. Before responding to arguments advanced by individual Members, I wish to elaborate the position of the Government in a couple of aspects.

Recently, many Members and the media have shown concern about the legislative timetable with respect to the constitutional reform package in 2012. I wish to make it clear here that I have stated in the Panel on Constitutional Affairs of the Legislative Council that it is our wish that an Amendment Bill on the Chief Executive Election Ordinance and the Legislative Council Ordinance can be introduced in the fourth quarter of 2010. We also hope that local legislation can complete within the Legislative Session of 2010-2011. In this way, we would have enough time to prepare for the practical arrangements of the two elections in 2012. Therefore, we hope to complete the process of amending Annex I and Annex II of the Basic Law before the Legislative Council rises in the summer of 2010.

Meanwhile, many Members have said today that they wish to express their views on the methods of universal suffrage as early as possible. Although the main thrust of the consultation document on this occasion is a consultation on the directions for the methods of elections to be held in 2012, we also stated in the consultation document that we welcome views and proposals on the methods for selecting the Chief Executive by universal suffrage and for forming the Legislative Council by universal suffrage. We will collate these views and arrive at some conclusions so that in 2012 the Chief Executive and the SAR Government of the fourth term can consider the methods proposed for selecting the Chief Executive by universal suffrage and that the Chief Executive returned

by universal suffrage in 2017 together with the SAR Government of the fifth term can consider how to implement the views expressed on forming the Legislative Council by universal suffrage in 2020.

Now I would like to respond to the views expressed by individual Members. Mr Alan LEONG specifically mentioned that Members from FCs only look after the interests of their respective sectors. I would think that his argument cannot be farther from the truth and is in no way close to the truth at all. As we can see in this Council, many Members returned from different FCs are exemplars of Members with ability, enthusiasm and commitment. Ms Miriam LAU has been the Chairman of the House Committee for many years. Ms LI Fung-ying is the chairman of a select committee and she is well-received by both the media and political groups and she is praised for being fair and just. Over the years in the elections of the legislature, we can see many Members who, after being returned from the FCs, have become Members returned by direct elections. Examples of these are the former Member, Mr SZETO Wah, who has made his views heard frequently in the media recently, and there is also the former Member, Mr Martin LEE, and there is also Mr WONG Kwok-hing who used to represent the labour sector but has now become a directly-elected Member. So it is not fair for us to pin the same label on everyone and likewise we cannot simply deny the contribution made by FC Members over the years and their zest and zeal for work in the Council.

Ms Emily LAU took great pains to make the point that a democratic political system does not only mean elections. I agree with her for the fact that a democratic system does not mean just elections, but also the rule of law, freedom and the protection of human rights. The SAR Government should hold itself responsible to the public and the Legislative Council. All these are solidly founded in Hong Kong under the Basic Law. So we believe that if in 2012 we can fight together to imbue new elements of democracy in our election system, it will make us come closer to the ultimate aim of universal suffrage. This is my response to the views expressed by Ms Emily LAU and other Members. I am glad to see Ms Emily LAU come back to listen to this debate now.

Mr Ronny TONG talked about a few issues in law. But I must point out that some of his arguments are not consistent with the facts. He said that he did not know what kind of views the Chief Executive had submitted to the NPCSC in

his report in 2007. This view is not grounded in any facts. The fact is, in December 2007, the Chief Executive submitted the report to Beijing, that is, the NPCSC and this report is a document open to the public and it fully conveys the public demand that universal suffrage should be implemented as early as possible.

Mr Ronny TONG has queried why there is such a five-part process. Actually, Article 158 of the Basic Law has made it clear that the right to interpret the Basic Law rests with the NPCSC. Article 67 of the Constitution of the People's Republic of China also states that the NPC has the right to interpret laws, so there is actually a constitutional basis for this five-part process.

Mr Ronny TONG also made special mention of Articles 25 and 26 of the Basic Law. He specifically mentioned that the permanent residents of Hong Kong should have the right to vote and be elected. Then he queries why there are FCs and FC elections. The answer to that is simple. Annex II of the Basic Law stipulates that the first, second and third terms of the Legislative Council shall have FC elections. Annex II of the Basic Law also states that the delimitation of functional sectors and corporate bodies shall be specified by an electoral law passed by the Legislative Council. So one should not arrive at an arbitrary interpretation of the Constitution and the Basic Law just by looking at one or two provisions, and the Basic Law must be read in its entirety.

Mr LEE Cheuk-yan is very smart and he always has got some gimmicks to show. Today he talks about a rehash. If this is really a rehash, then why did a timetable for universal suffrage appear after December 2007? Why would there be a timetable for universal suffrage in 2017 and 2020? No matter what you say, Mr LEE Cheuk-yan, you have to admit that this is something new and it is also important.

Mr LEE Cheuk-yan asks: Where in fact is the power of the SAR Government in handling constitutional reform issues? Under the Basic Law, there is some say in the Hong Kong SAR. Therefore, the SAR Government can make a proposal and the Legislative Council can endorse our proposal by a two-third majority and finally, with the consent of the Chief Executive, the proposal will be reported to the NPCSC for approval and for the record. Therefore, we should reach a consensus here in Hong Kong and likewise a consensus should be reached between Hong Kong and Beijing. But since Hong

Kong is not a sovereign entity, such constitutional reform with major implications cannot be carried out by a decision in Hong Kong alone, and the final say still rests with the Central Authorities.

I think I have to respond to Mr LEE Wing-tat at this point. He asked whether or not we could assert that even if there was no progress in the constitutional reform proposal for 2012, there would be no effect on the universal suffrage to select the Chief Executive in 2017. I can say unequivocally that to our understanding, the Decision of the NPCSC in 2007 is that universal suffrage to select the Chief Executive may be implemented in 2017 and that it is not a precondition that progress has to be made in 2012.

If we read again the Decision made by the NPCSC in 2007, we will find it is stated right in the first paragraph that "the election of the fifth Chief Executive of the Hong Kong Special Administrative Region in the year 2017 may be implemented by the method of universal suffrage; that after the Chief Executive is selected by universal suffrage, the election of the Legislative Council of the Hong Kong Special Administrative Region may be implemented by the method of electing the members by universal suffrage." This timetable for universal suffrage is clear enough.

Then the second paragraph in the Decision says: "At an appropriate time prior to the selection of the Chief Executive", the Chief Executive shall activate the five-part process. The third paragraph also states: "At an appropriate time prior to the election of all the members of the Legislative Council of the Hong Kong Special Administrative Region by universal suffrage", the Chief Executive shall also activate this five-part process. These three paragraphs of the Decision were a solemn decision made by the NPCSC in 2007 and it is a lawful and constitutional decision without any preconditions attached.

Quite a lot of responses were elicited by my remark about the familiarity of arguments. However, I have repeatedly made it clear that the SAR Government holds two very important positions and they are, first, election of Members of the Legislative Council by universal suffrage must comply with the principle of universality and equality; and second, there is still no final decision on the handling of FCs when the Legislative Council is to be formed by universal suffrage in 2020. I am sure that debates of this kind will continue in the future.

However, I think Members of the pan-democratic camp should face a political reality and that is, if they say that all FCs should be abolished, then they must make a decision now to strive to get the support of their colleagues in the Council, that is, including those Members from the FCs, and see if a two-third majority of all the Members are prepared to make the decision today to abolish the functional constituencies.

**MR ALBERT CHAN** (in Cantonese): Do you really want to be a dog now .....

**PRESIDENT** (in Cantonese): Mr Albert CHAN, please sit down.

**MR WONG YUK-MAN** (in Cantonese): Why can he not be rebuked?

**MR ALBERT CHAN** (in Cantonese): Sorry, President, I really think that he is like a dog.

**MR WONG YUK-MAN** (in Cantonese): ..... he wants an endorsement by a two-third majority of Members, this is most ingenious of him, and I will never let him have his way .....

**PRESIDENT** (in Cantonese): Mr Albert CHAN, Mr WONG Yuk-man, please observe the Rules of Procedure.

**MR WONG YUK-MAN** (in Cantonese): I don't care. It doesn't matter even if you drive me out of the Chamber now, for the meeting is about to end. Why can we not rebuke him?

**PRESIDENT** (in Cantonese): Mr WONG Yuk-man. Secretary, please continue.

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): President, I just want to point out that the constitutional arrangement .....

(Mr WONG Yuk-man continued to yell and shout)

**PRESIDENT** (in Cantonese): Secretary, please sit down first. Mr WONG Yuk-man, if you speak in your seat again, I will have to ask you to leave the Chamber. Please observe the Rules of Procedure. Secretary, please continue.

(Mr WONG Yuk-man and Mr Albert CHAN left the Chamber)

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): President, I am only referring to the constitutional arrangements and the political reality. Regardless of which political party or grouping Members may come from, when they voice their opinion, they have to face squarely this political reality and the constitutional prescriptions. I hope Members will cease distorting the position of the SAR Government.

**MS EMILY LAU** (in Cantonese): President, may I ask the Secretary to make a clarification?

**PRESIDENT** (in Cantonese): Secretary, are you prepared .....

(Secretary for Constitutional and Mainland Affairs sat down)

**MS EMILY LAU** (in Cantonese): Now the Secretary has sat down. Can he clarify why the DAB and the Liberal Party could write down in their party platforms that there should be universal suffrage in 2007 and 2008? Does he know the reason for that? It is because some people are willing to lend them support. President, they have written that down.

**PRESIDENT** (in Cantonese): Ms Emily LAU, that is your own view. Now it is time for the Secretary to speak. I am sure there will be many occasions to debate on that in future. I do not think we should prolong our debate tonight in this way. Secretary, please continue.

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): President, before I make a conclusion, I wish to present three points to Members.

First, in dealing with important issues in Hong Kong, especially with respect to promoting democratization in Hong Kong, it is very difficult to reach any consensus. If we are to preserve differences and strive to reach common grounds, all of us must narrow the gap between our positions, instead of drawing them farther and farther away.

I remember in 2005 when we discussed the election proposals for elections in 2007 and 2008, Members from the pan-democratic camp made two demands: first, that there should be a timetable for universal suffrage; second, that appointed members of the District Councils (DCs) should not be allowed to take part.

I still recall in the motion debate on 9 November 2005 that Mr Albert HO said in the Council meeting and I quote: "..... the newly added functional constituency seats will include appointed members ..... it allows vote planting by the Chief Executive ....."

On the same day, former Member Martin LEE also said and I quote: "..... the Government should at least provide a more realistic timetable to me. If the Government considers that even 2012 is not feasible, it can suggest a time."

Mr Ronny TONG also said in the same debate and I quote: "What we ask for now is just a clear timetable. On this issue, all major political parties actually shared the same view ....."

All of these are excerpts from the verbatim records of the proceedings of this Council. That I have cited these records is not to settle old scores, so to speak, but I just hope to make it clear that the SAR Government has done the best it can over the past few years and we have secured the Decision made by the

NPCSC in 2007 on the timetable for universal suffrage. Now we are proposing a direction for elections in 2012 and suggesting that the right to vote and participation of appointed members of DCs shall be removed and that only members of DCs elected by popular elections shall have the right to take part in the elections to select the Chief Executive and form the Legislative Council.

Dr Margaret NG mentioned specifically that booklets were published in 2005 and this I also remember. But I have to make it clear that I am not saying that back then you did not talk about a roadmap for universal suffrage and the methods for it. President, ever since I became the accountable Director of Bureau in this policy area in 2002, what Members from the democratic camp have always been striving for in the first place is a timetable for universal suffrage. I recall that there was a year when Dr YEUNG Sum said to me that if no agreement could be obtained on the timetable for universal suffrage, then perhaps talks about a roadmap for universal suffrage could be held. And should no agreement be reached on a roadmap for universal suffrage, then perhaps talks on methods for implementing universal suffrage should be held.

President, the scenario before us now is that we have got a timetable for universal suffrage. Although it is not the moment when a decision can be made on the roadmap and methods for universal suffrage, we are more than willing to listen to Members' opinions for use later. So I would think that we should work hard to close our gap, instead of going farther and farther apart. For in that case, we can never reach any consensus.

Another thing, and it is important, when we are to deal with important constitutional issues of this sort, we should make use of whatever room we can get. I still recall back in 2005 when we solicited the support of this Council for the proposal regarding 2007 and 2008, had that proposal been passed at that time, our starting point now would be 70 seats in this Council and these 70 seats would have been filled in September 2008. At that time, I stressed that when Members strove to get a roadmap for universal suffrage, there would be no contradiction with considering endorsing the proposal for 2007 and 2008 as raised in 2005. So I am citing the same argument to Members today, that endorsing the constitutional reform proposal for 2012 does not in any way contradict the attempt made by Members in striving to have the Chief Executive selected by universal suffrage in 2017 and to have the Legislative Council formed by

universal suffrage in 2020. There is no need for Members to bundle these two up and so impose an obstacle to the democratization of Hong Kong.

The third point I wish to tell Members is that politics is never a utopian ideal and there are bound to be some constraints and limitations. Politics is the art of the possible. Hong Kong is no independent sovereign entity and we cannot have our way in everything we want. The constitutional development of Hong Kong has its own unique historical background and it does not start from a blank sheet of paper. The principle of "one country, two systems" itself is a compromise in the art of politics of the highest order. This explains why Hong Kong practises capitalism instead of socialism, and also why common law system is preserved in Hong Kong instead of the legal system of the Mainland. So although Hong Kong has no control over its foreign affairs, it still enjoys a great degree of autonomy in external affairs. It can join the World Trade Organization and the APEC. And this is precisely why we manage to gain some room for manoeuvre with respect to constitutional reform in 2012. Even though some political parties or groupings may think that this is a compromise, we should try our best to make full use of such room.

Lastly, I would like to make a point in conclusion and, that is, Mr CHEUNG Man-kwong has talked about what he calls the sorrow of Hong Kong. President, I wish to state clearly that, if we can now see that Hong Kong can make some progress towards democracy in 2012, this is already a solid step taken in the direction of democracy even though some political parties or groupings may think that this is not so satisfactory. We must seize the opportunity and take this step forward, and we must not march on the same spot. It would indeed be a sorrow for Hong Kong if we have to march on the same spot in 2012.

President, I so submit. I hope Members will oppose the original motion and the amendments.

**MR LEUNG KWOK-HUNG** (in Cantonese): President, I ask the Secretary to clarify whether or not he means that it is necessary to lobby for the support of the 30 Members returned through FCs if we are to have universal suffrage. Is this what he means?

**PRESIDENT** (in Cantonese): Mr LEUNG Kwok-hung, I have already .....

**MR LEUNG KWOK-HUNG** (in Cantonese): I am asking him, buddy.

**PRESIDENT** (in Cantonese): I have already said that the Secretary has already delivered his speech and in future, we still have many opportunities to debate the subject of constitutional development, so I do not think that we should adopt this approach of seeking clarification from the Secretary now to continue with this debate.

**MR LEUNG KWOK-HUNG** (in Cantonese): No. I just want him to clarify if this is what he thinks.

**PRESIDENT** (in Cantonese): Mr LEUNG Kwok-hung, please sit down.

**MR LEUNG KWOK-HUNG** (in Cantonese): He cannot be like a dog the mouth in which no elephant tusk can grow.

**PRESIDENT** (in Cantonese): Mr LEUNG Kwok-hung, you have used up your speaking time. Please sit down.

**MR LEUNG KWOK-HUNG** (in Cantonese): I am a taxpayer.

**PRESIDENT** (in Cantonese): Mr LEUNG Kwok-hung, please sit down.

**MR LEUNG KWOK-HUNG** (in Cantonese): Can he be like a dog the mouth in which no elephant tusk can grow?

**PRESIDENT** (in Cantonese): I now call upon Ms Emily LAU to move her amendment to the motion.

**MS EMILY LAU** (in Cantonese): President, I move that Mr Alan LEONG's motion be amended.

**Ms Emily LAU moved the following amendment to the motion: (Translation)**

"To add "members of the public have been striving for the full implementation of universal suffrage for more than 20 years, and" after "That,"; and to add "strive for the implementation of universal suffrage for the Chief Executive and the Legislative Council elections in 2012, and if this cannot be done, the Government must" after "consultation to".".

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Ms Emily LAU to Mr Alan LEONG's motion, be passed.

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

(Members raised their hands)

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

(Members raised their hands)

Ms Emily LAU rose to claim a division.

**PRESIDENT** (in Cantonese): Ms Emily LAU has claimed a division. The division bell will ring for three minutes.

**PRESIDENT** (in Cantonese): Will Members please proceed to vote.

**PRESIDENT** (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Dr Margaret NG, Mr CHEUNG Man-kwong, Dr Joseph LEE and Mr CHEUNG Kwok-che voted for the amendment.

Dr Raymond HO, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Ms Miriam LAU, Ms LI Fung-ying, Mr Vincent FANG, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Prof Patrick LAU, Mr Paul CHAN, Mr CHAN Kin-por, Mr IP Wai-ming, Mr IP Kwok-him, Dr PAN Pey-chyou and Dr Samson TAM voted against the amendment.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Ms Emily LAU, Mr Andrew CHENG, Mr Albert CHAN, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Miss Tanya CHAN, Mr WONG Sing-chi and Mr WONG Yuk-man voted for the amendment.

Mr CHAN Kam-lam, Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr WONG Kwok-hing, Mr CHEUNG Hok-ming, Ms Starry LEE, Mr CHAN Hak-kan, Dr Priscilla LEUNG and Mr WONG Kwok-kin voted against the amendment.

THE PRESIDENT, Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 22 were present, four were in favour of the amendment and 18 against it; while among the Members returned by geographical constituencies through direct elections, 29 were present, 19 were in favour of the amendment and nine against it. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendment was negatived.

**PRESIDENT** (in Cantonese): Ms Cyd HO, you may move your amendment.

**MS CYD HO** (in Cantonese): President, I move that Mr Alan LEONG's motion be amended.

**Ms Cyd HO moved the following amendment: (Translation)**

"To delete "strongly requests the Government to seize the opportunity of the constitutional reform consultation to give an account to the public on the roadmap for universal suffrage, and make an undertaking that the option for genuine universal suffrage will be implemented no later than 2017 and 2020, and this option shall comprise the following principles" after "this Council" and substitute with "considers that the Administration should, on the basis of implementing universal and equal suffrage in 2012 and by listening to the views of the public in the constitutional reform consultation, design a political system that suits Hong Kong, and the option shall include"; to delete "," after "public opinion" and substitute with ";"; to add "establish a public nomination mechanism whereby the nominating committee must confirm the candidacy of a person who is nominated by 3% of registered electors; and" after "procedure,"; to delete "and" after "in the elections;"; and to add "; (d) to abolish the separate voting mechanism in the Legislative Council; and (e) to remove the restrictions on the introduction of private bills by Members" immediately before the full stop."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Ms Cyd HO to Mr Alan LEONG's motion, be passed.

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

(Members raised their hands)

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

(Members raised their hands)

Ms Cyd HO rose to claim a division.

**PRESIDENT** (in Cantonese): Ms Cyd HO has claimed a division. The division bell will ring for three minutes.

**PRESIDENT** (in Cantonese): Will Members please proceed to vote.

**PRESIDENT** (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Dr Margaret NG, Mr CHEUNG Man-kwong, Dr Joseph LEE and Mr CHEUNG Kwok-che voted for the amendment.

Dr Raymond HO, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Ms Miriam LAU, Ms LI Fung-ying, Mr Vincent FANG, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Prof Patrick LAU, Mr Paul CHAN, Mr CHAN Kin-por, Mr IP Wai-ming, Mr IP Kwok-him, Dr PAN Pey-chyou and Dr Samson TAM voted against the amendment.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Ms Emily LAU, Mr Andrew CHENG, Mr Albert CHAN, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Miss Tanya CHAN, Mr WONG Sing-chi and Mr WONG Yuk-man voted for the amendment.

Mr CHAN Kam-lam, Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr WONG Kwok-hing, Mr CHEUNG Hok-ming, Ms Starry LEE, Mr CHAN Hak-kan, Dr Priscilla LEUNG and Mr WONG Kwok-kin voted against the amendment.

THE PRESIDENT, Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 22 were present, four were in favour of the amendment and 18 against it; while among the Members returned by geographical constituencies through direct elections, 29 were present, 19 were in favour of the amendment and nine against it. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendment was negatived.

**PRESIDENT** (in Cantonese): Mr Alan LEONG, you may now give your reply. You still have one minute and 31 seconds.

**MR ALAN LEONG** (in Cantonese): President, Secretary Stephen LAM has "seriously" asserted that he has put forward a timetable, questioning us what more you still want. However, to begin with, this timetable ..... Let me quote the word used by Deputy Secretary-General Qiao Xiao Yang here. He only used the word "may". This use of this word means that there is no certainty. Second, even if something will surely happen, we simply do not know what exactly will happen. Is it going to be genuine universal suffrage? Or, bogus universal suffrage? We are not clear about all this. Secretary Stephen LAM has also

asked Members not to talk about things in the very remote future, saying that it suffices to discuss the elections in 2012. This can be compared to asking people to discuss whether a piece of meat is to be simmered, stir-fired or stewed. But in the end, people may find that the meat is pork, and they do not eat pork at all. I may use another analogy to illustrate my point. People are asked to board a bus. No one knows the terminus of this bus. But people are still asked to board the bus first.

I hope the public could all see Mr CHAN Kam-lam's nasty countenance today. Actually, the mechanism we are discussing is about powers — the desire of those with vested interests to retain their powers and to continue to have political deals with those in power. When he senses that this mechanism is under threat, he will show such nasty looks.

Therefore, I hope the public can realize that this is a critical moment in Hong Kong's pro-democracy movement. If they do not want to see any bogus universal suffrage, they must come forward.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That Mr Alan LEONG's motion 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 CHAN Kam-lam rose to claim a division.

**PRESIDENT** (in Cantonese): Mr CHAN Kam-lam 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 shall be displayed.

Functional Constituencies:

Dr Margaret NG, Mr CHEUNG Man-kwong, Dr Joseph LEE and Mr CHEUNG Kwok-che voted for the motion.

Dr Raymond HO, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Ms Miriam LAU, Mr Vincent FANG, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Prof Patrick LAU, Mr CHAN Kin-por, Mr IP Wai-ming, Mr IP Kwok-him, Dr PAN Pey-chyou and Dr Samson TAM voted against the motion.

Ms LI Fung-ying abstained.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Ms Emily LAU, Mr Andrew CHENG, Mr Albert CHAN, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Miss Tanya CHAN, Mr WONG Sing-chi and Mr WONG Yuk-man voted for the motion.

Mr CHAN Kam-lam, Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr WONG Kwok-hing, Mr CHEUNG Hok-ming, Ms Starry LEE, Mr CHAN Hak-kan, Dr Priscilla LEUNG and Mr WONG Kwok-kin voted against the motion.

THE PRESIDENT, Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 21 were present, four were in favour of the motion, 16 against it and one abstained; while among the Members returned by geographical constituencies through direct elections, 29 were present, 19 were in favour of the motion and nine against it. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the motion was negatived.

### **NEXT MEETING**

**PRESIDENT** (in Cantonese): I now adjourn the Council until 11.00 am on Wednesday, 9 December 2009.

*Adjourned accordingly at sixteen minutes to Eleven o'clock.*



**Appendix 1****REQUEST FOR POST-MEETING AMENDMENTS**

**The Secretary for Labour and Welfare requested the following post-meeting amendments in respect of a supplementary question to Question 2**

**Last line, page 18 of the Confirmed version**

To amend "..... have resided in Hong Kong for not less than 80 days ....." as "..... have resided in Hong Kong for not less than 90 days ....." (Translation)

(Please refer to line 3, last paragraph, page 2452 of this Translated version)

**Line 6, first paragraph, page 25 of the Confirmed version**

To amend "..... the elderly above the age of 70," as "..... the elderly aged 70 or above," (Translation)

(Please refer to fourth last line, third paragraph, page 2461 of this Translated version)

**Line 3, first paragraph, page 27 of the Confirmed version**

To amend "..... the so-called exemption for staying in Hong Kong or absence limit." as "..... the so-called permissible limit of absence from Hong Kong or period of stay in Hong Kong." (Translation)

(Please refer to line 4 to 5, first paragraph, page 2464 of this Translated version)

**Appendix 2****REQUEST FOR POST-MEETING AMENDMENTS**

**The Secretary for the Environment requested the following post-meeting amendments**

**Lines 1 and 2, fourth paragraph, page 165 of the Confirmed version**

To amend "The Mainland's emission level is around 4.7 tonnes," as "The Mainland's emission level is around 4 tonnes," (Translation)

(Please refer to line 2, second paragraph, page 2658 of this Translated version)

**Line 6 to 8, fifth paragraph, page 166 of the Confirmed version**

To amend "Even though energy intensity is still taken as the standard, it was 10 years ahead of the Sydney Declaration of the APEC. Also, the ratio of reduction will be increased from 30% to 40% to 45%." as "Even though energy intensity is still taken as the standard, it was 10 years ahead of the Sydney Declaration of the APEC. Also, the ratio of reduction will be increased to 40% to 45%." (Translation)

(Please refer to fourth last line to last line, last paragraph, page 2659 of this Translated version)

**Last line, fourth paragraph, page 167 of the Confirmed version**

To amend "These are the six major directions." as "These are the major directions." (Translation)

(Please refer to last line, last paragraph, page 2660 of this Translated version)

**REQUEST FOR POST-MEETING AMENDMENTS — *Continued*****Line 1, fourth paragraph, page 168 of the Confirmed version**

To amend "The old scheme was fully implemented on 1 September ....." as  
"The old scheme was fully implemented on 9 November ....." (Translation)

(Please refer to line 2, third paragraph, page 2662 of this Translated version)

**Lines 1 and 2, first paragraph, page 169 of the Confirmed version**

To amend "..... all government buildings with areas exceeding 10 000 sq ft." as  
"..... all government buildings with areas exceeding 10 000 sq m."  
(Translation)

(Please refer to line 2 to 3, second paragraph, page 2663 of this Translated version)