OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 9 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 ABRAHAM SHEK LAI-HIM, S.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

THE HONOURABLE PAUL TSE WAI-CHUN

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

PUBLIC OFFICERS ATTENDING:

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

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

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

MS JULIA LEUNG FUNG-YEE, J.P.
SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY

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
CLERKS IN ATTENDANCE:

MS PAULINE NG MAN-WAH, SECRETARY GENERAL

MRS CONSTANCE LI TSOI YEUK-LIN, ASSISTANT SECRETARY GENERAL

MRS JUSTINA LAM CHENG BO-LING, 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

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<td>Dangerous Drugs Ordinance (Amendment of Second Schedule) (No. 2) Order 2009</td>
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<td>240/2009</td>
<td>Pilotage (Dues) (Amendment) Order 2009</td>
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<td>241/2009</td>
<td>Tax Reserve Certificates (Rate of Interest) (No. 5) Notice 2009</td>
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Other Papers

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<th>No.</th>
<th>Description</th>
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<td>39</td>
<td>Hong Kong Tourism Board Annual Report 2008/09</td>
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<td>40</td>
<td>Director of Social Welfare Incorporated&lt;br&gt;Financial statements for the year ended 31 March 2009 together with the Report of the Director of Audit</td>
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<td>41</td>
<td>Emergency Relief Fund Annual Report by the Trustee for the year ending 31 March 2009</td>
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ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): Questions. The first question.
Traffic Accidents Involving Heavy Vehicles

1. MR LAU WONG-FAT (in Cantonese): President, in recent years, traffic accidents involving heavy vehicles such as franchised buses, tourist coaches, lorries, container trucks and resulting in serious casualties occurred from time to time. In this connection, will the Government inform this Council of:

(a) the total number of traffic accidents involving heavy vehicles in each of the past 10 years and the related casualties, as well as the major causes of such accidents; and

(b) the improvement measures currently implemented and to be implemented by the authorities to reduce traffic accidents involving heavy vehicles?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, road safety is of utmost importance. We closely monitor the statistics of traffic accidents and their trends, analyse their causes, and introduce corresponding improvement measures with a view to improving road safety.

My reply to the two parts of the question raised by Mr LAU is as follows:

(a) In the past 10 years, there were 2,996 to 3,419 traffic accidents involving heavy vehicles every year, or around 3,220 per year on average, accounting for 21% of the total number of traffic accidents. The annual casualty was about 4,680 persons, of which 86% suffered slight injury, 13% were inflicted with more serious injury, and 1% died. The Killed and Serious Injuries Rate of traffic accidents involving heavy vehicles has dropped from its peak of 21% in 2002 to 15% in 2008. Detailed figures are set out in the Annex.

Causes leading to traffic accidents can be grouped under four categories, namely environmental factors (such as wet road or obstructed sightline); vehicle factors (such as vehicle operation and functioning of vehicle parts); driver factors (such as drivers' driving behaviour); and factors of other road users (such as safety awareness of passengers and pedestrians). According to the analyses of the
Transport Department (TD), in the past 10 years, 2% of the traffic accidents involving heavy vehicles involved environmental factors; 4% of the accidents involved vehicle factors; 50% involved driver factors (mainly inappropriate driving); and over 40% involved factors of other road users (mainly inattention of pedestrians and failure of passengers to hold on handrails, and so on).

(b) We have all along adopted a multi-pronged approach through legislation, enforcement, improvement in traffic facilities and management, as well as publicity and education to enhance road safety, raise the awareness of road users and to improve the driving attitude of motorists.

On legislation, we review the traffic legislation from time to time, introduce new legislation and adjust the penalties as appropriate with a view to enhancing road safety. In recent years, we have been making legislative amendments in response to the public concerns over serious traffic offences such as dangerous driving and drink driving. Tougher penalties have been imposed to deter and combat traffic offences. For example, with the support of the Legislative Council, we amended the Road Traffic Ordinance in the 2007-2008 Legislative Session to increase substantially the term of imprisonment for the offence of causing death by dangerous driving from five years to 10 years. The relevant provisions came into effect on 4 July 2008. Furthermore, a series of measures targeting inappropriate driving and drink driving behaviour have been implemented since 9 February 2009. The measures include increasing the penalty on drink driving; empowering the police to carry out the Random Breath Test (RBT); mandating repeated traffic offenders and offenders of more serious traffic offences to attend driving improvement courses; and extending the probationary driving licence scheme to cover novice drivers of private cars and light goods vehicles.

From February to November this year, the police conducted over 1 900 RBT operations involving about 34 000 drivers. Out of these drivers, 182 of them have been/will be prosecuted for having alcohol concentration above the prescribed limit or refusing to provide
breath specimen. The accidents involving drink driving decreased by 62% between February and October 2009 compared with the same period last year. To further combat drink driving and dangerous driving, we are drafting some legislative proposals to increase the penalties for such offences. If our proposals are supported, the penalties of the relevant serious traffic offences, particularly their minimum driving disqualification period, will be significantly increased, thus prohibiting offenders from driving on the road for a longer period of time. We are actively pursuing the legislative procedures for introducing the proposal into the Legislative Council for deliberation in the second quarter of 2010.

On enforcement, the police have been strengthening their manpower in recent years to combat inappropriate driving behaviour. To this end, the police make use of red light cameras and speed enforcement cameras, and deploy laser guns, mobile radar and in-car video recording systems in surprise and mobile enforcement actions. The expansion projects on red light camera system and speed enforcement camera system just commenced in August this year. Traffic offences concerned will be further combated when the projects are completed by end of next year. In addition, the police will launch regional and territory-wide traffic enforcement operations regularly to combat overloading of goods vehicles. Roadside vehicle examination stations are set up to conduct checks and institute prosecution against overloaded trucks with the assistance of motor vehicle examiners.

Appropriate road design and facilities are an important factor to ensure road safety. The TD will conduct systematic analyses on statistics, trend and causes of traffic accidents so that corresponding standards and measures can be formulated in order to reduce and prevent the happening of traffic accidents. The TD will periodically select locations with more traffic accidents (generally called traffic accident black spots) for detailed investigations and improvements, having regard to the road conditions, timing, and behaviour of drivers and pedestrians involved in accidents. In 2008, the TD carried out detailed investigations at 100 locations across the territory and formulated improvement measures for 83 sites.
The TD is also very concerned about the adequacy of safety equipment on heavy vehicles, and will review from time to time whether improvement is required for such equipment.

Raising road safety awareness among motorists and road users is an effective means to enhance road safety. On this front, publicity and education are very important. All along, we have been carrying out publicity and education activities in conjunction with the Road Safety Council.

This year, the main theme of the publicity campaign of the Road Safety Council is "3C Responsible Drivers". In September, the Council held a pledging campaign to appeal to drivers to exercise due "Care" on the road, show "Concern" for the safety and rights of other road users, and make "Commitment" to be a responsible driver by adopting proper driving behaviour, such as not driving after drinking and following road safety codes. That means drivers should show care, concern and commitment. We will continue to broadcast TV and radio Announcements for Public Interest, including the series entitled "Be a true master of the road" which target especially at heavy vehicle drivers. We will display road safety messages on advertising panels at tunnel entrances and exits, and on the bodies of buses.

The TD and the police will continue to organize topical training programmes and safety workshops for professional drivers. In 2009, the police organized a total of 72 talks and seminars to promote road safety awareness to over 4000 heavy vehicle drivers. The police will continue to carry out on-street publicity and promotional activities at venues such as elderly centres and schools to disseminate as much as possible safety knowledge among road users at district level. In addition, the TD plans to launch a "Safe Driving and Health Campaign for Professional Drivers" from end 2009 to April 2010. The campaign will include provision of free simple health checks for professional drivers with a view to raising the awareness of drivers on the importance of road safety and good health condition.
Annex

No. of traffic accidents involving heavy vehicles\(^{(1)}\) from 1999 to 2008

<table>
<thead>
<tr>
<th>Year</th>
<th>Fatal</th>
<th>Serious</th>
<th>Slight</th>
<th>Total</th>
<th>Killed and Serious Injuries Rate(^{(2)})</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>72</td>
<td>530</td>
<td>2 535</td>
<td>3 137</td>
<td>19%</td>
</tr>
<tr>
<td>2000</td>
<td>38</td>
<td>525</td>
<td>2 576</td>
<td>3 139</td>
<td>18%</td>
</tr>
<tr>
<td>2001</td>
<td>46</td>
<td>601</td>
<td>2 667</td>
<td>3 314</td>
<td>20%</td>
</tr>
<tr>
<td>2002</td>
<td>39</td>
<td>635</td>
<td>2 592</td>
<td>3 266</td>
<td>21%</td>
</tr>
<tr>
<td>2003</td>
<td>44</td>
<td>539</td>
<td>2 413</td>
<td>2 996</td>
<td>19%</td>
</tr>
<tr>
<td>2004</td>
<td>60</td>
<td>581</td>
<td>2 627</td>
<td>3 268</td>
<td>20%</td>
</tr>
<tr>
<td>2005</td>
<td>45</td>
<td>520</td>
<td>2 658</td>
<td>3 223</td>
<td>18%</td>
</tr>
<tr>
<td>2006</td>
<td>37</td>
<td>471</td>
<td>2 731</td>
<td>3 239</td>
<td>16%</td>
</tr>
<tr>
<td>2007</td>
<td>41</td>
<td>500</td>
<td>2 878</td>
<td>3 419</td>
<td>16%</td>
</tr>
<tr>
<td>2008</td>
<td>37</td>
<td>450</td>
<td>2 731</td>
<td>3 218</td>
<td>15%</td>
</tr>
<tr>
<td>Average</td>
<td>46</td>
<td>535</td>
<td>2 641</td>
<td>3 222</td>
<td>18%</td>
</tr>
</tbody>
</table>

Notes:

(1) Heavy vehicles include bus, and medium and heavy goods vehicles over 5.5 tonnes.

(2) Killed and Serious Injuries Rate = (Total of "Killed" and "Serious" accidents ÷ Total no. of accidents) x 100%

No. of casualties of traffic accidents involving heavy vehicles from 1999 to 2008

<table>
<thead>
<tr>
<th>Year</th>
<th>Killed</th>
<th>Seriously Injured</th>
<th>Slightly Injured</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>83</td>
<td>616</td>
<td>4 075</td>
<td>4 774</td>
</tr>
<tr>
<td>2000</td>
<td>44</td>
<td>572</td>
<td>3 823</td>
<td>4 439</td>
</tr>
<tr>
<td>2001</td>
<td>48</td>
<td>691</td>
<td>4 117</td>
<td>4 856</td>
</tr>
<tr>
<td>2002</td>
<td>40</td>
<td>717</td>
<td>4 207</td>
<td>4 964</td>
</tr>
<tr>
<td>2003</td>
<td>67</td>
<td>615</td>
<td>3 588</td>
<td>4 270</td>
</tr>
<tr>
<td>2004</td>
<td>63</td>
<td>677</td>
<td>4 177</td>
<td>4 917</td>
</tr>
<tr>
<td>2005</td>
<td>50</td>
<td>577</td>
<td>4 012</td>
<td>4 639</td>
</tr>
<tr>
<td>2006</td>
<td>41</td>
<td>529</td>
<td>3 964</td>
<td>4 534</td>
</tr>
<tr>
<td>2007</td>
<td>42</td>
<td>543</td>
<td>4 147</td>
<td>4 732</td>
</tr>
<tr>
<td>2008</td>
<td>55</td>
<td>523</td>
<td>4 114</td>
<td>4 692</td>
</tr>
<tr>
<td>Average</td>
<td>53</td>
<td>606</td>
<td>4 022</td>
<td>4 682</td>
</tr>
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</table>
MR LAU WONG-FAT (in Cantonese): President, the consequences of traffic incidents involving heavy vehicles can be very serious. Very often, the causes of the incidents are related not to the machinery and performance of the vehicles but to the driving attitude and judgment of the drivers. May the Government inform this Council whether the authorities will consider raising the criteria for obtaining driving licences for heavy vehicles, in order that the right cure can be administered?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, the current licensing and consideration criteria have actually been in use for many years. Certainly, driver factors, such as driving too close to vehicle in front, changing lanes negligently, and so on, also account for approximately 50% of traffic accidents. Therefore, on this front, as pointed out by me in the main reply, more efforts in training and topical seminars will be required for enhancing the safety awareness of drivers. Furthermore, as I pointed out just now, the main theme of the publicity campaign of the Road Safety Council this year is "Care", "Concern" and "Commitment" to be a responsible driver. We will continue to adopt a multi-pronged approach to enhance awareness on this front.

MR WONG KWOK-KIN (in Cantonese): President, the Secretary's main reply has also paid great attention to the importance of driver factors to accidents involving heavy vehicles. However, the Secretary seems to have overlooked the fatigue factor frequently raised by our unions. Has the Government paid attention to the impact of the duty schedules and working hours of franchised bus companies on the energy and fatigue level of drivers? Has the Government negotiated with the bus companies or enhanced monitoring on this front for improvements? Many drivers have complained that the duty schedules of their companies adversely affect their energy and fatigue level, thereby causing accidents.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, earlier, the Panel on Transport has also held detailed discussions on this issue. Currently, there are guidelines on working hours of bus drivers for compliance by all bus companies. However, during the implementation of the guidelines, it is found that the average working and driving hours are far below the requirements of the guidelines. The average working hours, which stand at
We have also put in place a mechanism to examine the appropriateness of the current journey timetable. For instance, adjustment should be made if it is found that a journey cannot be completed during a certain period of time. Actually, between 2006 and 2008, the journey time of 71 routes of major bus companies was extended. Therefore, regarding the question raised by the Member as to whether we will continue to review this matter, the reply is affirmative. The TD will conduct random inspections. It will also continue to review the existing duty schedule system with bus companies, as well as study ways to implement the guidelines.

MR CHEUNG HOK-MING (in Cantonese): President, my supplementary question is similar to the one raised by Mr WONG Kwok-kin. In part (b) of the main reply, the Secretary spoke at length about driver factors but failed to mention the working hours of drivers. The figures quoted by the Secretary just now have also been quoted on another occasion — at present, the duty hours of each driver is 14 hours, whereas the driving hours is not less than 11 hours. How did the Secretary come up with the figures quoted in her reply just now? If the duty hours and driving hours stand at 14 hours and 11 hours respectively, how can the Government examine with bus companies or franchised bodies in the future ways to improve work on this front?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, according to the current guidelines, the Member was right in saying that the maximum daily working hours (including rest period) of a bus driver should not exceed 14 hours, and the daily driving hours (that is, the maximum working hours minus the minimum rest period) should not exceed 11 hours. The figures quoted by me just now are based on the actual situation. The actual working hours, which are between 9.8 to 10.4 hours, and the driving hours, between 7.8 to 8.5 hours, are far below those stipulated in the guidelines. We understand that the guidelines should continue to be reviewed. Therefore, we
will continue to discuss with the TD and bus companies ways to implement the guidelines. However, it is most important that, during actual operation, each bus driver should be given adequate rest periods. According to the bus companies, flexible deployment will be made. For instance, in the event of traffic jams or other incidents between shifts, the rest period of bus drivers should not be curtailed. Instead, other deployment measures should be taken to ensure that bus drivers are given some rest periods, so as to safeguard road safety.

**MS LI FUNG-YING** (in Cantonese): President, the Secretary replied that 50% of the traffic accidents involved driver factors. Has the Secretary analysed, in a specific and detailed manner, what factors are actually involved? Targeting these factors, what improvement measures has the Secretary taken?

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): There are several major driver factors, so to speak. Perhaps let me explain briefly. They include, for instance, driving too close to vehicle in front, changing lanes negligently, trying to avert collision or other factors (according to our data, although the collision of two vehicles might sometimes involve a heavy vehicle, the one who erred did not necessarily have to be the heavy vehicle driver), making turns or starting a vehicle negligently, and so on. We will make more efforts in publicity, education and training. As I mentioned in the main reply just now, efforts have been made by the Road Safety Council, the TD and the police. For instance, 72 talks were organized in 2009 to promote road safety awareness to over 4,000 heavy vehicle drivers.

**MR ALBERT CHAN** (in Cantonese): President, I have mentioned the standing passengers of double deckers a number of times in connection with the issue of public safety being endangered by traffic hazards. Passengers of double deckers operating on expressways are required to wear seat belts. In the event of accidents, standing passengers will definitely face particularly high risks. Regarding this issue, will the Secretary consider afresh whether standing passengers will be prohibited progressively in formulating transport arrangements on highways, particularly for buses operating on expressways, in order to safeguard passenger safety?
SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, we attach importance to introducing progressive improvements to bus installations and are taking progressive steps for enhancement. For instance, all buses purchased after 2003 are required to have their exposed seats fitted with seat belts. We have also required bus companies to add seat belts for the four seats in the front row on the upper deck for buses procured between 1997 and 2003. However, we have to consider the structural differences of each model of buses. In particular, the additional installation of seat belts must tie in with structural support and anchorage points. Therefore, improvements are being made progressively.

As regards buses with standing capacity, as mentioned by Member just now, we will mainly add seat belts for exposed seats. As standing passengers are allowed, we have put in place other complementary measures. For instance, the speeds of buses operating on expressways cannot exceed 70 km. These complementary measures are adopted to safeguard passenger safety. If no standing passengers are allowed because of the lack of seat belts, bus frequencies, operation, and so on, will be affected. Therefore, these issues must be handled carefully.

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

MR ALBERT CHAN (in Cantonese): In order to safeguard passenger safety, will the Secretary prohibit standing passengers? While I have taken note of other factors, my supplementary question is whether passenger safety will be safeguarded …… given that seats are fitted with seat belts, what about the safety of standing passengers? Are the lives of standing passengers less precious?

PRESIDENT (in Cantonese): Mr CHAN, you have made yourself very clear.

MR ALBERT CHAN (in Cantonese): Are the lives of standing passengers less precious?
PRESIDENT (in Cantonese): Secretary, do you have anything to add?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, I said just now that a series of issues, such as frequencies, standards of service, and so on, had to be taken into consideration. As regards buses operating on expressways, other regulatory measures, such as speed control, have been put in place. Therefore, we have no intention to prohibit standing passengers at the present stage.

MS MIRIAM LAU (in Cantonese): As drivers must bear safe driving in mind, the Government must ensure that drivers internalize their awareness of safe driving and road safety before they can reflect such awareness in their driving behaviour. I learn from the main reply that the Road Safety Council has made a lot of efforts in publicity and the police have also organized many talks and seminars. However, I am worried that the publicity and talks would only fall on deaf ears. Actually, the trade has many trade organizations and drivers' associations. There are many trade organizations and drivers' associations for both lorries and minibuses, too. Will the Government consider allowing itself or the Road Safety Council to join these trade organizations, drivers' associations or unions in promoting road and traffic safety, rather than purely relying on educational efforts, such as organizing talks or workshops? In other words, will the Government consider taking joint actions, rather than making efforts on its own?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, this is a good suggestion. I believe the Road Safety Council is more than willing to co-operate with other trade associations in exploring room for collaboration. We would also like to organize some training programmes and safety workshops for professional drivers, or promote awareness of health condition, body checks, and so on. There is much room for collaboration with trade associations and drivers' associations. We welcome these proposals and will take follow-up action.

MR LEE CHEUK-YAN (in Cantonese): A few days ago, a verdict of manslaughter was returned in connection with the road accident occurred in Lok Ma Chau, and the culprit was only sentenced to six years of imprisonment. Let
us put aside the issue of whether the penalty is adequate — the family members of the victims were actually dissatisfied. They have made another request that, given the road accident has resulted in six deaths, the driver causing the accident should have his driving licence suspended for good. However, there is no legislation in place for regulation at present. I note that the Secretary has indicated that legislation on this front will be reviewed. May I ask if the Secretary agrees that the present situation is actually very ridiculous? If the suspension of licence is to take effect concurrently with the prison term, it would be the same as no suspension of licence. Will the Government review legislation to impose the penalty of suspending a licence after the release from jail, so that the suspension of licence can carry substantial meaning? Will the Secretary consider amending legislation in this direction?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, under the existing system, the Court may actually exercise flexibility in imposing the term of imprisonment and suspension period consecutively or making the latter longer than the former. We have also seen actual court precedents that the suspension periods were longer than the terms of imprisonment. As regards whether it should be strictly required that the two take effect consecutively, or there is adequate guideline in legislation for the Court to enable it to address this issue within a framework, we are willing to give consideration. We will consider including this factor when we introduce legislation to this Council in the second quarter.

PRESIDENT (in Cantonese): Last supplementary question.

DR RAYMOND HO (in Cantonese): One of the factors causing traffic accidents, as mentioned by the Secretary, is related to road facilities, design and obstructed sightline. I would like to ask if the Secretary has noticed that many road signs are being obstructed by trees or completely obstructed. On the other hand, many road signs are inconspicuous at night because of the lack of lighting. Even green road signs are not illuminated, and sometimes, the same goes with the blue ones. Furthermore, drivers tend to follow some road signs while driving, but they might find some road signs discontinued after covering a certain distance. Regarding these issues, has the Government paid them any attention, and conducted reviews and introduced improvements continuously? Such
reviews and improvements are made in overseas countries. However, even if these problems are spotted in Hong Kong, they will still exist after many years. I would like to call on the Secretary to examine this issue.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, insofar as road design or signage is concerned, the Government has some guidelines and follows international standards. We have complied with them completely. I believe, under specific circumstances and in certain places, be they traffic accident black spots or general improvements, we will conduct review and take follow-up action from time to time, particularly with respect to the trimming of trees. The Highway Department has put in place a regular system for compliance. We will continue to monitor the work in this aspect closely.


Prescription of Drugs for Public Hospital Patients

2. MR ALAN LEONG (in Cantonese): President, many different patient groups have complained to me that newer drugs with fewer side-effects on the market are not listed on the Hospital Authority Drug Formulary (the Formulary) in a timely manner, or listed as third-line drugs, thus patients who have to take such drugs are not subsidized. Some of the complaints are from patients suffering from Thalassaemia who have pointed out that at present patients with Thalassaemia major of the Hospital Authority (HA) are only prescribed first-line and second-line drugs on the Formulary, which may cause severe side-effects, and doctors of public hospitals rarely prescribe Deferasirox, which is a third-line drug for treating Thalassaemia and has fewer side-effects. In this connection, will the Government inform this Council whether it knows:

(a) the number of times that Thalassaemia patients of public hospitals were prescribed Deferasirox in each of the past three years and for how long on average the drug prescribed lasted; whether the HA will list Deferasirox as a first-line drug for the treatment of Thalassaemia; if it will, of the specific timetable; if not, the reasons for that;
(b) the details of the clinical guidelines for doctors of public hospitals to determine if Deferasirox should be prescribed; if the HA will review and amend the contents of the guidelines to allow more Thalassaemia patients to be prescribed the drug; and

(c) if the HA will consider inviting representatives from patient groups to sit on the Drug Advisory Committee (DAC), so that the Committee will take into account the views of patients when considering introducing new drugs; if it will, of the details; if not, the reasons for that?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, the HA's drug policy is to ensure equitable access by patients to cost-effective drugs of proven efficacy and safety through implementation of the Formulary to standardize the drug policy and drug utilization in all HA hospitals and clinics. The guiding principle of the Formulary is that public resources should be utilized with maximal effect to provide equitable access to health care services by all patients. It is also based on the principles of evidence-based medical practice, targeted subsidy and opportunity cost, as well as considerations of patients' choice. My reply to various parts of the question is as follows:

(a) At present, the following three drugs in the Formulary are used for iron chelation therapy for Thalassaemia patients. These three drugs are classified as General or Special Drugs and covered by standard fees and charges which are highly subsidized. Patients who meet the specific clinical conditions and require the drug for treatment would be prescribed the drug by doctors and provided with the drug at standard fees and charges by the HA.

The first one is Desferrioxamine (DFO), which is an injection drug classified as General Drug (that is, drugs with well-established indications and effectiveness which are available for general use as indicated by the relevant clinical conditions of the patient) in the Formulary. The drug is currently recognized by the medical profession as an efficacious, safe and reliable iron chelating drug. There are also established scientific evidences on the long-term efficacy of the drug on patients' survival. Serious side-effects caused by the use of DFO are not common. Some of the side-effects may also be observed in patients using other drugs, such as Deferasirox. At present, DFO is still the so-called "gold
standard " drug for iron chelation therapy from the perspective of doctors.

The second one is Deferiprone, which is an oral drug and its registered indication specifies it as a second-line drug after DFO. It is classified as Special Drug (that is, drugs to be used under specified clinical conditions with specific specialist authorization) in the Formulary. Patients who cannot adapt to injection or are not suitable for treatment with DFO because of side-effects or other clinical reasons can shift to Deferiprone or use DFO alternately with Deferiprone. HA patients who cannot adapt to injection are widely prescribed Deferiprone. Deferiprone has similar efficacy as DFO and has cardio-protective function. But Deferiprone may cause cytopenia under few individual circumstances.

The third one is Deferasirox. Like Deferiprone, Deferasirox is also an oral drug. It is classified as Special Drug in the Formulary. Patients whose clinical conditions are not suitable for the use of DFO and Deferiprone can be prescribed Deferasirox.

Some research findings show that Deferasirox is not superior to DFO in terms of efficacy in iron chelation therapy for Thalassaemia in general. Deferasirox may also have the side-effect of damaging renal functions. Deferasirox has only been in the market for a short time. Its long-term efficacy and safety remain to be observed and require accumulation of further data to prove.

The HA included Deferasirox into the Special Drug category of the Formulary in January 2009 officially. As at September 2009, 354 patients in the HA have been prescribed a first-line drug, DFO; 227 with a second-line drug, Deferiprone (of which 121 use DFO in combination with Deferiprone); and 12 with Deferasirox. In general, patients who are prescribed Deferasirox will continue to use this drug.

Doctors will closely monitor the clinical conditions of patients after prescribing the drugs and make suitable adjustments to the treatment plan in the light of the clinical conditions and treatment needs of the patient.
(b) It is clearly stated in the HA's clinical guideline for Deferasirox as follows:

"Patients with Thalassaemia major or transfusion-dependent patients with iron overload fail Desferrioxamine and Deferiprone due to significant side effects including severe allergy/bony dysplasia/osteonecrosis/neutropenia/agranulocytosis."

The HA has issued the guideline to doctors of various clusters. Patients who meet the specific clinical conditions specified in the guideline would be provided with the drug at standard fees and charges.

The HA reviews the treatment guidelines from time to time in the light of the development of the drugs and scientific evidence. Having regard to the development of various treatment approaches, the HA has revised the guidelines for iron chelation treatment for Thalassaemia in 2004 and 2009.

(c) The DAC of the HA is a professional structure comprising doctors, clinical pharmacologists and pharmacists. The DAC mainly assists the HA in appraising new drugs using professional principles in medicine and science. Its meetings involve professional consideration and discussion of issues requiring scientific and clinical analysis. Moreover, the HA has in place a regular consultation mechanism and holds a patient consultation meeting on the Formulary once a year to directly listen to the views of patient groups on the introduction of new drugs by the HA. Patients are also invited to submit their views in writing to the HA. Furthermore, the HA maintains communication and liaison with patients through other channels such as regular gatherings, newsletters and talks to listen to their views on the introduction of new drugs. After receiving patients' views, the HA will follow up and reflect their views to the relevant drug assessment and review committees.

**MR ALAN LEONG** (in Cantonese): *President, the Secretary has made it clear in part (b) of his main reply that as stated in the HA's clinical guideline for Deferasirox, patients will only be prescribed Deferasirox, a third-line drug, after*
having side-effects such as bony dysplasia and osteonecrosis with prescription of first-line and second-line drugs. Does the Secretary know that in 28 countries, including Macao, Taiwan, South Korea and Australia, patients have been provided with Deferasirox by their governments free of charge? Moreover, an international organization on Thalassaemia has also listed Deferasirox as a first-line drug. I wish to ask the Secretary, as many countries and the international organization concerned have already listed Deferasirox as a first-line drug, does it show that the standard adopted by Hong Kong in determining which drugs should be listed as General Drugs is too strict?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, regarding the problems faced by patients with Thalassaemia and the views of specialists in Hong Kong, I have met and discussed with them in person for several times over the past year. Of course, as they all know, the data of this drug may be accumulated gradually in other places, so as to give them a better understanding. But this drug has, after all, emerged in the market for four years only. Therefore, they still have reservation about its overall and long-term efficacy. Moreover, they consider that basically, the efficacy of this drug is more or less the same as that of the first-line and second-line drugs. Some side-effects, which the first-line and second-line drugs have, are not found in this drug. However, this drug also has its own side-effects. As shown in a research, 26% of patients will have digestive discomfort while 7% will have skin allergy after taking it — this figure is relatively high. Apart from this, a minority of patients may also have complications such as renal failure. Therefore, after discussion, they agree to review it from time to time and take patients' views into account whenever necessary, such as prescribing other drugs for them.

However, I believe that most importantly, the efficacy and the long-term effectiveness should be taken as our objective. In particular, if these patients are not treated properly, once there is an excessive accumulation of iron in their bodies, their hearts will easily be affected and their lives may also be endangered. As a matter of fact, most patients with Thalassaemia die earlier than ordinary people. We are particularly concerned about this.

I understand that some Honourable Members wish to strive for better services for patients. However, they should also understand that our doctors have the same wish to cure patients or stabilize their condition expeditiously.
Therefore, they also have certain work objectives to follow. If the efficacy of a drug is superior to that of other drugs, I believe that they will prescribe it without doubt.

MR CHAN HAK-KAN (in Cantonese): President, the mechanism of the Formulary has in fact been in place for quite a long period of time. According to my information, a relatively large-scale review has been conducted once. However, as we can see, there are different views regarding the mechanism of the Formulary in society. Some people think that it is in lack of transparency. Some even think that we had better abolish such a mechanism. I wish to ask the Secretary, will he conduct any large-scale review on the mechanism of the Formulary again in the coming days, so as to respond to various views in society?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, any responsible government, particularly those having a large public health care system, will have the mechanism of the Formulary in place. In this regard, we should of course conduct reviews frequently. In fact, it is the HA's practice to conduct regular reviews each year. If there do emerge new drugs with special and excellent efficacy in the market, they will also review expeditiously to consider whether such drugs should be used. Many targeted drugs or anti-cancer drugs currently being prescribed are examples. Therefore, they will conduct reviews frequently in this regard. At the same time, we will also review under what situation patients can be subsidized to use some expensive drugs, with a view to extending the safety net. This is what the Government has committed to review.

As for the entire system, given its proven effectiveness in principle and operation, we do not find it necessary to make any substantial change. As a matter of fact, even our nation, which is currently conducting a health care reform, has also consulted us on the Formulary, with a view to adopting it widely there.

DR PAN PEY-CHYOU (in Cantonese): President, my supplementary question is in fact similar to that put forth by Mr CHAN Hak-kan. At present, many drugs which are relatively expensive do have proven efficacy and can bring about improvement to patients' living. However, they are not accepted as General or Special Drugs. At present, a few medical instruments or accessories can be
procured through some special funds, such as the Samaritan Fund, while most of the drugs should be paid by patients at their own expense. As for those patients living in poverty, it is in fact impossible for them to obtain these treatments. Under such a situation, why does the Government not consider providing grants under the Comprehensive Social Security Assistance (CSSA) to subsidize patients to use some drugs which are relatively expensive, or providing government allowances to those poor people not receiving CSSA?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, first of all, according to my understanding, CSSA does not include any medical assistance itself. It is because, basically, CSSA recipients can enjoy free treatment in public hospitals and the HA. As for providing them with assistance for each drug or a safety net, the Government is currently reviewing how to enhance the effectiveness of such a safety net with our limited resources. Each year, we will also allocate more funding to organizations such as the Samaritan Fund, with a view to providing subsidies to more patients.

As mentioned by Honourable Member, for those drugs with proven efficacy, we should classify them as first-line drugs or General Drugs. In fact, this is what we are doing every year. I think Dr PAN should also know that over the past few years, we have classified some psychotropic drugs as General Drugs. Of course, there may be new drugs each year or each month. However, we should analyse them in a relatively balanced or objective manner, especially for those new drugs. It is because their efficacy may be exaggerated during the sale. In fact, they may have some side-effects or even give rise to other complications, which can only be identified later. As such, we should be extremely cautious in applying any new drug. We should not make a decision by merely taking financial factors into account. Rather, before deciding which drug should be listed in the Formulary, we should view from the perspective of its efficacy and see if it can bring about benefits to patients largely.

PRESIDENT (in Cantonese): Dr PAN, which part of your supplementary question has not been answered?

DR PAN PEY-CHYOU (in Cantonese): I wish to ask the Secretary …..
PRESIDENT (in Cantonese): Dr PAN, you can only repeat the part of your supplementary question raised just now which has not been answered by the Secretary.

DR PAN PEY-CHYOU (in Cantonese): The Secretary has not answered why the Government does not consider subsidizing patients to use these relatively expensive drugs under the CSSA.

PRESIDENT (in Cantonese): Dr PAN, I think the Secretary has already answered.

DR LEUNG KA-LAU (in Cantonese): I wish to follow up part (b) of the main reply given by the Secretary, that is, the HA's treatment guideline. I wish to ask, is it the case that the HA's guideline has not taken patients' living quality into account? In other words, is it the case that better living quality is not a factor to determine whether a certain drug will be used or not? What I mean is that if you consider a drug effective and find its side-effects also acceptable after comparing it with other old drugs, is it the case that the HA will not take the implications of using the new drug or those old drugs on patients' living quality into account again? I wish to ask the Secretary about this as I find that living quality has not been mentioned here.

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, I think Dr LEUNG should be well aware that, apart from curing diseases, doctors should also be concerned about patients' living quality and style, and see if they can lead a normal life during the treatment. I believe that all health care personnel should have such a mentality, and thus, there is no need to state it in the guideline each time. I have discussed with medical experts on Thalassaemia, who consider that each drug has its own merits and demerits. After taking some drugs, especially those second-line and third-line drugs, patients should have blood tests more frequently to maintain their stability. Thus, they always have to go to hospitals for blood tests. This is also one of the considerations. Therefore, we should strike a balance and it is most desirable for doctors and patients to determine
which drug is suitable for use through their mutual communication. We, being in charge of administrative matters, should not be involved in making such a decision.

PRESIDENT (in Cantonese): Last supplementary question.

MS AUDREY EU (in Cantonese): President, I also wish to follow up Dr LEUNG Ka-lau's supplementary question on patients' living quality. I think the Secretary should know that three drugs are listed here, but only the first one, DFO, is classified as General Drug. However, I think the Secretary should also know that patients using this injection drug have to be injected for at least 10 hours each night and their skin will fester as a result. Very obviously, this has affected patients' living quality. However, only this drug is listed as General Drug, while the other two are listed as Special Drugs, being classified as the second-line and third-line drugs.

In the main reply given by the Secretary relating to the guiding principle of the Formulary, he remarked that public resources should be utilized with maximal effect to provide equitable access to health care services by all patients. He then mentioned some considerations such as opportunity cost as well. However, he has not mentioned patients' living quality at all. Although he has said that such consideration has been taken into account when responding to Dr LEUNG Ka-lau just now, my supplementary question is: As he knows that DFO, a first-class drug being classified as General Drug, will have such implications on patients' living that they have to be injected for at least 10 hours every night and their skin will fester as a result, why is only this drug classified as General Drug, while the other two …… As mentioned by Alan LEONG just now, 28 regions have already classified Deferasirox as a first-line drug? Why is Hong Kong lagging so far behind in this regard? Is it really the case that we are just concerned about money, focusing on opportunity cost and resources only? In particular, as for this drug ……

PRESIDENT (in Cantonese): Ms Audrey EU, please raise your supplementary question concisely.
MS AUDREY EU (in Cantonese): …… only $2.3 billion has been injected in drugs, accounting for 7% of the total expenditure of $32.7 billion of the HA. I would like to ask the Secretary, is it the case that the HA is unwilling to list Deferasirox as General Drug because of some financial considerations? Does it simply ignore patient's living quality?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, I have answered in the main reply that DFO, currently being a first-line drug, is a very reliable drug from the perspective of doctors. It has proven efficacy on patients for iron chelation therapy. This is also their so-called "gold standard".

As for the other two lines of drugs, the cost for using Deferiprone and DFO is comparable, and basically, there is no difference in terms of expenditure. It can be said that the selection of either DFO or Deferiprone is solely based on patients' needs. Regarding Deferasirox, as I have also mentioned just now, although it is expensive — nearly ten-fold more expensive as compared with the other two lines of drugs — it is a relatively new drug and has some side-effects which the other two drugs do not have. Of course, it also has its merits. Therefore, if we solely consider whether it is an injection or oral drug, there is basically no difference between the first-line and second-line drugs in terms of price. Price is not a factor of consideration in selecting these drugs.

PRESIDENT (in Cantonese): Third question.

Regulation of Private Columbarium Facilities

3. MR KAM NAI-WAI (in Cantonese): President, as there is keen public demand for columbarium niches, some temples such as Sai Lam Temple, Memorial Park, Yan Hau Ancestral Hall and Chuk Lam Sim Yuen operate columbarium facilities in their premises. It has been reported that the Lands Department has recently issued warning letters to the persons in charge of such premises, pointing out that they are in breach of the terms of land leases and demanding them to stop operating the facilities, and it is estimated that nearly 10 000 people who bought columbarium niches are affected. In this connection, will the Government inform this Council:
(a) of the current total number of public columbarium niches in Hong Kong, and list out by district (Hong Kong Island, Kowloon and the New Territories) the respective locations of the churches, temples and Taoist monasteries where columbarium niches are provided, whether the premises concerned are providing such services legally, the current shortfall in the supply of columbarium niches, as well as the estimated shortfall in this regard for the next 10 years;

(b) of the name list of the premises where the operation of private columbarium facilities has been substantiated to have breached the terms of the land leases concerned, details of the breaches, the number of columbarium niches provided by them and the number of those affected; whether it has assessed if the keeping of the ashes of their deceased relatives by members of the public in coffin shops and stone factories as well as at home is in breach of the land leases and the deeds of mutual covenant of the residential buildings concerned and against the law; if such an assessment has been made, of the results; and whether the various Policy Bureaux and government departments (including the Lands Department and the Food and Health Bureau) will standardize the legal definition of "human remains" for compliance by members of the public and the trade; and

(c) of the options to address the problem and assist the aforesaid affected members of the public; the Government's plan to assist private bodies and organizations (both profit-making and non-profit-making) in providing columbarium niches legally, and how the Government deals with the objections raised by local residents to the construction of columbarium facilities in their districts?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, the operation of various trades in Hong Kong, including that of private columbaria, must be in compliance with statutory requirements, including the requirement for business premises to comply with land use zoning. In addition, the use of the land must not be in breach of the terms of the land lease. Apart from this, as human ashes do not give rise to public health and environmental hygiene concerns, the Government does not impose any specific regulation on the
operation of private columbaria, nor do we have complete statistics or data regarding them. Our reply to the three parts of the main question is as follows:

(a) There are about 167,900 public columbarium niches in the territory, all of which have been allotted. Out of the some 341,700 columbarium niches provided in cemeteries managed by the Board of Management of the Chinese Permanent Cemeteries (BMCPC) and various religious bodies, about 39,000 niches are not yet allotted. In July 2009, funding approval was obtained from the Finance Committee of the Legislative Council for construction of a new public columbarium within the Wo Hop Shek Cemetery. The project will provide some 41,000 new columbarium niches, which can accommodate about 82,000 urns, for use in 2012. Apart from public niches, about 21,000 newly-built niches will be provided in cemeteries managed by the BMCPC and Catholic, Protestant, Buddhist and other religious bodies in the next two years as projected at the present stage.

The Government does not have complete statistics on the number of niches provided on premises managed by private entities including temples and Taoist monasteries.

Based on past data, the annual total numbers of deaths and cremations in the next 10 years (from 2010 to 2019) are estimated to be about 47,700 and 43,900 respectively. As the demand for public columbarium niches hinges on a number of different factors, such as public acceptance of scattering cremains in Gardens of Remembrance or in designated waters, public demand for private columbarium facilities, and so on, projecting the shortfall presents some real difficulties.

However, it should be pointed out that the public can make better use of the existing public niches, which, depending on their types, can accommodate two to four urns for holding the ashes of deceased persons with kinship.

(b) The Government does not have complete statistics or data on private columbaria, nor do we have a list of private columbaria the operation of which has been substantiated to be in breach of requirements. The land leases referred to in the question were made between the
Government and the landowners, who are required to ensure that the use of their land is in compliance with all the requirements in the land leases. As advised by the Development Bureau, the formulation of a land lease is targeted at the land use and not for the purpose of imposing regulation on any individual trade. As a matter of fact, given that there are an enormous number of land leases, and the areas and uses of the land involved are extensive, it is not possible for the government departments concerned to conduct regular inspection of all private land. However, upon receipt of a complaint about a breach of land use requirements stated in land leases, the Lands Department will deploy its staff to carry out inspection on the site concerned. Legal advice will be sought in light of the actual circumstances and follow-up action taken as appropriate. Such arrangements are applicable to all land leases, including those involving private columbaria.

On the definition of "human remains", the subsidiary legislations relating to cremation and Gardens of Remembrance, public cemeteries and public funeral halls under the Public Health and Municipal Services Ordinance state that "human remains" does not include ashes resulting from the cremation of dead bodies. However, such a definition is laid down for the purpose of the relevant legislation only and is not applicable to the interpretation of "human remains" in the terms of private contracts. As a matter of fact, tenancy leases, land leases or deeds of mutual covenant are private contracts and the interpretation of "human remains" under private contracts should be made in accordance with the rules of interpreting private contracts and must not be treated regardless of the context.

(c) The Government fully understands the concern of the public about private columbaria and will handle the issue carefully.

As regards the purchase of private columbarium niches, under normal circumstances, members of the public can pursue their claims under the Law of Contract if they consider that providers of private columbarium niches are in breach of the sale and purchase contracts. We call on the public to ask the sellers of columbarium niches to provide them with full and complete information to, among other
things, ensure that the columbarium niches are in compliance with the relevant legislation and land lease requirements before buying the columbarium niches. They should also seek professional advice where necessary. Those who already bought columbarium niches should contact the providers of columbarium niches direct to find out how they would, in the event that there is a breach of the relevant legislation or land lease requirements, deal with the hirers or buyers of the columbarium niches, such as whether they would make a refund of the fees paid to the hirers or buyers of columbarium niches. To enhance the public's confidence, the Government will look into ways to increase the transparency in this regard in joint efforts with the trade by, for instance, setting up a voluntary registration system to make the information more transparent with a view to enhancing consumer protection.

As advised by the Development Bureau, at present, where an application is made to the Town Planning Board (TPB) for planning permission or change of land use in connection with the provision of a private columbarium, the TPB will conduct public consultation on the case in accordance with the statutory procedures laid down in the Town Planning Ordinance upon receipt of the application. Where landowners apply for regularizing a breach of land lease requirements, the Lands Department will normally seek the views of the relevant Policy Bureaux and government departments and then consider each application in light of the actual circumstances of each individual case.

**MR KAM NAI-WAI** (in Cantonese): *In part (b) of the main reply, the Government relates the legal definition of "human remains" to private contractual disputes but in the last paragraph, it is pointed out that the Government will set up a voluntary registration system. How exactly is this so-called voluntary registration system going to work? Can an operator be registered as a legal operator if "human remains" are allowed in the land lease? Will the Government reconsider its legal definition and put in place a genuine licensing system to formally impose regulation on the trade, so that there will be rules for the public and the trade to follow?*
SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, taking an overview of columbaria in places all around the world, we can see that there is no specific statutory regulation in most of the places. As for the legal definition, as I have said very clearly, "human remains" do not include human ashes under the Public Health and Municipal Services Ordinance. Human remains other than those in the form of ashes will, in our view, give rise to public health and public safety concerns and statutory regulation is, therefore, necessary. In this connection, if we purely look at it from the angle of columbaria, we consider that we should make use of …… sorry, President, I am not sure if it is me or someone else ……

(Interference noises kept on being heard)

PRESIDENT (in Cantonese): Secretary, do you have an audible device with you?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): I turned it off already …… Where was I? (Laughter) The main purpose of the voluntary registration system is to facilitate compliance with the terms of land leases by these premises and in the meantime, the decision is made on the principle of consumer protection. I think these two principles are very important.

PRESIDENT (in Cantonese): We have spent over 11 minutes on this question. Members can see that many Members are waiting for their turn to ask a question. Members please be as concise as possible when asking your questions.

PROF PATRICK LAU (in Cantonese): President, the Government has agreed that members of the public are very concerned about private columbaria, and the number of columbarium niches cannot meet the needs of the public. According to the last paragraph of the main reply, the Development Bureau pointed out that each application would be considered in the light of the actual circumstances of each individual case. Is it an appropriate time now to examine the general policy to, for instance, modify the land lease, so as to enable the public to use these columbarium niches by, say, paying a premium?
PRESIDENT (in Cantonese): Which Secretary will give a reply?

SECRETARY FOR DEVELOPMENT (in Cantonese): The supply of land in Hong Kong is to meet the economic and social demand. The Administration appreciates that it may not be adequate to rely solely on the public sector in the provision of columbarium niches. Therefore, we will provide support in terms of the policies on land and planning. Take the approvals given by the TPB as an example. Over the past three years, a total of nine applications for planning permissions or even change of land use for providing columbarium facilities were received from the private sector, mostly from religious bodies, and all the nine applications were approved. If the land lease does not allow use of land for columbarium facilities, the Lands Department will provide support by modification of lease conditions. Certainly, this will be done on the condition that such modification for providing columbarium facilities is supported by society whether from the angle of planning or land, because we must have regard for the reaction of the public. If, as suggested by Prof LAU, the Government goes further from the planning angle by proactively planning the use of some lands for providing columbarium facilities, it would give rise to the difficulties that Secretary Dr CHOW has shared with Members when answering similar questions before. In fact, there have been many cases where plans on building columbaria and crematoria had met opposition from the locals. That said, we will make continuous efforts in this regard.

PRESIDENT (in Cantonese): Prof LAU, which part of your supplementary has not been answered?

PROF PATRICK LAU (in Cantonese): I am asking whether it is now an appropriate time to study and draw up a policy for co-ordination, rather than considering the applications on a case-by-case basis.

PRESIDENT (in Cantonese): Secretary, do you have anything to add in respect of a policy for co-ordination?
SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, as I said in the main reply, we are now looking into a voluntary registration system in the hope that it can protect particularly the information for and interest of consumers.

MR TAM YIU-CHUNG (in Cantonese): President, the Secretary has been to Japan recently for a field study on the columbarium facilities there. I would like to know what insights or experiences have been gained to help find a solution to this problem.

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, I think I do not have the time to explain our observations in detail. But firstly, there is a law in Japan which requires all persons to be cremated after they died and so, burial is not an option. This is very special and rigid. I think Hong Kong people may not accept it. Secondly, the columbaria or cemeteries there all charge an annual fee, and this is particularly so for places where human ashes are kept. In the event of default in payment, the ashes will be relocated to a public facility after a default period of about five years, in which case some space can then be vacated. But in spite of this, and as Members may learn from press reports, there is also the option of providing columbarium facilities in high-rise buildings and I am also paying attention to it, a lot of ashes are still put in warehouse waiting for relocation. I think all metropolises are facing this problem. So, we must be very careful in making any policy proposals and we must consider whether or not such proposals are in line with the culture, religion or various traditional customs of Hong Kong people.

MR FRED LI (in Cantonese): President, during some recent discussions, the Government provided us with some figures projecting that there will be 430 000 applications for cremation in the next decade, which means about 43 000 applications per year. However, the total number of columbarium niches provided by the Government and non-profit-making organizations (including religious bodies) falls far short of the demand. The shortfall, which is as many as 200 000 to 300 000 niches, has to be met by the private sector. The problem is that the Government now says very clearly that it is not going to impose regulation because human ashes which were cremated at high temperature do not give rise to any hygiene concerns. I would like to ask the Government this: If it is necessary to rely on the private sector to provide these 200 000 to 300 000
niches but the Government is not going to impose any regulatory and licensing requirements on them which means giving them a free hand to develop, is the Government not being irresponsible?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, I have also made reference to the legislation and regulatory systems in many countries and I can say that very few countries have in place a licensing system for columbaria. Having said that, we do consider it necessary for Hong Kong to protect consumer interest, and the voluntary registration system that I have just mentioned can serve this purpose.

MISS TANYA CHAN (in Cantonese): Insofar as the residence for the living people is concerned, the housing policy is within the ambit of Secretary Eva CHENG, and we have public rental flats, private flats, the Waiting List, and squatter huts. But insofar as the residence for the deceased is concerned, some situations have arisen because the Lands Department seemed to have taken some legal actions some time ago, and I wonder if those columbarium niches affected are equivalent to squatter huts for the deceased and whether there is also a Waiting List for them. However, from the reply to this oral question today or that to a written question asked by me, there is no mention of any long-term policy.

Some years ago there was the policy to build 85,000 flats for the living people. Certainly, Members have their own judgment on whether this is good or bad. But has the Government considered formulating a housing policy of building 85,000 niches for the deceased? As the Secretary said earlier, he has been to places outside Hong Kong to look at their facilities. In fact, Taiwan does have a policy in a longer term covering just about six years ahead.

PRESIDENT (in Cantonese): Please be concise in asking your question.

MISS TANYA CHAN (in Cantonese): In this connection, apart from a policy of voluntary participation, will a long-term housing policy be drawn up to provide a home for the deceased?
SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, as land is indeed scarce in Hong Kong, every time when we ask to provide space for these services, I must say that there is always much hassling at the level of District Councils. So, apart from actively making continuous efforts to identify sites for columbarium facilities, we also have to respond to the needs of the public, as they may need to put the ashes in nunneries or temples or religious venues. As also mentioned by Secretary LAM, we will work with the aim of meeting the demand in society. For instance, we will grant land or permission for the provision of such services. So, we hope that this can be done with involvement from both the public and private sectors.

As to whether a target should be set or a certain number of columbarium niches should be provided, this has to depend on how Hong Kong people think the ashes should be handled in the future. Nowadays, more and more people consider the options of scattering the ashes in Gardens of Remembrance or sea burial, and we can see that the number has started to increase year after year. Although the number is still on the low side, I think this culture will persist. Besides, many people are now sending the bodies of their deceased relatives to the Mainland for burial in some more spacious cemeteries there. So, while we must endeavour to identify suitable places in Hong Kong, we must also allow choice of free will.

We, therefore, do not set a specific target of building a certain number of niches annually in each district for the time being. Certainly, we can discuss this in the District Councils but I think before a proposal is made, we must clearly analyse how we can meet the demand of Hong Kong people. To this end, a working group has been set up. I am responsible for co-ordinating the work of this working group which is currently conducting studies.

PRESIDENT (in Cantonese): We have spent over 20 minutes on this question. I cannot possibly allow all Members in the queue to ask their questions. They have to follow up this issue on other occasions.

In his response the Secretary said "庵堂廟宇" (meaning nunneries and temples) and he correctly pronounced the character "庵" as "庵" (m1), while the character "龕" (meaning a niche) should be pronounced as "龕" (mm1), and Miss Tanya CHAN pronounced it correctly.
Banking Services Provided by Note-issuing Banks

4. **MR ALBERT CHAN** (in Cantonese): President, I have recently received complaints from quite a number of members of the public pointing out that instead of setting up branches or providing self-service banking facilities in remote areas, some note-issuing banks (NIBs) have continued to close branches and self-service banking facilities recently, causing great inconvenience to residents of the districts. In this connection, will the Government inform this Council:

(a) whether it knows the number of branches and self-service banking facilities set up by the various NIBs in Hong Kong in each of the past four years, and whether it has assessed if these banks have an obligation to provide adequate basic banking services for members of the public;

(b) given that NIBs have continued to reduce the number of branches in recent years, whether the authorities will reconsider revoking the NIB status of such banks; if they will, of the details; if not, the reasons for that; and

(c) given that quite a number of members of the public have indicated that the services currently provided by non-NIBs can serve the needs and interests of the general public better than those of NIBs, whether the authorities will reconsider granting NIB status to such banks; if they will, of the details; if not, the reasons for that?

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

(a) According to the information provided by the Hong Kong Monetary Authority (HKMA), the number of branches and automated teller machines (ATMs) maintained by the three NIBs did not exhibit great change during the past four years. As at end October 2009, the three NIBs maintained a total of 413 branches, which was slightly less than the relevant number of 416 as at end 2006. The total number of ATMs was 1,364 as at end October 2009, which was up
by 174 from the relevant number of 1,190 as at end 2006. Please refer to Annex for details.

The responsibility of the NIBs is to maintain an effective and efficient network for distribution of banknotes so that banknotes issued by them can be distributed through the banking system in a speedy manner to meet the demand of the public.

As regards the provision of basic banking services, the NIBs are no different from other banks. Decisions made by these banks are all based on commercial considerations.

(b) The main functions of the NIBs are to maintain the stability of Hong Kong’s notes issuance operation and ensure the stable supply of banknotes according to the Legal Tender Notes Issue Ordinance (Cap. 65) and the terms and conditions specified by the Financial Secretary. The NIBs are responsible for safekeeping and handling the withdrawal and storage of banknotes, including the maintenance of an effective and efficient network for distribution of banknotes, to meet the demand for banknotes of the banking system. We are of the view that the current networks of branches and ATMs maintained by the three NIBs are able to meet the demand of the public for banknotes.

(c) Currently, the three NIBs in Hong Kong are able to provide an adequate and stable distribution network of banknotes to the public through their respective networks. We therefore do not see the need to increase the number of the NIBs.

Annex

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ATMs

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<td>1 364</td>
<td>1 337</td>
<td>1 234</td>
<td>1 190</td>
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MR ALBERT CHAN (in Cantonese): I strongly condemn the Government's claim that NIBs "are able to provide an adequate and stable distribution network of banknotes to the public". President, my question is not about the distribution of banknotes but about basic banking services. Basically, the reply of the Secretary is irrelevant.

What I maintain is that NIBs have their basic responsibilities. If the Government says that NIBs are no different from other banks in the provision of services, I think this is a policy mistake. The public expectation is that in the provision of basic services, NIBs should assume greater social responsibility than non-NIBs. If this is true, is the Secretary going to conduct a comprehensive review of the responsibilities of NIBs in this regard at present? NIBs should raise their standard in the provision of social services, in particular, they should assume greater social responsibility in the provision of banking services than non-NIBs do. This is the expectation of the public. Residents in Tin Shui Wai and Tung Chung cannot find any branch even after walking for a mile but in Central, there are four banks in just one street corner ……

PRESIDENT (in Cantonese): Mr Albert CHAN ……

MR ALBERT CHAN (in Cantonese): …… in Central, there are four banks in just one street corner, so is this discrimination against people in the districts and the poor?
PRESIDENT (in Cantonese): Mr Albert CHAN, your supplementary question is already very clear.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Under the existing Banking Ordinance, we have no power to request NIBs to provide basic banking services. The provision of basic banking services is a commercial decision, as is the case for other commercial banks. However, this does not mean that we do not understand or do not care about whether adequate banking services are available to the grassroots or some remote areas. Over the past two to three years, we have liaised with a committee under the Hong Kong Association of Banks (HKAB) and put forward quite a number of proposals, in the hope of easing the need for banking services in remote areas. Among them are the provision of additional ATMs and the provision of cash withdrawal service at such places as supermarkets and convenience stores. We are continually making efforts in this regard.

MR ALBERT CHAN (in Cantonese): President, the Secretary has not answered my supplementary question at all. I am asking the Secretary if she will review the responsibility of NIBs since the public have greater expectation for them. And it is because NIBs are not providing these services. I am asking her to conduct a review. Is she going to do so? The Secretary did not answer my supplementary question at all.

PRESIDENT (in Cantonese): Secretary, please reply as to whether a review will be conducted.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): The responsibility of NIBs is to distribute banknotes in an efficient manner. We think that they have already fulfilled their responsibility. They are all major banks and we will encourage them to assume social responsibility.

MR CHAN KIN-POR (in Cantonese): No matter if banks are NIBs or not, since they open or close branches based on commercial principles, in fact, this does not pose any major problem. However, at present, there is a realistic problem, that is, residents in remote areas really have to travel long distances before they can
get banking services. Moreover, the situation is worsening. In view of this, has the Government introduced any measure to encourage banks to take into account their social responsibility when deciding to open or close branches? I am not referring just to NIBs, nor am I asking the Government to adopt the approach of guidelines. Rather, I am talking about how to encourage them, so that all banks will understand that in fact, they have their social responsibility?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): I agree very much with this opinion and we will take measures to encourage banks, in the hope that they will understand their social responsibility. For this reason, in the past two to three years, we have continually held meetings with them. In particular, we hope that when deciding to close branches, they can consider their responsibilities in this regard. In addition, the HKAB also came to the Panel on Financial Services to report on, among other measures, how to link up the two ATM networks or further extend the cash withdrawal service to include more convenience stores. In this area, we are constantly giving them encouragement and conducting reviews.

MR TAM YIU-CHUNG (in Cantonese): President, in fact, this issue has been disputed for many years and when Mr Frederick MA was serving as the Secretary, I asked him about this issue and he also made some proposals, one of them being to request NIBs to establish branches in remote areas but unfortunately, the Government said again that this could not be done and there was little it could do. In addition, we also proposed that deposit service and other banking services be provided in post offices and he also agreed to consider them at that time. However, subsequently, it appeared that this was also infeasible. In fact, such arrangements can also be found in overseas countries. It is also proposed that the Government provides venues in some shopping centres, in particular, in the shopping centres under the management of the Housing Department (HD), so as to attract and encourage banks to provide ATMs. However, it seems that the overall effectiveness is limited. In remote areas and to CSSA recipients in particular, the lack of banking services is really a misery. In this regard, is it not really necessary for the authorities to think of more ways? This is because the present figures provided are very disappointing.
SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, in fact, the committee under the HKAB has also examined the several methods put forth by Mr TAM just now, including the provision of more ATMs in housing estates managed by the HD and banks also have guidelines and practices in this regard. In particular, when banks close their branches, they will provide more ATMs. Such a measure has been taken. The HD has also arranged, in particular, to consider reserving some shops and if banks want to rent them, they will be given priority. But ultimately, this is a commercial decision after all. As regards post offices, the HKAB has also conducted a study together with us but at present, post offices do not have the power to take deposits from customers, so this presents some difficulties.

MR PAUL CHAN (in Cantonese): It so happened that my supplementary question has just been raised by Mr TAM Yiu-chung, so there is nothing else that I want to ask.

MR WONG KWOK-HING (in Cantonese): President, I wish to ask the Government about the social responsibility of banks in respect of the existing mutual aid committees (MACs), in particular, the MACs in housing estates. They are all units serving the grassroots but when they open accounts, banks regard them as business organizations and if the balance of their accounts falls below $5,000, a surcharge would be imposed. However, MACs only receive $1,000 subsidy from the Government each quarter and they do not have any other funding. At present, with a government letter issued by the Home Affairs Bureau, individual NIB would exempt MACs from the requirement that a surcharge would be imposed on them if their deposit falls below $5,000. However, not all NIBs or banks have adopted this arrangement to show their social responsibility. In addition, it is not common for those banks, particularly those NIBs, to establish branches in housing estates, so it is difficult for MACs to open accounts in banks nearby. In view of this, may I ask the Government if it can encourage and appeal to all banks (not just NIBs) through the HKAB to waive the requirement that a surcharge would be imposed on MACs across the territory if the balance of their accounts falls below $5,000? In fact, concerning those sums of money, it is little by little that residents …….
PRESIDENT (in Cantonese): Mr WONG, your supplementary question is unrelated to the main question.

MR WONG KWOK-HING (in Cantonese): President, it is in view of the response of the Government that I talk about the social responsibility of banks. In remote new towns, particularly in housing estates, many MACs serving local residents have precisely such a service need.

PRESIDENT (in Cantonese): The relationship as explained by you is tenuous (Laughter) but let me see if the Secretary has anything to add.

MR WONG KWOK-HING (in Cantonese): If what I said is justified, the Government should answer my question.

PRESIDENT (in Cantonese): Secretary, are you willing to reply?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, I am willing to answer this supplementary question. Although MACs cannot be considered socially-disadvantaged groups, we have actually encouraged the HKAB to study whether the surcharges imposed on socially-disadvantaged groups can be waived if the balance of their accounts falls below $5,000. The HKAB has also issued some guidelines to members in the banking sector. We understand that most banks will do so with regard to socially-disadvantaged groups or CSSA recipients. Just now, the Member raised a question relating to MACs and I believe that when the HKMA holds meetings with the HKAB, it would raise this issue in particular to see if exemptions can be granted.

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

MR WONG KWOK-HING (in Cantonese): No, I only wish to thank the Government.
MR CHAN KAM-LAM (in Cantonese): President, at present, the competition among banks for business is quite keen and all of them are finding ways to lower their operating costs and this is understandable. Just now, when giving her reply, the Secretary mentioned a series of possible improvement measures, for example, combining the two systems and in many other countries, banks group together in doing business and providing service to customers. I wish to see if the Government will only give its encouragement or it will ask the HKAB to take actual measures instead of just considering them conceptually without being able to implement them for a long time. Will the Government set a timetable, so that the HKAB can take some actual measures, for example, combining the systems or doing business together, so as to solve this problem?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, we will do our best to actively encourage the HKAB to consider the several points raised by Members just now. We will hold meetings with them continually, in the hope that they can think of more innovative ideas or make reference to overseas experience. We will do so as far as possible.

MR RONNY TONG (in Cantonese): President, I do not understand why, whenever the Government mentions issues relating to consortia or major property developers, it would only say "encourage, keep encouraging, further encourage, encourage as far as possible" and why it does not know how to say "regulate". President, our banking industry is subjected to a licensing regime under which all banks have to apply for licences. One of the major conditions is that they have to comply with the Banking Ordinance and the guidelines of the HKMA. At present, we find that there is a serious service problem, so why do the authorities not consider amending the legislation and the guidelines to require all banks to attain a minimum service level, so that Hong Kong people can enjoy these services instead of only the rich being able to use banking services? Why do poor people have to take buses, trams and even trains to use banking services? Why does the Government not do something in this regard?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): If we want to remain as a commercial society, commercial decisions
should be left to the business sector. We can encourage the business sector to show its social conscience and we also believe that banks, in particular, major banks, will listen to Members' views.

MR RONNY TONG (in Cantonese): Why is it that all the Government only knows how to encourage but not how to supervise them?

PRESIDENT (in Cantonese): I believe the Secretary has already replied.

MR ALBERT CHAN (in Cantonese): President, the Government often talks about encouragement, saying that the relevant behaviour is commercial behaviour but it is precisely because this is commercial behaviour that …… according to the main reply of the Government, if we compare the figures last year and this year, 17 branches have closed. President, after encouragement and further encouragement by the Government for so many years, the three NIBs closed a total of 17 branches last year and this year and many of them were located in remote areas in which socially-disadvantaged groups live. Secretary, you should not continue to live in your dream. Due to the lack of supervision by the Government and the lack of guidelines in the government policy on NIBs …… I have stressed time and again that the expectation of the public for NIBs is different from that for the other 100 to 200 licensed banks. What I hope now is that the Secretary ……

PRESIDENT (in Cantonese): Mr Albert CHAN, please put your question.

MR ALBERT CHAN (in Cantonese): …… I hope the Financial Secretary will look into this issue. Concerning the social responsibility of NIBs, will the Government discuss the reasonable division of labour among these three banks in serving various socially-disadvantaged groups or remote areas to ensure that poor or ordinary members of the public do not have to walk for a mile or take some form of transport before they can get to a bank? Will the Secretary stop living in a dream?
PRESIDENT (in Cantonese): Mr Albert CHAN, you are repeating the view you have expressed earlier. Secretary, do you have anything else to add?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, it is true that the numbers of branches of NIBs this year and last year have decreased but we have also noticed that the number of ATMs has increased by 170. In 2009, the total number of branches has increased compared with that in 2007. As in April 2009, there were 1,299 branches, as compared with 1,264 branches in 2007. On the whole, at present, there are different ways of providing banking services, so we should not just look at a particular figure. It is also possible to provide services through ATMs or Internet banking.

MR ALBERT CHAN (in Cantonese): The Secretary has not answered my supplementary question. I am asking her if she can stop dreaming but she continues to do so.

MR RONNY TONG (in Cantonese): President, I do not understand the reply of the Government just now. It seems she meant that there was no need to regulate commercial operation but at present, the products sold by banks, how banks sell them and whether they can sell them are all subjected to regulation. Why is it that in this regard, the Government does not maintain that this is commercial operation and it cannot regulate the services provided by banks? The problem raised by us now is similar in nature. We are talking about the standard of service and this is entirely the same as how banks sell their products and to whom the products are sold. For this reason, I find it totally unacceptable for the Government to claim that since commercial operation is involved, there is no need to impose regulation.

PRESIDENT (in Cantonese): Secretary, please reply as to why regulation cannot be imposed.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): We believe that whether or not a certain commercial service is
adequate involves making a judgment, for this reason, this is commercial behaviour. We are not talking about whether or not the services or certain products offered by banks would affect the stability of banks. If this issue is involved, we would impose regulation. When imposing regulation, of course, we will consider the rights of the public and consumers, but the stability of banks will also be taken into account.

PRESIDENT (in Cantonese): Mr Albert CHAN, you are seeking to raise the third supplementary question.

MR ALBERT CHAN (in Cantonese): President, my supplementary question is ……

PRESIDENT (in Cantonese): Please do not repeat any question that you have raised.

MR ALBERT CHAN (in Cantonese): …… I know that this is related to NIBs and their social responsibilities and they are very different from the other banks that operate on commercial principles. These two should be dealt with separately. President, my question is very clear. I now put the question to the Government again, in the hope that the Financial Secretary can reply because this Secretary is dreaming, so I do not have any expectation for her.

At present, there is a very obvious problem. In remote areas, particularly in poor areas, there is a serious lack of banking services. In particular, people on CSSA have to go to certain banks designated by the Government in order to receive CSSA payments and the shortfall of banking services has affected the living of many members of the public. Concerning the social responsibilities of NIBs designated by the Government, will the Government conduct further reviews of and give further consideration to the social responsibilities of NIBs in the provision of basic services? Financial Secretary, will this issue be re-examined?
PRESIDENT (in Cantonese): The one who replies to this question is the Secretary for Financial Services and the Treasury. Mr Albert CHAN, you are repeating your question. I will see if the Secretary has anything to add.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): I have nothing to add.

MR ALBERT CHAN (in Cantonese): President, since the Secretary is dreaming, I wish to ask a Secretary who is not dreaming to reply to this question.

PRESIDENT (in Cantonese): Mr Albert CHAN, your view is already very clear and this question can only end here.

PRESIDENT (in Cantonese): The fifth question.

Financial Secretary's Power to Appoint Inspectors to Investigate Affairs of Companies

5. MR RONNY TONG (in Cantonese): President, under sections 142 and 143 of the Companies Ordinance (CO), on the application of members of a company with good reason, upon an order made by the Court or a special resolution passed by a company, or if it appears to the Financial Secretary that there are circumstances suggesting those cases stipulated in section 143(1)(c) have occurred, the Financial Secretary may appoint inspectors to investigate the affairs of the company and to report thereon. By virtue of the power conferred by this Ordinance, the Financial Secretary may also directly regulate the operation of Hong Kong companies. In this connection, will the Government inform this Council:

(a) whether the Financial Secretary has applied the provisions to appoint inspectors to investigate the affairs of Hong Kong companies since the enactment of the above sections; if so, of the
dates of such applications, contents of the investigations and summaries of the findings; if not, the reasons for that;

(The President's Deputy, Ms Miriam Lau, took the Chair)

(b) of the criteria, factors of consideration and procedures on which the Financial Secretary at present bases his decisions regarding whether inspectors should be appointed to investigate the affairs of individual companies; besides, when the Financial Secretary is requested by shareholders or members of the public to investigate the affairs of individual companies by invoking the above Ordinance, what criteria and procedures the Financial Secretary adopts for deciding whether he should intervene, and whether he will make public the reasons for making the decision concerned; and

(c) whether the Financial Secretary will exercise this investigation power to make up for the inadequacies of financial regulators in this regard; if so, of the criteria adopted; if not, the justification for that?

Secretary for Financial Services and the Treasury (in Cantonese): Deputy President,

(a) According to our records, the Financial Secretary has in the past invoked sections 142 or 143 of the CO to appoint inspectors to investigate the affairs of 38 companies. The company names and the appointment dates are set out in Annex A. Due to time constraints, we have not been able to verify the findings and outcomes of all the cases. We have listed in Annex B the brief outcome of cases involving 16 companies since 1992.

(b) The Financial Secretary will only exercise his discretion under sections 142 and 143 of the CO if significant or great public interest is involved. The Financial Secretary will consider a number of factors in deciding whether a case involves significant or great
public interest, like the scale and scope of the alleged complaints, the expected difficulties, costs and benefits involved in pursuing the investigation, and the availability of alternative remedies, and so on. If an applicant makes an application to appoint an inspector under section 142 of the CO and the Financial Secretary declines, the Financial Secretary will normally briefly explain the reasons to the applicant.

(c) As explained above, the Financial Secretary will consider whether a case involves significant or great public interest in deciding whether to exercise his discretion under sections 142 and 143. It is worth noting that the Securities and Futures Ordinance (SFO), which took effect in April 2003, gives the Securities and Futures Commission (SFC) more powers to investigate into the affairs of listed companies, and the investigatory powers of the SFC are substantially similar to those available to an inspector appointed under the CO. However, the SFO, being a more recently enacted piece of legislation, gives more specific powers to the SFC and better suits our current needs. Besides, investigations under sections 142 and 143 of the CO are only on the affairs of the company, while the grounds for the SFC to commence an investigation under the SFO are wider, covering irregularities and misconduct which affect the securities market and industries.

Annex A

Cases where the Financial Secretary has invoked sections 142 and 143 of the CO —
Company names and appointment dates

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<td>Mandarin Resources Corporation Limited*</td>
</tr>
<tr>
<td>01-06-1989</td>
<td>Jademan (Holdings) Limited*</td>
</tr>
<tr>
<td>03-12-1986</td>
<td>Asean Resources Limited</td>
</tr>
<tr>
<td>30-07-1985</td>
<td>Val Nominees Ltd.</td>
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<td>30-07-1985</td>
<td>Charic Investments Limited</td>
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<td>30-07-1985</td>
<td>Investment Consolidated Ltd.</td>
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<td>30-07-1985</td>
<td>Consortium Investment Ltd.</td>
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<tr>
<td>30-07-1985</td>
<td>Pan East Development Corporation Limited</td>
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<tr>
<td>11-07-1985</td>
<td>Standard Nominees Ltd.</td>
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<tr>
<td>11-07-1985</td>
<td>C. T. Nominees Ltd.</td>
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<tr>
<td>11-07-1985</td>
<td>Miland Nominees Ltd.</td>
</tr>
<tr>
<td>22-04-1985</td>
<td>Perak Pioneer Ltd.</td>
</tr>
<tr>
<td>22-04-1985</td>
<td>Plessey Investments Limited</td>
</tr>
<tr>
<td>22-12-1984</td>
<td>Deak-Perera Far East Ltd.</td>
</tr>
<tr>
<td>29-04-1980</td>
<td>Nugan Hand (Hong Kong) Limited</td>
</tr>
<tr>
<td>02-08-1977</td>
<td>MAF Credit Limited*</td>
</tr>
<tr>
<td>13-11-1974</td>
<td>Asia Lands and Properties Limited*</td>
</tr>
<tr>
<td>13-11-1974</td>
<td>Kao Shing Properties and Finance Limited*</td>
</tr>
<tr>
<td>24-10-1974</td>
<td>Paul Lee Engineering Company Limited</td>
</tr>
<tr>
<td>29-01-1974</td>
<td>East Asia Industrial &amp; Commercial Services Limited</td>
</tr>
<tr>
<td>22-04-1971</td>
<td>Fund of Asia (Management), Limited</td>
</tr>
</tbody>
</table>

Note:

* These companies have changed their names afterwards
Cases where the Financial Secretary has invoked sections 142 or 143 of the CO —
Brief outcome of the cases since 1992

<table>
<thead>
<tr>
<th>Company name</th>
<th>Brief outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>Peregrine Fixed Income Limited, Peregrine Investments Holdings Limited</td>
<td>The inspector made no findings of fraud or dishonesty by any relevant persons, but held the view that all failures detected were failures of performance rather than intention. Disqualification orders were made against four former directors in the end.</td>
</tr>
<tr>
<td>World Trade Centre Group Limited, Tomson Pacific Limited, Maddis Company Limited, Mandarin Development Limited, Fulldiamond Limited</td>
<td>The inspector found that in the acquisition of World Trade Centre Group Limited (WTCG), the requirement to place the WTCG placement shares with independent third parties, thereby avoiding the need to make a general offer, was flagrantly breached. The police conducted further investigation and five directors were prosecuted for conspiracy to defraud and bribery-related offences. All defendants were eventually found not guilty by the Court.</td>
</tr>
<tr>
<td>Allied Group Limited, Paragon Holdings Limited, Crusader Holdings Limited, Wai Yick Limited, Allied Properties (H. K.) Limited, Hok Choi Limited, Cropland Limited, Truly Nominees Limited, Excel-In Limited</td>
<td>The findings indicated abuse of the group corporate structure and securities market ethical requirements. The police conducted further investigation. The former Chairman and the ex-financial controller of the Allied Group were prosecuted and subsequently pleaded guilty to two counts and one count of publishing a false statement or account respectively.</td>
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</table>
MR RONNY TONG (in Cantonese): Deputy President, I find the Government's response most shocking because the main reply shows that while the Financial Secretary has exercised his power in 38 instances over the past three decades, he has only exercised this power in one instance over the 12 years since the reunification to investigate into the affairs of two companies, which were actually related to the same incident. The CITIC Pacific incident was very serious, but the Financial Secretary has not exercised this investigatory power against it so far.

Deputy President, the Government has not responded to part (c) of my main question at all. I hope the Secretary will read it carefully. My question asks whether the Financial Secretary will exercise the power under the CO to make up for the inadequacies of financial regulators; if so, of the criteria adopted; if not, the justification for that. The Secretary only told us about the development of the Ordinance and the enactment of the Securities and Future Ordinance (SFO) but did not give any reply to my main question. I hope the Government will answer this question. Is it because of the existence of the SFO that the Financial Secretary will not exercise his power, or this power will even be revoked?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): The Honourable Member has already pointed out that the Government has rarely invoked this Ordinance since the reunification. Although we have not fully analysed the reasons, the major reason is upon the enactment of the SFO, the investigatory power and scope provided for under it can better meet the needs of operation. Regarding the CITIC Pacific incident, having regard to the fact that the SFC has conducted an investigation and completed a report thereon, and the police have also conducted an investigation into it, for both enforcement bodies have adequate power to investigate the alleged misconduct of the company, we therefore consider it unnecessary to invoke sections 142 and 143 of the CO to conduct a further investigation at the present stage.

DEPUTY PRESIDENT (in Cantonese): Mr Ronny TONG, which part of your supplementary question has not been answered?
MR RONNY TONG (in Cantonese): Deputy President, she has not answered my question at all. I asked how the inadequacies of financial regulators can be made up for. The CITIC Pacific incident happened more than a year ago, but the report has yet to be made public so far. Are there inadequacies? If there are, why did she not exercise the relevant power to make up for them? Deputy President, this is the question.

DEPUTY PRESIDENT (in Cantonese): Please sit down.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): The relevant investigation is in progress and no conclusion has been reached yet. Once the investigation is completed, the findings will be referred to the Department of Justice for direction on whether or not there is adequate evidence for instituting a prosecution. At the present stage, we consider it unnecessary to invoke the CO to make up for any inadequacies because there is already adequate power of investigation and an investigation is in progress. Therefore, we consider it unnecessary to invoke another power to conduct an investigation at the present stage. Certainly, if the conclusion to be reached in the future indicates a need to exercise this power, we will give it consideration then.

MR CHIM PUI-CHUNG (in Cantonese): Deputy President, I have to declare an interest because I was once a substantial shareholder of one or two companies listed by the Government. Deputy President, as the purpose of sections 142 and 143 has almost been or considered to be spent, may I ask the Government whether it will consider introducing legislative amendments to enable regulators to perform their duties in accordance with a more comprehensive piece of legislation?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): We think the power conferred by sections 142 and 143 of the CO on the Financial Secretary is a reserved or final power to enable him to conduct investigations into matters not covered by the SFO or other ordinances.
Therefore, we will not repeal these provisions. We will consider updating them in the review of the CO to make them better suit the current needs of society.

(Mr Ronny TONG stood up)

**DEPUTY PRESIDENT** (in Cantonese): Mr Ronny TONG, now this is not ……

**MR RONNY TONG** (in Cantonese): A point of order.

**DEPUTY PRESIDENT** (in Cantonese): What is your point of order?

**MR RONNY TONG** (in Cantonese): Actually, I do not consider it necessary to make any declaration of interest, but as Mr CHIM Pui-chung has done so just now, I do not know whether anyone would consider it improper for me not to do so. Among the 38 companies listed by the Government, I provide legal services to a number of them. This is all I need to say.

**MR PAUL CHAN** (in Cantonese): Deputy President, my supplementary question is related to the SFC's power mentioned in part (c) of the main reply. At present, over 400 Mainland companies are listed in Hong Kong, and their major business operations and most of their assets are in the Mainland. When these companies run into trouble, can the SFC extend its power and conduct investigations in the Mainland? If not, what mechanism is in place to ensure that the power to conduct investigations against these companies and the sanctions imposed on them are effective?

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): This point raised by Mr CHAN has actually highlighted the advantage of conducting investigations under the SFO as opposed to under the CO. Investigations conducted under the CO can only relate to the affairs of the company. If the company has part of its business overseas, more complicated approaches may be required to obtain assistance in investigation. On the other
hand, investigations conducted by the SFC under the SFO may at least provide a channel for the SFC to request assistance for investigation into certain issues from the relevant authorities in places outside Hong Kong, including the China Securities Regulatory Commission, with which we have entered into a Memorandum of Understanding (MoU).

MR PAUL CHAN (in Cantonese): *I would like to follow up ……*

DEPUTY PRESIDENT (in Cantonese): Mr Paul CHAN, you shall not raise a follow-up question. You may only point out the part of your question that the Secretary has not answered.

MR PAUL CHAN (in Cantonese): *She has answered it already.*

DEPUTY PRESIDENT (in Cantonese): If the Secretary has answered it, you may wait for another turn.

MR PAUL CHAN (in Cantonese): *I will wait for another turn.*

MS AUDREY EU (in Cantonese): *As evident in Annex A to the main reply, since the reunification, there has been only one instance in which the Financial Secretary invoked sections 142 and 143 to conduct an investigation, that is, the investigation into the Peregrine Limited which took place more than a decade ago in May 1999. May I ask the Secretary, specifically in relation to part (b) of the main reply, how many applications requesting the Financial Secretary to exercise this power there have been after the last investigation conducted in May 1999? What were the reasons for refusing these applications? Which companies were involved?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): There was one application in relation to CITIC Pacific. We received an application lodged by its shareholders in April this year requesting
the Financial Secretary to consider exercising the power under section 142 to conduct an investigation. As for the question of how many applications there have been since 1999, I do not have the relevant information at hand.

**DEPUTY PRESIDENT** (in Cantonese): Secretary, will you provide a reply in writing after the meeting?

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): No problem. (Appendix I)

**MS AUDREY EU** (in Cantonese): I hope her reply in writing will be similar to the Annexes to the main reply in which the information is clearly tabulated. For example, regarding CITIC Pacific she mentioned just now, she only said there was one application, but actually ……

**DEPUTY PRESIDENT** (in Cantonese): Ms EU, you have already made your request.

**MS AUDREY EU** (in Cantonese): Deputy President, I wish to make it clear that I hope the Secretary will state each and every application involved clearly.

**DEPUTY PRESIDENT** (in Cantonese): It would be unfair to other Honourable colleagues if I allowed you to do so.

**MS AUDREY EU** (in Cantonese): Yes, Deputy President.

**MR RONNY TONG** (in Cantonese): I also find part (b) of the Government's main reply most shocking. The Secretary said in deciding whether or not to invoke the CO, the Financial Secretary would consider the expected difficulties, costs and benefits involved in pursuing the investigation before deciding whether or not to adopt alternative remedies. Deputy President, why should these
factors also become reasons for not pursuing investigations? Why should investigations not be conducted into difficult cases and cases which would incur higher costs and a larger amount of expenses? May I ask the Government which piece of legislation, which provisions and which principles have set out these considerations? Why should investigations not be conducted into difficult cases and cases incurring a large amount of expenses?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): This is not what the main reply means. We are not saying that investigations will not be conducted into difficult cases. The SFO has actually provided for adequate investigatory power, and it is also stated in the main reply that if ……

MR RONNY TONG (in Cantonese): Deputy President, my supplementary question is not about part (c), but rather about part (b), that is, about sections 142 and 143 of the CO ……

DEPUTY PRESIDENT (in Cantonese): Mr Ronny TONG, the Secretary is answering your supplementary question. Please allow her to do so.

MR RONNY TONG (in Cantonese): I hope she will answer my supplementary question ……

DEPUTY PRESIDENT (in Cantonese): Please follow it up after she has finished with her reply.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): It does not mean that investigations will not be conducted into difficult cases, but having regard to …… as in the example I have just cited, investigations are allowed under the CO only on the affairs of a company, but investigations under the SFO may be on not just the affairs of the company but also the agent, the counterparty or other aspects of the company in relation to the incident. Therefore, for more complicated cases, particularly when overseas
information is involved, it may be more effective to conduct investigations under the SFO or other legislation. This is my reply to the point on difficulties.

As for the costs and benefits involved, concerning investigations conducted in or prior to 1999, the public reflected that appointing an accountant or a team to investigate a case would spend a considerable amount of public money. If this is the most effective and the best approach, we would certainly not mind spending the amount of public money required, but if a more comprehensive piece of legislation is in place and law-enforcement teams are already available, should priority be given to considering allowing the existing law-enforcement teams and the police to conduct investigations? If inadequacies really exist, other considerations can then be made. This is our main consideration.

MR RONNY TONG (in Cantonese): She has not answered my supplementary question.

DEPUTY PRESIDENT (in Cantonese): She has already answered it. You may not be satisfied with it, and you may wait for another turn to raise your question.

MR RONNY TONG (in Cantonese): Deputy President, my question is on the considerations in exercising the power under the CO. The main reply was provided by her rather than by me. She said when difficulties are encountered, the costs and benefits ……

DEPUTY PRESIDENT (in Cantonese): Mr Ronny TONG, you may wait for another turn.

MR PAUL CHAN (in Cantonese): In her reply to my supplementary question, the Secretary said the SFC and the China Securities Regulatory Commission have entered into an MoU in respect of Mainland companies listed in Hong Kong. However, apart from Mainland companies, companies listed in Hong Kong also include those from many overseas places, such as Singapore, Australia and the United Kingdom. May I ask whether the SFC has also entered into similar
MoUs with the securities regulators of these places? When these companies run into trouble, can the SFC really follow up and investigate the cases effectively and impose sanctions on these companies?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): The SFC and major markets …… I do not have the figures in hand, but at least dozens of major countries and regions have entered into MoUs with us. If such circumstances happen to some listed companies, we may follow them up and exchange information with these countries and regions.

MR PAUL CHAN (in Cantonese): Will the Secretary provide supplementary information on this?

(The Secretary for Financial Services and the Treasury did not oppose to providing such supplementary information) (Appendix II)

MR ALBERT HO (in Cantonese): I would like to focus on part (c) of the main question. That part of the question is about the inadequacies of the existing power of the SFC or its regulatory power over financial institutions, and whether the Financial Secretary may make up for these inadequacies using the CO. In the main reply, the Secretary said the power under the SFO is more extensive and covers a wider scope. Actually, however, the Secretary has totally evaded an important issue, that is, as secrecy is required under a provision of the SFO, we do not know whether investigations have been conducted into complaints; we do not know whether complaints have been received and the contents of these complaints; we do not know whether investigations are in progress or whether investigations have been terminated due to intervention; and also we do not know whether adequate evidence has been gathered in the investigation and yet the Government is unwilling to take follow-up actions. It just states that secrecy is required. Therefore, no matter how much power is conferred by the legislation, we consider it futile because the public will not be given any account of the cases.

My supplementary question is: The CO at least allows for transparency after investigation and the giving of a full account to the public, which is exactly the most crucial point. Does the Secretary consider that as there are significant
inadequacies in the existing SFO, the CO should be invoked to conduct investigations when appropriate, such as in the case of the CITIC Pacific incident and various incidents involving complaints against other companies, in order to address grave public concerns?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): We have looked up records on investigations conducted by invoking the CO to find out about the publication of findings of these investigations. We were unable to look up the records of all the investigations, but we know that not all the findings have been published because according to the direction of the Department of Justice, the publication of the findings of some cases will affect the legal proceedings which are being or will be carried out. Therefore, not all findings are published. This shows not all the findings of investigations conducted under the CO will be made public.

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

MR ALBERT HO (in Cantonese): Just now I asked whether the findings of investigations under the CO can be made public because there is no secrecy provision in the Ordinance. The Secretary's reply seems to suggest that not all investigation findings will be made public, which shows exactly where the inadequacy of the SFO lies. Does the Secretary agree that such an inadequacy exists?

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

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): I will try to give some supplementary information on it. There is certainly a secrecy provision in the SFO, but if the Department of Justice gives a direction in the future that prosecution shall be instituted, we will still be concerned that, insofar as procedures are concerned, making all investigations
public may give rise to the same problem, that is, it is not sure whether the judicial proceedings will be affected. As such, investigation findings shall not be made public. Certainly, if judicial proceedings of the relevant case are already underway, an account will be given.

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

MR RONNY TONG (in Cantonese): I think Government representatives attending meetings of the Council to answer Members' questions should not be so perfunctory. Part (b) of the main question asks what considerations the Financial Secretary will take into account in exercising his power. The Financial Secretary may reply that he will not conduct an investigation if an investigation is being conducted by the SFC. This may be one of the considerations, and he may answer in this way. However, the reply provided by the Secretary is untenable. She said investigations may not be pursued if difficulties, costs and benefits are involved. May I ask the Government what legislation and principles are there to turn these grounds into reasonable considerations? The Government should give a reply, and I can give the Secretary one more opportunity. Does she wish to amend the reply to part (b), such that the Financial Secretary will not conduct an investigation if an investigation is being conducted by the SFC? Is this her reply? Or does she maintain that no investigation will be conducted as and when there are difficulties or the costs are not proportionate to the benefits?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Regarding the case of CITIC Pacific, we received the application letter in April. As the case was already under investigation at that time, we did not conduct any investigation under the CO. I hope Members are happy with this reply.

MR RONNY TONG (in Cantonese): Deputy President, my question was not about the CITIC Pacific incident. I really do not know whether there is any
serious problem with my Cantonese. My question was not about the CITIC Pacific incident, and my question is what considerations the Financial Secretary will take into account in exercising this power.

DEPUTY PRESIDENT (in Cantonese): Secretary for Financial Services and the Treasury, please reply for the last time.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): I have already done so in the main reply. The relevant considerations are those set out in the paper.

DEPUTY PRESIDENT (in Cantonese): Last oral question.

Privatization of Government Assets

6. MR FREDERICK FUNG (in Cantonese): Deputy President, last year, under the impact of the financial tsunami, the social, economic and other aspects of Hong Kong were seriously affected, especially the livelihood of the middle and lower classes. However, The Link Real Estate Investment Trust (The Link) still managed to achieve substantial profits, with a revenue of $2,438 million for the first half of this financial year, and the profits from the rents of retail properties even amounted to $1,333 million, representing a growth of over 10% and 25% respectively as compared to the same period last year. On the other hand, tenants of shopping malls and markets under The Link have continued to complain for many years about its disregard of social responsibility and frequent outrageous increases in rents which were unaffordable to them and resulted in their going on strike time and again, thus causing social disputes. At the same time, some public rental housing (PRH) tenants have commented that since The Link took over the management of the shopping malls and markets of PRH estates, prices of commodities have surged continuously, shops lack varieties and there is little room for survival for small shop tenants, resulting in fewer shopping choices for the residents. In this connection, will the Government inform this Council:
(a) whether, in response to the social disputes caused by The Link in the past as well as the experience and lessons brought by the financial tsunami (for example, certain enterprises only care about making profits and ignore public interests), the Government has conducted any comprehensive review of the issues relating to privatization of government assets, including whether there is over-reliance on free market, how public interests can be protected and how a balance can be struck between enhancing corporate profits and fulfilling corporate social responsibilities; if it has, of the outcome; if not, the reasons for that; of the authorities' latest strategy on privatization and their medium and long-term privatization plans; and

(b) of the substantive assistance provided by the authorities to the tenants of The Link and the affected PRH tenants hitherto; whether the authorities have recently assessed the impact of The Link taking over the shopping malls and markets concerned on the interests of PRH tenants, and if the current situation is contrary to the original intention of providing these shopping malls and markets to serve the PRH tenants; whether the authorities have formulated remedial measures to protect the interests of PRH tenants?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Deputy President, having incorporated the input of the Financial Services and the Treasury Bureau, my reply to the two-part question is as follows:

(a) The main objective of the Government's Asset Disposal and Securitization Programme is to focus resources on the delivery of public services that must be provided by the Government. It also allows non-government organizations to undertake services that are more suitable to be delivered in a commercial manner. Under the principle of "big market, small government", we believe that the programme would help enhance efficiency. This will be beneficial to Hong Kong as a whole, including the taxpayers as well as the development of market economy.

The Government reviews the Asset Disposal and Securitization Programme from time to time. When considering selling our assets, we will take into account a number of considerations,
including the suitability for the relevant assets to be operated by the market, the possible impact to be brought about to the community, different methods of disposal and market conditions. We will also consider the views of all sectors of the community to ensure that the Programme is in the overall interest of Hong Kong.

We will announce the details of individual items included in the Asset Disposal and Securitization Programme when there are more concrete proposals.

(b) The main objective of the Hong Kong Housing Authority (HA) in divestment of its commercial and car park facilities is to enable the HA to withdraw from commercial operation, so that it can focus on its function as a provider of subsidized PRH. The Government's policy objective is to focus resources on the provision of public rental housing to low-income families who cannot afford private rental accommodation.

After the HA divested the majority of its commercial and car park facilities through the listing of The Link in November 2005, The Link may determine its own business strategies, mode of operation and trade mix, just like any other private entity. The Government and the HA cannot and would not intervene.

However, to ensure that The Link will continue to provide commercial and car park facilities for the residents after divestment, the Government and the HA have specifically arranged the following measures for proper regulation.

The land use of the relevant lots is stipulated in the Government leases (commonly known as land leases) relating to the properties acquired by The Link from the HA. If The Link wishes to change the land use specified in the Government leases, it has to obtain prior consent from other owners of the lots and approval of the Lands Department. These lease restrictions ensure the continued provision of commercial and car parking facilities in PRH estates or courts to meet residents' shopping and car parking needs. The land use condition in the aforesaid lease remains effective and must be observed by successors in title whether or not such facilities are held
by The Link in future. In other words, any change to the management or control of these properties will not affect the continued use of the relevant facilities for commercial or car parking purposes.

In designing the divestment vehicle, the HA has taken into account the availability of suitable mechanisms to restrict The Link from selling its assets arbitrarily. To this end, the Property Agreement between the HA and The Link contains restrictive covenants applicable to the divested properties. Under those covenants, each shopping centre or car parking facility within a PRH estate can be sold by The Link only as a whole but not in part. Such a requirement will apply in the same way to any third party who purchases any such facilities from The Link.

Besides, to ensure that educational and social welfare facilities which have been operating in shopping centres will continue to deliver services to the public after the divestment, the HA entered into covenants specifically drawn up for the sale of its properties with The Link requiring it to continue to let a certain amount of floor area at concessionary rent to non-profit-making organizations for social welfare or educational purposes.

President, as an organization operating on commercial principles, The Link, just like any private organization, would take suitable action to respond to the economic and market situation in order to maintain its viability in the market. Given the fact that The Link's shopping centres are located in PRH estates and its clientele are mainly PRH tenants, they must cater for their needs and affordability. The Link also has to endeavour to enhance the operation of the facilities so as to provide the PRH tenants with the services they need.

At the special meeting of the Legislative Council Panel on Housing held on 28 September this year, the Executive Director and Chief Executive Officer (ED/CEO) of The Link stated that The Link would formulate an appropriate trade mix for its shopping centres and would be willing to consider the individual requests of retailers during renovation of the shopping centres. The ED/CEO said The
Link understood it had to serve the residents of PRH estates. In the fixing of rent, the ED/CEO advised that The Link had to take into account the performance of the retailers and the market trend, but it would try its best to maintain the rent at an affordable level and consider the circumstances of individual cases.

MR FREDERICK FUNG (in Cantonese): Deputy President, the Secretary has not answered part (a) of my main question. It is stated in the preamble that since The Link took over the management of the shopping malls, shops lack varieties and frequent outrageous increases in rents caused market tenants, car park staff and doctors to stage processions and petitions. Is this consistent with the corporate social responsibilities it promised to undertake at the time it purchased these facilities? Moreover, my follow-up question is: Under such circumstances, does the Government intend to buy back these facilities and put them under the HA's management again?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Deputy President, under the prevailing circumstances, we believe, and I have already said in my main reply a while ago that, The Link cannot deviate from the normal course of the market in operation, otherwise, it may fail to provide services to PRH tenants because its shopping malls are mainly located in PRH estates.

From our observation, communication has recently been enhanced; and agreements have been reached in respect of workers' contracts — as far as I remember, at a previous Legislative Council meeting, Honourable Members were very much concerned about such issues as workers working two shifts or three shifts — and with the doctors. I trust The Link would continue to deal with its tenants and residents, so communication must be enhanced. As I have mentioned in my main reply, when the ED/CEO of The Link was invited to the Special Meeting of the Panel on Housing, he also indicated that he understood the points and would draw up an appropriate trade mix.

Besides, the follow-up question of the Honourable Member is about whether the Government would consider a buyback or other actions; my answer is that we do not have such a plan.
MR LEUNG KWOK-HUNG (in Cantonese): *Deputy President, the Secretary has stated in part (a) of the main reply that, in respect of its Asset Disposal and Securitization Programme, it will consider the views of all sectors of the community to ensure that the Programme is in the overall interest of Hong Kong. The Link is involved in one of the largest asset disposal project.*

I would like to ask the Secretary's advice. Concerning the phenomenon mentioned by Mr Frederick FUNG, that is, doctors are forced to move away from PRH estates because of expensive rents; as a result, first, when PRH tenants fall ill, there are no doctors in PRH estates to give them treatment; second, since the Housing Department used to charge lower rents, it managed to ensure that there were sufficient doctors in PRH estates to serve the residents. Yet, this is no longer the case. Then, how can the various arrangements be considered consistent with the interests of the community as a whole? It is stated that 40% of people are living in PRH estates, that is, 40% of people are adversely affected by the relevant government policy. How can the Government look after the interests of the community as a whole?

My supplementary question is very simple. How many doctors' clinics have been driven away by The Link? And, after the purchase of assets by The Link, how many tenants have moved away? What is the rate of increase in their rents?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Deputy President, given the independent operation of The Link, I do not have the relevant information. However, I have noticed from its disclosed information that it has a letting rate of 90%. Nevertheless, I am pleased to convey Mr LEUNG Kwok-hung's question to The Link to see if it could provide any information.

The first part of the question just raised by the Honourable Member is about how the Government would ensure a certain degree of protection after the divestment of assets. On this point, I have already said in my main reply that the land use, the point that each facility can be sold by The Link only as a whole but not in part or the point about social welfare purposes are regulated by the covenants.

MR LEUNG KWOK-HUNG (in Cantonese): *The Secretary has not answered my supplementary question.*
DEPUTY PRESIDENT (in Cantonese): Mr LEUNG, which part of your supplementary question has not been answered?

MR LEUNG KWOK-HUNG (in Cantonese): I asked the Secretary how many tenants have been driven away.

DEPUTY PRESIDENT (in Cantonese): The Secretary has already given an answer.

MR LEUNG KWOK-HUNG (in Cantonese): No, she said that 90% ……

DEPUTY PRESIDENT (in Cantonese): She said she does not have the relevant information.

MR LEUNG KWOK-HUNG (in Cantonese): She said the letting rate was 90%, but that is meaningless. Even a 100% letting rate is meaningless. I asked her how many people had moved away.

DEPUTY PRESIDENT (in Cantonese): The Secretary has already answered that she does not have the relevant information. She will enquire with The Link and see if she can get the relevant information. She has already given an answer.

MR LEUNG KWOK-HUNG (in Cantonese): If she does not have even the relevant information, how can she serve the overall interest of Hong Kong?

DEPUTY PRESIDENT (in Cantonese): Please sit down.

MR CHIM PUI-CHUNG (in Cantonese): Deputy President, the Government’s sale of certain assets to The Link and the listing of The Link have indeed caused convenience to various sectors of the community, but people have even
discriminated against and become hostile to one another. The Government needs to conduct a review of this because it has certainly perpetuated the disharmony between The Link and PRH residents and various sectors of the community.

Has the Government considered discussing with The Link and requiring it to set out clearly, among the projects under its ownership, those projects in which it has the right to increase rents and the rate at which the rent can be increased; and the projects which protect the welfare of the local residents, to allow The Link, PRH residents and investors to have a clear understanding of the situation? Will the Government consider doing so? If it does so, all of us will not be at a loss, which may cause repercussions in society. This is the Government's responsibility; will the Government consider doing so?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Deputy President, according to my understanding, the Honourable Member is asking if we will consider regulating how The Link determines rents and even how it determines the trade mix. I have explained clearly that The Link has been operating independently since listing, and the Government and the HA do not have any right to intervene.

Nonetheless, on the other hand, it cannot completely deviate from the community's appeals and the market situation. As we have seen, it has recently promoted mutual understanding with some doctors' groups and reached some agreements. So, I believe The Link will continue to do so. If its commercial operation continues, it should do so.

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

MR CHIM PUI-CHUNG (in Cantonese): I asked the Government if it had taken that into consideration. Although the Secretary's answer is that the Government cannot intervene in the operation of The Link, has it considered letting people know clearly the aspects in which The Link should comply with the Government's or the HA's ……
DEPUTY PRESIDENT (in Cantonese): Mr CHIM Pui-chung, please sit down; in fact, the Secretary has already given an answer. Secretary, do you have anything to add?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Deputy President, I have nothing to add.

MR LEUNG YIU-CHUNG (in Cantonese): Deputy President, I am sorry that the Secretary has just repeatedly stressed that the Government does not have any plan to buy back The Link shopping malls or car parks. In this area, as many Honourable colleagues have reflected, The Link is currently allowed to continue to impose great pressures on small commercial tenants or vehicle owners, which is unfair and unreasonable.

As a matter of fact, in one of the paragraphs in the Secretary's reply to Mr Frederick FUNG's main question, I have found certain problems and I hope the Secretary could respond to them. In her main reply, the Secretary said "Besides, to ensure that educational and social welfare facilities which have been operating in shopping centres will continue to deliver services to the public after the divestment, the HA entered into covenants specifically drawn up for the sale of its properties with The Link requiring it to continue to let a certain amount of floor area at concessionary rent to non-profit making organizations for social welfare or educational purposes". Firstly, we have no idea at all about the amount of floor area prescribed by the Government to be let by The Link for social welfare or educational purposes; we do not have any idea about this; secondly, ……

DEPUTY PRESIDENT (in Cantonese): Mr LEUNG Yiu-chung, please come to your supplementary question direct.

MR LEUNG YIU-CHUNG (in Cantonese): I was just about to ask it. We have no idea about the preferential rent; is a rent $1 or $2 less than the market rent preferential or not? We also do not have any idea about that. Actually, I have made enquiries with The Link ……
DEPUTY PRESIDENT (in Cantonese): Mr LEUNG Yiu-chung, please ask your question.

MR LEUNG YIU-CHUNG (in Cantonese): I was about to ask my question. I had asked The Link how the rent would be calculated if the tenant is a non-profit-making organization, and it answered that the market rent would be used as the basis. So, I would like to ask the Government how it can ensure that The Link will let a certain amount of floor area at concessionary rent to non-profit-making organizations for social welfare or educational purposes? Can the Secretary give us a detailed account of the actual situation?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Deputy President, as stated in my main reply, there are covenants and legally binding provisions. Of course, the Housing Department will examine the implementation from time to time. In my opinion, in respect of floor area or concessionary rent to non-profit-making organizations for social welfare or educational purposes, we will enforce the provisions in the covenants in earnest.

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

MR LEUNG YIU-CHUNG (in Cantonese): I asked the Secretary the amount of floor area involved and what the concessionary rent is. Can she disclose to us the details of such information? But the Secretary has not answered this part of my question at all.

DEPUTY PRESIDENT (in Cantonese): Secretary, can you provide the Member with the relevant details?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Deputy President, can I provide supplementary information after the meeting?
DEPUTY PRESIDENT (in Cantonese): Are you going to give a reply in writing?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Yes. (Appendix III)

DEPUTY PRESIDENT (in Cantonese): Fine.

MR RONNY TONG (in Cantonese): Deputy President, I find that the answer given by the Secretary makes us very confused. On the one hand, she said that the Government does not have statutory rights or measures to influence The Link's operation. And on the other, she stated in her main reply that covenants had been entered into upon the divestment of the assets requiring The Link to let a certain amount of floor area at concessionary rent to non-profit-making organizations for social welfare or educational purposes. She also stated in the next paragraph that The Link's facilities must cater for the needs and affordability of PRH tenants. Is there contractual regulation or not? If there is, why has the Government not tried to cite these regulatory provisions and take legal actions? If there is not, the Government should review whether it should explore methods to enable the Government to really achieve the intended objectives?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Deputy President, it has been clearly stated in my main reply that a certain amount of floor area should be let for social welfare purposes; of course, this has already been specified at the time of listing. As regards other commercial operations and shopping centres in PRH estates, The Link must operate according to commercial principles. For this reason, I am now explaining why it cannot deviate from the normal course of the market and it must target PRH estates and the residents of PRH estates as its major client group.

Thus, we have regulatory provisions at the time of listing and, in respect of the floor area of shopping malls, The Link must operate according to commercial principles.
MR RONNY TONG (in Cantonese): Is the Secretary saying that at the time of divestment …..

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

MR RONNY TONG (in Cantonese): I asked her whether, at the time of divestment of assets, it was prescribed in the contracts that they must cater for the needs and affordability of PRH residents? If yes, should this legal power be exercised to compel it to act in accordance with the covenants?

DEPUTY PRESIDENT (in Cantonese): Secretary, please focus on this point in your reply.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Deputy President, at the time of listing, as I have just said, it is subject to some major controlling provisions. As regards ensuring the provision of amenities ancillary to housing, as stated in section 4(1) of the Housing Ordinance, "The HA shall secure the provision of housing and such amenities ancillary thereto." However, it was stated in a judgment made by the Court of Final Appeal years ago that, "the Authority secures the provision of the facilities so long as the facilities are available, although they are provided not by the Authority but by Link REIT, a third party over whom the Authority has no control".

DEPUTY PRESIDENT (in Cantonese): Last supplementary question.

MR FREDERICK FUNG (in Cantonese): Deputy President, the preamble of my main question is: "since The Link took over the management of the shopping malls and markets of PRH estates, prices of commodities have surged continuously, and shops lack varieties." Lacking varieties means that The Link increases rents and asks tenants to carry out alterations and repairs in line with its promotion of up-market development. As a result, some tenants that are willing to pay higher rents but unwilling to make changes are regarded as
unacceptable and forced to move out. Thus, the shops in these shopping malls in PRH estates are more or less the same as the chain stores and large enterprises outside, giving PRH resident shoppers fewer and fewer choices. In this connection, has the Government reviewed if The Link has gone back on its promise of serving PRH residents when it purchased these shopping malls back then?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Deputy President, as I said when I answered the supplementary question just now, the facilities available to residents are now provided by a third party.

Regarding the trade mix, I believe I have explained clearly a short while ago that The Link has to design a mix in the light of the locations and client groups of shopping malls. At a previous meeting of the Panel on Housing, they said that they would be prepared to draw up an appropriate trade mix for its shopping centres and to consider the individual requests of retailers during renovation of the shopping centres. In determining rents, The Link would take into account the performance of commercial tenants and the market trend. I believe The Link will continue to listen to the views of commercial tenants and residents.


WRITTEN ANSWERS TO QUESTIONS

Impact of Dubai World's Debt Problem on Financial Institutions in Hong Kong

7. MR JEFFREY LAM (in Chinese): President, it has been reported that at the end of last month, the debt problem of Dubai World, a sovereign investment company, has triggered off financial turbulence with quite a number of stock markets worldwide becoming very volatile, and some banks in Hong Kong are also creditors of Dubai World. In this connection, will the Government inform this Council:

(a) whether it has assessed the impact of the debt crisis in Dubai on the Hong Kong stock market, and if it will slow down the pace of recovery of Hong Kong's economy; what measures the authorities
have put in place to stabilize the stock market, so as to avoid recurrence of the financial tsunami;

(b) given that the Government has actively studied the development of Islamic bond market in recent years, whether the authorities have assessed the impact of the current economic situation in Dubai on the development of Islamic bond market in Hong Kong; of the latest progress of the development of such bond market in Hong Kong; and

(c) whether it knows the total number of banks and financial institutions in Hong Kong that have business connections with Dubai World at present, and of the impact of the debt problem of Dubai World on them?

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

(a) The financial difficulty facing Dubai World is a credit event of an individual debt issuer. According to the assessment made by the Administration and the regulators, the event will not cause any systemic implications on the financial system and market of Hong Kong. The event has however affected the overall investment atmosphere in the light of its impact on the confidence concerning the pace of global economic recovery.

The Administration and the regulators will continue to closely monitor the development of the event and market conditions. Investors should make investment arrangements having regard to their own investment needs and risk appetite.

(b) In the Dubai World event, the Islamic and conventional debts of Dubai World are all affected. While the event has some impacts on both the Islamic bond and conventional bond markets, the cause of the event has nothing to do with the trading structure and mode of operation of the Islamic bond market.

The objective of the Administration in developing an Islamic bond market in Hong Kong is to increase the breadth and depth of the local bond market, diversifying Hong Kong's financial market and
consolidating Hong Kong's status as an international financial centre. This is a long-term policy goal, which will not and should not be affected by individual credit events.

Currently, the Administration is studying how to take forward amendments to the relevant laws to facilitate the development of a local Islamic bond market by levelling the playing field for Islamic bonds *vis-a-vis* their conventional counterparts as far as tax arrangements are concerned. Before amending the laws, we issued reference materials to the industry towards the end of last month to facilitate their application for tax exemption in relation to the launch and transaction of Islamic bonds.

(c) According to the assessment made by the Administration and the regulators, the Dubai World event has not posed any systemic risk to the financial system of Hong Kong. Aggregate risk exposure of the local banking sector to Dubai World and its subsidiaries only amounts to less than 0.14% of the total asset of the sector. Aggregate risk exposure to Dubai World and its subsidiaries of other financial institutions, including insurance companies and licensed corporations under the Securities and Futures Ordinance, is also limited.

**Designated Driving Schools**

8. **MR ANDREW CHENG** (in Chinese): President, it has been learnt that as the only government-designated driving school on Hong Kong Island, which is near the Ap Lei Chau industrial area, is small in size, there is an acute shortage of space for learner drivers to practise driving on roads. In addition, a temporary barging point will be set up near the driving school to tie in with the commencement work of the South Island Line project, and it is expected that learner drivers and staff of the school will be seriously affected during the construction period. In this connection, will the Government inform this Council:

(a) whether it has looked into the difficulties faced by the driving school, including the unpredictable threats brought by the seaside environment (for example, strong winds with a speed of over 100 km per hour swept Aberdeen in 2006 and the storm surge caused by a typhoon in 2008), the acute shortage of space for driving practices
on roads, as well as the lack of necessary facilities for road driving training (for example, traffic lights, roundabouts, lane changing practice area, merging and diverging lanes, and so on);

(b) whether it will assist in relocating the driving school to other sites; if it will, of the details; if not, the reasons for that; and

(c) of the factors and criteria considered by the Government when identifying the site for the driving school on Hong Kong Island?

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): President, the Administration has all along adopted a two-pronged approach for driver training. On the one hand, off-street driver training is promoted through the establishment of designated driving schools. On the other hand, the Administration maintains adequate supply of private driving instructors for on-street driver training.

The driving school situated at Wong Chuk Hang was relocated to the existing site at Ap Lei Chau to cater for the development of the Ocean Park in 2007. Taking into account the conditions necessary for the operation of a driving school, including the need to provide lectures, indoor simulated training, off-street driver training within the driving school, and a suitable setting for driver training on public roads, we found the current site of the Ap Lei Chau Driving School was the only site on Hong Kong Island suitable for use as a driving school.

The South Island Line (East) (SIL(E)) is a designated project under the Environmental Impact Assessment Ordinance (Cap. 499) and is thus required to go through an environment impact assessment. We had written to the Hong Kong School of Motoring to explain the impacts of SIL(E) on the Ap Lei Chau Driving School in September this year. The Highways Department and the MTR Corporation Limited (MTRCL) had also met with the operator of the Ap Lei Chau Driving School in mid-November to clarify the details and impacts of the project further. It was made known at the meeting that the peak hours of the Ap Lei Chau Driving School were from dusk to night-time whereas the works of SIL(E) would end at 7 pm every day. The Highways Department and the MTRCL will try to arrange works in collaboration with the Ap Lei Chau Driving School.
Our replies to the specific questions are as follows:

(a) The current Ap Lei Chau Driving School has a size of about 14 400 sq m, which is comparable to that of the then Wong Chuk Hang Driving School. In addition to lecture rooms and indoor simulated training, there are adequate traffic facilities to conduct driver training within the school, which include ramps, parking spaces, zebra crossings, traffic lights and roundabouts, and so on. The training route outside the school can be used for driver training on public roads. The setting and facilities of the Ap Lei Chau Driving School are in compliance with the code of practice issued by the Transport Department under section 88N of the Road Traffic Ordinance (Cap. 374).

The Ap Lei Chau Driving School is edged on the seafront, and the seawall on the south of the School conforms to current design and safety standards. The stormy waves encountered in September 2008 were exceptional. At that time, typhoon Hagupit caused the sea level of the region concerned to rise to a record high since typhoon Wanda hit Hong Kong in September 1962. The Civil Engineering and Development Department (CEDD) had investigated the impact of the typhoon on the Ap Lei Chau Driving School afterwards and concluded that no damage had been caused to the seawall concerned as a result of the typhoon, and the operation of the Ap Lei Chau Driving School under normal circumstances would not be affected. The CEDD will continue to monitor the condition of the seawall along the Ap Lei Chau Driving School and carry out regular inspections and repair works as necessary.

(b) We are concerned about the operating environment of the Ap Lei Chau Driving School and have been actively liaising with the Lands Department (LandsD) on the feasibility of relocating the Ap Lei Chau Driving School to other sites on Hong Kong Island. According to the information provided by the LandsD, there is no site on Hong Kong Island which is of a size comparable to that of the Ap Lei Chau Driving School and is suitable for use as a driving school. We would continue to follow up on the matter with the Planning Department, LandsD and relevant departments.

(c) In general, in considering whether a site is suitable for use as a driving school, the Administration would, apart from the size of the
site concerned, take into account the various requirements set out in the code of practice issued by the Transport Department under section 88N of the Road Traffic Ordinance (Cap. 374) that govern the facilities within and outside the driving school (details as mentioned in the second paragraph of the preamble). This is to ensure that the site concerned is suitable for off-street driver training in support of our policy to adopt the "two-pronged" approach for driver training.

Regulation of Health Food Products and Complementary Medicines

9. MR FRED LI (in Chinese): President, in connection with complaints about and regulation of food products or complementary medicines claimed to have health maintenance effects, will the Government inform this Council whether:

(a) it knows if the Consumer Council had received any complaint about the above food products or medicines in the past three years; if so, of the number of such complaints received and the investigation results;

(b) in the past three years, it had uncovered that some of the above food products or medicines contained western or Chinese medicines, or carried health claims which contravened the Undesirable Medical Advertisements Ordinance (Cap. 231); if so, of the number of such cases and the penalties imposed; and

(c) the authorities will reconsider formulating dedicated regulatory framework and legislation to regulate the above food products and medicines or products such as "dietary supplements"?

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

(a) The number of complaints received by the Consumer Council in the past three years about products such as food items claimed to have beneficial health effects is as follows:
Upon receipt of complaint, the Consumer Council would help resolve the dispute between the consumer and the business concerned through mediation. Subject to the consumer's request, the Consumer Council would keep a record of the case after mediation and conduct product research as and when necessary.

(b) Between 2007 and October 2009, the Department of Health (DH) has found in the market a total of 183 cases in which products were suspected of containing western drug ingredients undeclared on their labels in contravention of the Pharmacy and Poisons Ordinance (Cap. 138). Among these cases, the DH has proceeded with prosecution with respect to some cases based on the advice of the Department of Justice, all leading to successful conviction. The number of cases of prosecution and the penalties imposed are set out below:

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of complaints</th>
<th>Year</th>
<th>Number of prosecutions leading to successful conviction</th>
<th>Penalties</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007</td>
<td>109</td>
<td>2007</td>
<td>3</td>
<td>Fines ranging from $3,500 to $10,000</td>
</tr>
<tr>
<td>2008</td>
<td>116</td>
<td>2008</td>
<td>3</td>
<td>Fines ranging from $4,000 to $8,000; and imprisonment ranging from 14 days suspended for one year to four months suspended for two years</td>
</tr>
<tr>
<td>2009 (as at October)</td>
<td>73</td>
<td>2009</td>
<td>3</td>
<td>Fines ranging from $1,500 to $4,500</td>
</tr>
</tbody>
</table>

During the same period, the DH has successfully proceeded with prosecution with respect to a total of 41 cases under the Undesirable Medical Advertisements Ordinance (Cap. 231), including cases in which products were claimed to have beneficial health effects. Fines ranging from $1,000 to $24,000 were imposed.
(c) At present, products such as food items claimed to have beneficial health effects, "complementary medicines" or "dietary supplements" generally sold on the market are regulated under the following ordinances according to their ingredients:

(i) Products containing western medicine must be registered under the Pharmacy and Poisons Ordinance before putting up for sale. These products must meet the requirements in respect of safety, quality and efficacy before they can be registered. They should also be labelled with such particulars as ingredients, dosage and method of usage. Officers of the DH will inspect pharmacies and medicine shops frequently to see if there are false descriptions or descriptions which are different from those approved when the products were registered. Samples of these products sold on the market are taken for tests by the DH from time to time. Actions are also taken to investigate and follow up complaints. If the products are found to contain unregistered western medicines after investigation and testing, the DH will take legal actions and require the shops to recall their products immediately.

(ii) All products which fall within the definition of proprietary Chinese medicines (pCms) under the Chinese Medicine Ordinance (Cap. 549), that is, products which are composed solely of Chinese medicines as active ingredients and for treatment and health maintenance purposes, are regulated under this Ordinance. Such products must meet the requirements in respect of safety, quality and efficacy before they can be registered. The Chinese Medicine Ordinance also requires the labelling of registered pCms to include information such as main ingredients, method of usage, dosage, packing specifications, place of production, and so on. All pCms must comply with the statutory requirements after full implementation of the provisions relating to the registration of pCms.

(iii) Products such as "health food", "complementary medicines" or "dietary supplements" which cannot be classified as Chinese medicine or western medicine are regulated under the Public Health and Municipal Services Ordinance (Cap. 132) as
general food products. The Ordinance requires the manufacturers and sellers of food to ensure that their products are fit for human consumption and comply with the requirements in respect of food safety, food standards and labelling. According to the Food and Drugs (Composition and Labelling) Regulations (Cap. 132W) under the Ordinance, all prepackaged food should bear labels which correctly list out the ingredients of the food.

On the other hand, there are different ordinances regulating advertisements of products such as food items claimed to have beneficial health effects, "complementary medicines" or "dietary supplements". The Trade Descriptions Ordinance (Cap. 362) prohibits the making of false trade descriptions in respect of the method of manufacture, composition, testing results and fitness for purpose in an advertisement. The "Generic Code of Practice on Television Advertising Standards" and the "Radio Code of Practice on Advertising Standards" issued pursuant to the Broadcasting Ordinance (Cap. 562) and the Broadcasting Authority Ordinance (Cap. 391) stipulate that an advertisement of any product or service must not contain any descriptions, claims or illustrations that depart from truth.

The Public Health and Municipal Services Ordinance makes it an offence for any person to use or to display a food label which falsely describes the food or is calculated to mislead as to its nature, substance or quality. The Ordinance also makes it an offence for any person to publish, or to be a party to the publication of, an advertisement which falsely describes any food.

In addition, the Food and Drugs (Composition and Labelling) (Amendment: Requirements for Nutrition Labelling and Nutrition Claim) Regulation 2008 made under the Public Health and Municipal Services Ordinance regulates the nutrition labelling and claims of general food products, including requiring the nutrient function claims on the labels and advertisements of prepackaged food to comply with the statutory requirements. The Amendment Regulation will come into effect on 1 July 2010. The new provisions will enable consumers to make healthy food choices, encourage food manufacturers to provide food products that are conducive to public health and meet sound nutrition principles, and
regulate misleading or deceptive nutrition information labels and claims.

The Undesirable Medical Advertisements Ordinance prohibits any person to publish, or cause to be published, any advertisement likely to lead to the use of any medicine, surgical appliance or treatment for the purpose of preventing or treating certain diseases or conditions as specified in Schedules 1 and 2 to the Ordinance.

Care Workers Providing Care to Elderly

10. **MR IP WAI-MING** (in Chinese): President, at present, among the job vacancies processed under the Supplementary Labour Scheme (SLS), the main type of jobs is Care Worker (Elderly Service). In this connection, will the Government inform this Council:

(a) of the number of care workers imported under SLS in each of the past three years, as well as their average, highest and lowest monthly salaries and working hours; the respective numbers of applications submitted by residential care homes for the elderly (RCHEs) of private undertakings and social service organizations; whether there was a big difference in the number of applications from these two kinds of organizations; if so, of the reasons for that;

(b) whether it knows the total number of posts of Care Worker (Elderly Service) in Hong Kong at present and, among them, the number of posts held by local employees, and their average monthly salary and working hours;

(c) whether the authorities will set manpower ratios on care workers for the various types of RCHEs; if they will, of the details; if not, the reasons for that; and

(d) of the number of training courses the Government organized for care workers in RCHEs in each of the past three years and whether it knows the number of graduated trainees who were employed as care workers for six months or longer; whether it will consider increasing the number of such training places; if it will not, of the reasons for that?
SECRETARY FOR LABOUR AND WELFARE (in Chinese): President,

(a) In 2007, 2008 and 2009 (from January to October), the Labour Department (LD) approved under SLS the importation of 372, 522 and 192 workers respectively to take up the posts of Care Worker (Elderly Service).

Workers imported under SLS are required to be paid at a level no less than the median monthly wages of local workers in comparable positions. The Census and Statistics Department will update these wage statistics every six months. The median monthly wages applicable to the imported Care Workers (Elderly Service) mentioned above are as follows:

<table>
<thead>
<tr>
<th>Date of Employment</th>
<th>Median Monthly Wages ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 January 2007 to 28 March 2007</td>
<td>6,690</td>
</tr>
<tr>
<td>29 March 2007 to 26 March 2009</td>
<td>6,940</td>
</tr>
<tr>
<td>27 March 2009 to 28 September 2009</td>
<td>7,010</td>
</tr>
<tr>
<td>29 September 2009 to late March 2010</td>
<td>7,110</td>
</tr>
</tbody>
</table>

All these imported Care Workers (Elderly Services) were employed by private RCHEs. The Government has not compiled statistics on their average working hours. To encourage subsidized RCHEs to employ local workers, the Social Welfare Department (SWD) will include in the contracts to be signed with operators of subsidized contract RCHEs clauses which prohibit the importation of care workers under SLS. Agreements signed between the SWD and private RCHEs participating in the Enhanced Bought Place Scheme (EBPS) also contain similar requirements.

(b) At present, about 9,800 care workers are employed by RCHEs in Hong Kong, of whom some 9,100 are local employees and the rest are imported workers from the Mainland. The median monthly wages of local care workers are provided in the reply to part (a) above. The Government has not compiled statistics on their average working hours.

(c) The Residential Care Homes (Elderly Persons) Ordinance (Cap. 459) and the Residential Care Homes (Elderly Persons) Regulation (Cap. 459A), which came into full operation in June 1996, provide for the regulation of RCHEs through a licensing
system administered by the Director of Social Welfare. The licensing requirements cover aspects such as health, sanitation, staffing, safety, location, premises design, structure, equipment, fire precautions and size of RCHEs.

On the issue of manpower ratio, Schedule 1 of the Residential Care Homes (Elderly Persons) Regulation (see Annex) sets out the minimum staffing requirements of various types of RCHEs under the licensing system. Besides, all subsidized RCHEs must comply with the relevant staffing standards in addition to the licensing requirements. Subvented RCHEs are required, inter alia, to meet the staffing requirements set out in the Funding and Service Agreements signed with the SWD. Operators of contract RCHEs also have to set the numbers of various types of staff in accordance with their service commitments. Private RCHEs participating in EBPS are also required to meet a staffing standard higher than the licensing requirements so as to further enhance the quality of care services.

Apart from meeting the licensing requirements for RCHEs, RCHEs which offer nursing home places are also required to be registered under the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap. 165) and comply with the relevant staffing requirements.

(d) At present, there are altogether 27 training bodies approved by the Director of Social Welfare to provide training courses for health workers. Their graduates can work as either health workers or care workers. Every year, the SWD asks the training bodies to indicate the number of places planned for the health worker training courses in the coming year. Based on information collected in such exercises, these courses offered some 4,500 places over the past three years. As graduates can take up a wide range of jobs, we have not compiled statistics on the number of graduates employed as care workers.

According to the SWD, the overall number of training places for health workers has been increasing continuously in recent years. Training bodies will provide courses related to elderly services and adjust the number of training places in response to the needs of the industry. For example, among the training bodies appointed by the
Employees Retraining Board (ERB), 14 have been offering a full-time placement-tied Diploma in Health Worker Training Course since the latter half of 2008, and 15 are offering a full-time placement-tied Certificate in Personal Care Worker Training Course. ERB is planning to provide more courses on elderly services through the "Skills Upgrading Scheme Plus" in 2010-2011.

Annex

Schedule 1 to Residential Care Homes (Elderly Persons) Regulation (Cap. 459A)

Employment of Staff

<table>
<thead>
<tr>
<th>Item</th>
<th>Type of staff</th>
<th>Care and attention home</th>
<th>Aged home</th>
<th>Self-care hostel</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Home manager</td>
<td>One home manager</td>
<td>One home manager</td>
<td>One home manager</td>
</tr>
<tr>
<td>2.</td>
<td>Ancillary worker</td>
<td>One ancillary worker for every 40 residents or part thereof, between 7 am and 6 pm</td>
<td>One ancillary worker for every 40 residents or part thereof, between 7 am and 6 pm</td>
<td>One ancillary worker for every 60 residents or part thereof, between 7 am and 6 pm</td>
</tr>
<tr>
<td>3.</td>
<td>Care worker</td>
<td>(a) One care worker for every 20 residents or part thereof, between 7 am and 3 pm;</td>
<td>No care worker required</td>
<td>No care worker required</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(b) One care worker for every 40 residents or part thereof, between 3 pm and 10 pm;</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>(c) One care worker for every 60 residents or part thereof, between 10 pm and 7 am</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>Health worker</td>
<td>Unless a nurse is present, one health worker for every 30 residents or part thereof, between 7 am and 6 pm</td>
<td>Unless a nurse is present, one health worker for every 60 residents or part thereof</td>
<td>No health worker required</td>
</tr>
<tr>
<td>5.</td>
<td>Nurse</td>
<td>Unless a health worker is present, one nurse for every 60 residents or part thereof, between 7 am and 6 pm</td>
<td>Unless a health worker is present, one nurse</td>
<td>No nurse required</td>
</tr>
</tbody>
</table>

Note:

As an additional requirement for a care and attention home or an aged home, any two persons (who can be home manager, ancillary worker, care worker, health worker or nurse) shall be on duty between 6 pm and 7 am.
Setting up a Registration System for Standard Patents in Hong Kong

11. **MR WONG TING-KWONG** (in Chinese): President, at present, patents registered in Hong Kong are of two types, namely standard patents and short-term patents. The grant of a standard patent is based on a patent granted by one of the three designated patent offices located outside the boundary, and Hong Kong does not have an independent registration system for standard patents. Moreover, applicants of patent registration have relayed to me that Hong Kong lacks the talents for drafting patent specifications required for submission when applying for registration of standard patent. In this connection, will the Government inform this Council:

(a) of the numbers of applications for short-term patents and standard patents received in each of the past three years and the types of inventions involved and, among the applications, the numbers of those which were unsuccessful and the reasons for that;

(b) given that neighbouring places such as Singapore and Macao have already set up independent registration systems for standard patents, whether the authorities will study the setting up of an independent registration system for standard patents in Hong Kong; if they will, of the details; if not, the reasons for that; and

(c) whether it will consider training local talents for preparing patent specifications and setting up a system to recognize the relevant professional qualifications; if it will, of the details; if not, the reasons for that?

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Chinese): President, the Patents Ordinance (Cap. 514) provides for the relevant requirements under the patent registration system in Hong Kong. For the purpose of granting a patent, the Hong Kong Patents Registry will verify the documents and information submitted to ensure that the registration requirements are met. It does not conduct substantive examination, that is, it does not assess whether the invention is novel, involves an inventive step and is susceptible to industrial applications.
Standard patents obtained in Hong Kong are based on a patent granted by one of three "designated patent offices". These "designated patent offices“, which adopt the "original grant patent system", are the State Intellectual Property Office, the United Kingdom Patent Office and the European Patent Office. The application process involves two stages. At Stage 1, the applicant files a "request to record" in Hong Kong within the prescribed period after the patent application has been published by a "designated patent office". At Stage 2, after the patent has been granted by the designated patent office, the applicant files a "request for registration and grant" within the prescribed period. The Hong Kong Patents Registry will normally grant the patent within a few months after receiving the relevant certifying document from the "designated patent office". A standard patent may remain in force for a maximum term of 20 years.

As for a short-term patent, the applicant files his application direct with the Hong Kong Patents Registry without having to go through a "designated patent office". The applicant will need to submit a search report prepared either by one of the "designated patent offices" or by any International Searching Authority appointed pursuant to Article 16 of the Patent Cooperation Treaty. The Hong Kong Patents Registry will grant the short-term patent after satisfying itself that the information required is fully furnished. Such a process normally takes a few months. A short-term patent may remain in force for a maximum term of eight years.

With regard to parts (a) to (c) of the question, our reply is as follows:

(a) The number of applications received for standard and short-term patents, the number of patents granted, the subject matters of the inventions, and the number of unsuccessful applications between January 2006 and October 2009 are set out below:

(1) The standard patent application has to be filed in Hong Kong within six months after the date of publication of corresponding application in a designated patent office.

(2) The request has to be filed in Hong Kong within six months after the date of grant of the designated patent by the designated patent office or publication of the request to record in Hong Kong, whichever is later.
Number of applications received and patents granted

<table>
<thead>
<tr>
<th></th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009 (as at 31 October)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Standard Patents</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of applications(^{(3)}) received (request to record)</td>
<td>13 790</td>
<td>13 766</td>
<td>13 662</td>
<td>9 697</td>
</tr>
<tr>
<td>Number of applications(^{(3)}) received (request for registration and grant)</td>
<td>5 218</td>
<td>4 907</td>
<td>4 775</td>
<td>4 144</td>
</tr>
<tr>
<td>Number of patents granted</td>
<td>5 147</td>
<td>4 839</td>
<td>4 001</td>
<td>4 449</td>
</tr>
<tr>
<td><strong>Short-term Patents</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of applications received</td>
<td>520</td>
<td>599</td>
<td>488</td>
<td>465</td>
</tr>
<tr>
<td>Number of patents granted</td>
<td>436</td>
<td>492</td>
<td>435</td>
<td>373</td>
</tr>
</tbody>
</table>

Note:

(3) There is a time lag between "request to record" (that is, Stage 1) and "request for registration and grant" (that is, Stage 2). It varies from more than 10 months to several years.

Subject matters of the inventions

<table>
<thead>
<tr>
<th>Subject matters of the inventions</th>
<th>Standard patents</th>
<th>Short-term patents: Number of applications (2006 to October 2009)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number of requests to record (2006 to October 2009)</td>
<td>Number of requests for registration and grant (2006 to October 2009)</td>
</tr>
<tr>
<td>1 Human Necessities</td>
<td>13 041</td>
<td>4 219</td>
</tr>
<tr>
<td>2 Performing Operations; Transporting</td>
<td>5 265</td>
<td>2 406</td>
</tr>
<tr>
<td>3 Chemistry; Metallurgy</td>
<td>11 008</td>
<td>3 926</td>
</tr>
<tr>
<td>4 Textiles; Paper</td>
<td>530</td>
<td>219</td>
</tr>
<tr>
<td>5 Fixed Constructions</td>
<td>961</td>
<td>464</td>
</tr>
<tr>
<td>6 Mechanical Engineering; Lighting; Heating; Weapons; Blasting</td>
<td>1 709</td>
<td>822</td>
</tr>
<tr>
<td>7 Physics</td>
<td>8 685</td>
<td>3 434</td>
</tr>
<tr>
<td>8 Electricity</td>
<td>9 151</td>
<td>3 550</td>
</tr>
<tr>
<td>9 Not provided</td>
<td>565</td>
<td>4</td>
</tr>
</tbody>
</table>
Number of patent applications which had not proceeded to grant

<table>
<thead>
<tr>
<th></th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009 (as at 31 October)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard patents</td>
<td>209</td>
<td>218</td>
<td>258</td>
<td>172</td>
</tr>
<tr>
<td>(request to record)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Standard patents</td>
<td>80</td>
<td>63</td>
<td>52</td>
<td>32</td>
</tr>
<tr>
<td>(request for registration and grant)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Short-term patents</td>
<td>51</td>
<td>80</td>
<td>65</td>
<td>33</td>
</tr>
</tbody>
</table>

Most of the unsuccessful applications were due to failure to file for registration or pay the specified fees within the prescribed time. Some other cases involved withdrawal by the applicants.

(b) Before establishing an "original grant patent system", a Patent Office would need to have a comprehensive technical information databank and a sizeable pool of suitably qualified technical personnel. Such prerequisites are essential for the substantive examination of applications covering the main technical fields of inventions, including the capacity to assess whether an invention is patentable (that is, whether the invention is novel, involves an inventive step and is susceptible to industrial application). The relevant set-up cost is enormous. Moreover, given the present relatively low volume of patent applications originating from Hong Kong (approximately 1% of the total number of applications received for standard patents), establishing an "original grant patent system" may not be cost-effective. Hence, we have no plan to establish an "original grant patent system" in Hong Kong for the time being.

According to the information available to us, the patent systems of Singapore and Macao are not "original grant patent systems". Singapore has outsourced the substantive examination of patent applications to the Patent Offices of Australia, Austria, Denmark and Hungary while patent applications filed with the Macao Patent Office are entrusted to the State Intellectual Property Office for substantive examination. The relevant patents granted are valid only in the economy where the applications are made.
In Hong Kong, most applicants for patent registration will simultaneously seek patent protection in other economies (including our major trading partners, such as Europe or the Mainland). Not only does our existing patent registration system largely meet the business needs of the applicants, the process leading to registration is relatively straightforward and inexpensive (entailing a fee of $896 for filing an application). Hence, we have no plan to change the existing registration system for standard patents.

(c) Patent agents help clients prepare patent specifications. In general, the offices employing these practitioners (mainly law firms) would provide the relevant training in-house, and meet the manpower needs according to market demand.

As mentioned above, the existing patent registration system in Hong Kong is generally working well. It largely meets the business needs of the applicants and the process leading to registration is relatively straightforward. Under the existing system, we do not see a need for regulating the qualifications of patent agents.

Review of Pre-primary Education Voucher Scheme

12.  **MR CHEUNG KWOK-CHE** (in Chinese): President, the Panel on Education of this Council passed a motion on 20 March this year, urging the Government to establish a committee whose members include representatives from the pre-primary education sector and parents to review the kindergarten (KG) fee subvention system, as well as to establish a remuneration system that is linked to teachers' training and qualifications. It has been reported that the Education Commission (EC) indicated that a working group (WG) had been established to review the Pre-primary Education Voucher Scheme (PEVS). In this connection, will the Government inform this Council:

(a) whether the membership of the WG includes parents of children, KG teachers, representatives from school sponsoring bodies, academics, official representatives and members of the public;

(b) whether the WG's scope of review includes:
(i) studying the Government's future role in early childhood education (ECE), as well as how it ensures that the problems of a fully market-driven ECE will not occur;

(ii) examining the mode of operation of different schools so that whole-day nursery schools will receive fair subsidies;

(iii) determining the recognized salary level for teachers, and directly providing subsidies according to the salaries of teachers;

(iv) examining the work of teachers and the pressure they encounter when pursuing further studies;

(v) enhancing support to children at different learning stages and the corresponding support to parents; and

(vi) formulating a long-term development blueprint for ECE to optimize the articulation of ECE and primary education; and

(c) of the review timetable of the WG, as well as what consultation mechanisms and methods are in place to obtain the views of the various ECE stakeholders; how it ensures that the WG's operation is transparent and will report its work to the various stakeholders and the public?

SECRETARY FOR EDUCATION (in Chinese): President, my reply to the above three-part question is as follows:

In response to calls from the public and the Legislative Council for an early review of fee subvention under the PEVS and relevant policy measures, the Government has started from this school year to adjust the fee remission ceilings for KGs annually on the basis of the respective weighted average fees (WAF) of the non-profit-making half-day and whole-day KGs eligible for PEVS. Currently, the maximum amount of fee remission plus the voucher value for half-day and whole-day KGs has been raised to $18,000 and $29,300 per student per annum respectively. The mechanism for adjusting the fee remission ceilings annually according to WAF has provided more choices for needy families.
Furthermore, following discussion between the Education Bureau and the EC, it has been decided to establish a WG under the EC to take forward the PEVS review. Chaired by Prof Edmond KO Inq-ming, the WG comprises members from different sectors of the community who are experienced in their respective fields, including Miss Gloria LEUNG Chi-kin, Ms Shirley Marie Therese LOO, Prof LEE Wing-on, Prof WONG Po-choi and Mr TANG Kwai-tai. The terms of reference of the WG include collecting the views of stakeholders on the implementation of PEVS and making recommendations to the Government for the improvement of PEVS.

The WG will review the effectiveness of PEVS having regard to its background, policy objectives, implementation strategy and current operation, and will make recommendations on the way forward. The WG is aware of the concerns and requests of the public and Legislative Council regarding PEVS-related issues, including subsidies for whole-day nursery school places, and teachers' salaries, workload and pressure encountered when pursuing further studies. It will conduct focus group discussions to gauge public views when necessary. The WG plans to submit a report to the EC by the end of next year, after which recommendations would be submitted to the Government.

Provision of Columbarium Facilities

13. MISS TANYA CHAN (in Chinese): President, to cope with the demand of Hong Kong people for columbarium niches, quite a number of private columbaria have come into operation. The Lands Department recently issued warning letters to some private columbaria, pointing out that the operation of such columbaria had breached lease conditions. In this connection, will the Government inform this Council:

(a) whether in the past three years the Administration had comprehensively examined the land leases of all the columbaria in Hong Kong that are not operated by the Government or by the Board of Management of the Chinese Permanent Cemeteries to ascertain whether such premises could be used for accommodating the ashes of the deceased; if it had, of the progress and findings, and whether the Government will consider making public the findings; if it has not examined the leases, whether the Government will commence the relevant work in the near future; if it will not, of the reasons for that;
(b) given that quite a number of members of the public spent large sums of money to buy columbarium niches, which involve the issue of consumers' interests, whether at present there are legislation, policies and measures to regulate the selling of columbarium niches to safeguard consumers' interests; if so, of the details; if not, whether the Government will consider studying the formulation of the relevant measures in the near future; if it will not, of the reasons for that;

(c) whether the Government will consider reviewing the current policy that regulates columbaria so as to facilitate individuals or organizations that are currently operating or intend to operate columbaria to operate the business; if it will, of the details; if not, the reasons for that; and

(d) whether the Government will consider taking various measures to expedite the supply of government niches, for example, by expediting the study on developing artificial rock caverns or factory buildings for use as columbaria; if it will, of the details; if not, the reasons for that?

SECRETARY FOR FOOD AND HEALTH (in Chinese): President, the operation of various trades in Hong Kong, including that of private columbaria, must be in compliance with statutory requirements, including the requirement for business premises to comply with land use zoning. In addition, the use of the land must not be in breach of the terms of the land lease. Apart from this, as human ashes do not give rise to public health and environmental hygiene concerns, the Government does not impose any specific regulation on the operation of private columbaria, nor do we have complete statistics or data regarding them.

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

(a) The Government does not have complete statistics or data on private columbaria, including whether storage of ashes of the deceased is allowed under the relevant land leases.

As advised by the Development Bureau, land leases are leases made between the Government and landowners. The landowners are required to ensure that the use of their land is in compliance with all
the requirements in the land leases. The formulation of a land lease is targeted at the use of the land and not for the purpose of imposing regulation on any individual trade. Given that there are an enormous number of land leases, and the areas and uses of the land involved are extensive, it is not possible for the government departments concerned to conduct regular inspection of all private land. However, upon receipt of a complaint about a breach of land use requirements stated in land leases, the Lands Department will deploy its staff to conduct inspection on the site concerned. Legal advice will be sought in light of the actual circumstances and follow-up action taken as appropriate. Such arrangements are applicable to all land leases, including those involving private columbaria.

(b) As aforesaid, the Government has not imposed any specific regulation on the operation of private columbaria. Members of the public should ask the sellers of columbarium niches to provide them with full and complete information to ensure that the columbarium niches are in compliance with the relevant legislation and land lease requirements before buying the columbarium niches. They should also seek professional advice where necessary. Those who already bought columbarium niches should contact the providers of columbarium niches direct to find out how they would, in the event that there is a breach of the relevant legislation or land lease requirements, deal with the hirers or buyers of the columbarium niches, such as whether they would make a refund of the fees paid to hirers or buyers of columbarium niches. Members of the public can pursue their claims under the Law of Contract if they consider that providers of columbarium niches are in breach of the sale and purchase contracts.

To enhance the public's confidence, we also call on the trade to increase their transparency for the public. The Government will also look into ways to set up a voluntary registration system.

(c) As advised by the Development Bureau, at present, operators of private columbaria can make an application to the Town Planning Board (TPB) for planning permission or a change of planned land use in accordance with the Town Planning Ordinance. Where landowners apply for regularizing a breach of land lease
requirements, the Lands Department will normally seek the views of the relevant Policy Bureaux/government departments and then consider each application in light of the actual circumstances of each individual case.

(d) All along, the Government, religious and charitable organizations, as well as private entities have played a part in the supply of columbarium niches. It is expected that the demand for columbarium niches will remain heavy in the coming decade as it will take some time for Hong Kong people to fully accept the ideas of sea burial or scattering cremains in the Gardens of Remembrance.

The Government will carry out all feasible measures to increase the supply of columbarium niches. The measures include continuing to actively identify suitable sites for the development of columbaria, including providing additional columbarium niches in existing cemeteries. We will also further our efforts in seeking support from District Councils and local communities through continuous communication. However, as members of the public tend to flock to columbaria at Ching Ming and Chung Yeung Festivals in large numbers, we need to take into account the capacity of the transportation network in the vicinity when we look for sites for the development of columbaria. In the long run, the Government will explore various options for the provision of columbarium facilities. With the support of the Development Bureau, the Geotechnical Engineering Office will launch a study on the excavation and development of rock caverns in April 2010. The study will include reviewing various land uses with potential for rock cavern development. At this stage, any discussion of the feasibility and suitability of providing columbaria in rock caverns would be premature.

Additionally, we will make active efforts to improve the outlook and layout of the proposed columbaria by the provision of landscaping facilities so as to ease the concerns and anxiety of the residents. Wherever possible, we will augment through flexible design the supply of niches in the columbarium facilities to be built by increasing the number of storeys of columbarium blocks as well as the number of tiers of niches.
Apart from the Government, religious bodies and temples as well as non-governmental organizations such as Board of Management of the Chinese Permanent Cemeteries will continue to play an important role as providers of columbarium facilities. The Government encourages these organizations to provide additional niches on their existing premises. Government departments will provide appropriate co-ordination and support in this respect.

As advised by the Development Bureau, the policy initiative to encourage wholesale conversion of industrial buildings requires the use of the buildings after conversion to be in compliance with the respective land zoning. "Columbarium" use is not always permitted in "Industrial" zones or in "Other Specified Uses" zones annotated "Business" or "Commercial". If building owners plan to convert their existing industrial buildings for this purpose, they must first lodge an application for amendment of plan with the TPB. The TPB will consider whether the application should be granted after the statutory public consultation process has been carried out. If an owner applies for waiver where the use of the building is not in compliance with terms of the land lease, the Lands Department would seek the views of the relevant Policy Bureau/government departments (including the Planning Department) and consider the application in light of the actual circumstances of each individual case.

**Fare Collection Systems for Roads and Tunnels**

14. **MR LAU KONG-WAH** (in Chinese): *President, regarding the fare collection systems for roads and tunnels, will the Government inform this Council:*

   *(a) given that at present, users of the auto fare collection system for roads and tunnels operated by the Autotoll Limited (Autotoll) are required to pay a monthly administration fee of $35 and a deposit of $150 when opening an account, whether it knows if there is room for downward adjustment of the fees;*
whether it knows if the authorities concerned have signed with the aforesaid company agreements that granted the latter exclusive franchise; if they have, of the reasons; and

given the growing popularity of the public making purchases with Octopus cards, whether the authorities will reconsider installing Octopus systems at the various tolled roads and tunnels for motorists to choose for use?

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): President, my replies to the three parts of the question are as follows:

(a) According to the response of the Autotoll to the Government's enquiry about the issue, the purpose of collecting a deposit from customers when they open an account is to save the company from any financial loss in case customers lose the tags or fail to return the tags after termination of the Autotoll service. The deposit has been decreased from the initial $300 to the current $150 and is refundable upon service cancellation.

Autotoll has also indicated that its service is supported mainly by charging customers a monthly administration fee of $35, which was set 11 years ago and has not been adjusted since then. Autotoll considers that the deposit for the tags and the monthly administration fee cannot be adjusted downward given the current operating environment.

(b) The Government has not entered into any agreement with Autotoll. Under the Management, Operation and Maintenance contracts of all Government tolled tunnels and roads, the Government requires the contractors to provide automatic toll collection services. These contractors have arranged Autotoll to provide such services as it is currently the only provider of such services in Hong Kong.

(c) The Government keeps an open mind and encourages the introduction of new automatic toll collection systems for tunnels and
roads. We have been liaising with the Octopus Cards Limited (OCL) the introduction of the Octopus toll collection system for tunnels and roads. The Transport Department is discussing with OCL the technical feasibility of their proposed toll collection system and how such system could be integrated with tunnel traffic management, so as to provide motorists with another toll payment choice and enhance toll collection efficiency.

Progress of Provision of Various Types of Jobs and Internship Opportunities

15. **DR DAVID LI**: President, following the second meeting of the Task Force on Economic Challenges in December 2008, the Chief Executive announced that over 60 000 jobs were to be created through expediting infrastructure projects, advancing recruitment of civil servants and creating temporary positions. In the 2009-2010 Budget, the Financial Secretary mentioned a number of measures to create about 62 000 jobs and internship opportunities in the next three years. In this connection, will the Government inform this Council of the number of jobs and internship opportunities that had been created through these measures as of 30 September 2009, and of this total, the breakdown between full-time and part-time jobs, between civil service recruitment and private sector recruitment, as well as between permanent positions and internship positions?

**SECRETARY FOR LABOUR AND WELFARE**: President, after the second meeting of the Task Force on Economic Challenges held in December 2008, the Chief Executive announced the creation of over 60 000 employment opportunities through expediting infrastructure and minor works projects, advancing the recruitment of civil servants and creating temporary positions. By the end of September 2009, more than 34 500 positions had been created, comprising over 24 400 full-time construction jobs and over 3 500 temporary positions. In addition, over 6 600 civil service job offers had been made. The latest total figure as at the end of October 2009 had further increased to over 40 000 and the Government will continue its work on creating employment opportunities.

In addition, the Financial Secretary announced in the 2009-2010 Budget the creation of about 62 000 jobs and internship opportunities through various
initiatives in the next three years. Details of the number of jobs and internship opportunities created pursuant to these initiatives by the end of September 2009, and the breakdown between full-time and part-time jobs, between civil service recruitment and private sector recruitment, as well as among permanent positions, time-limited and internship positions, are at Annex. It should be noted that, as most of these initiatives are ongoing, a considerable number of jobs and internship opportunities came on stream after the end of September this year.

Annex

Number of jobs and internship opportunities created under initiatives announced by the Financial Secretary in the 2009-2010 Budget by 30 September 2009

<table>
<thead>
<tr>
<th>Initiatives</th>
<th>Number of jobs and internship positions</th>
<th>Full-time/Part-time Position</th>
<th>Employed by Government/Private Sector</th>
<th>Permanent/time-limited/internship positions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Full-time</td>
<td>Part-time</td>
<td>By Government</td>
</tr>
<tr>
<td>1. &quot;Operation Building Bright&quot; for maintenance and repair of dilapidated buildings</td>
<td>2 140 (1)</td>
<td>2 010</td>
<td>130</td>
<td>20</td>
</tr>
<tr>
<td>2. To promote and organize community activities under the theme of &quot;Green, Cultural, Dynamic Games&quot; and publicize the 2009 East Asian Games and celebrate the 60th anniversary of the founding of the People's Republic of China</td>
<td>259 (2)</td>
<td>208</td>
<td>51</td>
<td>200</td>
</tr>
<tr>
<td>3. One-year education campaign to promote safe and healthy use of the Internet</td>
<td>500 (3)</td>
<td>500</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>4. Energy efficiency and saving projects for government buildings and public facilities</td>
<td>118 (4)</td>
<td>95</td>
<td>23</td>
<td>15</td>
</tr>
<tr>
<td>5. To enhance and integrate the Youth Pre-employment Training Programme (YPTP) and the Youth Work Experience and Training Scheme (YWETS)</td>
<td>7 700 (5)</td>
<td>N. A.</td>
<td>N. A.</td>
<td>N. A.</td>
</tr>
<tr>
<td>6. To enhance the Employment Programme for the Middle-aged (EPM)</td>
<td>1 300 (6)</td>
<td>1 300</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>7. To enhance the Work Orientation and Placement Scheme (WOPS)</td>
<td>48 (7)</td>
<td>35</td>
<td>13</td>
<td>0</td>
</tr>
<tr>
<td>Initiatives</td>
<td>Number of jobs and internship positions</td>
<td>Full-time/Part-time Position</td>
<td>Employed by Government/Private Sector</td>
<td>Permanent/time-limited/internship positions</td>
</tr>
<tr>
<td>-------------</td>
<td>----------------------------------------</td>
<td>-----------------------------</td>
<td>--------------------------------------</td>
<td>--------------------------------------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Full-time</td>
<td>Part-time</td>
<td>By Government</td>
</tr>
<tr>
<td>8. Internship Programme for University Graduates (GIP)</td>
<td>770 (7)</td>
<td>770</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
<td>12 835</td>
<td>4 918</td>
<td>217</td>
<td>235</td>
</tr>
</tbody>
</table>

Notes:

(1) This is a two-year campaign. Up to early December 2009, repair works had commenced in more than 180 target buildings, creating more than 4 000 job opportunities.

(2) The target number of job opportunities created by these two initiatives has been met.

(3) As at the end of November 2009, a total of 140 jobs had been created. It is anticipated that the target of creating 200 employment opportunities would be met by the end of the 2009-2010 financial year.

(4) The figure indicates the number of applications received under the YPTP YWETS as at the end of September 2009. The integrated YPTP YWETS, which commenced operation in September 2009, provides trainees with comprehensive training and employment support services with pre-employment and on-the-job training opportunities. Enrolment is on a year-round basis. By the end of November 2009, the Labour Department (LD) had received around 10 000 applications. The LD will continue to monitor progress and promote the programme through various channels.

(5) In October and November 2009, over 740 middle-aged job-seekers were placed into employment under the EPM. All of the placements were full-time and permanent positions in the private sector. The LD will continue to monitor progress and promote the EPM through various channels.

(6) In October and November 2009, over 90 people with disabilities were placed into employment under the WOPS. Of these placements, more than 70 were full-time and permanent positions in the private sector while 20 others were part-time jobs in the private sector. The LD will continue to monitor progress and promote the WOPS through various channels.

(7) Admission to the GIP began on 1 August 2009. In October and November 2009, another 630 university graduates secured full-time internship positions under the GIP. The LD will continue to monitor progress and promote the programme through various channels.

(8) The Government has set up a $100 million MEF to host attractive events in the areas of arts, culture and sports over the next three years. In the first round of MEF applications, six mega events were selected. According to the event organizers, these events would create some 1 900 jobs. As the first selected mega event was held in mid-November 2009, the number of jobs/internship opportunities created under this initiative has not been included in the above table.

**Section 39E of Inland Revenue Ordinance**

16. **DR LAM TAI-FAI** (in Chinese): President, I raised questions regarding the depreciation allowances on machinery and plants under section 39E of the Inland Revenue Ordinance (section 39E) at the meetings of this Council on 21 October, 4 November and 25 November of this year respectively. Regarding the replies given by the Secretary for Financial Services and the Treasury, will the Government inform this Council:

   (a) whether the authorities have, on the basis of "balance of probabilities", which is the standard of proof generally adopted in
civil litigation cases, assessed the feasibility of allowing taxpayers to provide their own proof to prove that section 39E does not apply to the activities involved; if they have assessed, of the results; if not, the reasons for that;

(b) given that the former Secretary for the Treasury indicated at the meeting of the former Legislative Council on 11 March 1992 that the amendment to Inland Revenue (Amendment) (No. 5) Bill 1991 aimed "to apply the new provisions relating to leveraged leasing to transactions entered into on or after 15 November 1990 only in respect of ships and aircraft", why the Government now states that since 1986, section 39E has already covered machinery or plants other than ships and aircraft;

(c) given that the Government has stated that it had noticed at that time many companies could technically circumvent the definition of "leveraged leasing", yet the Legislative Council Brief of 1991 did not mention such situations, of the justifications for the Government to make such a statement, whether there are any data indicating the number of companies involved in such arrangements at that time, and of the detailed explanation of "technically circumvent the definition";

(d) according to the Legislative Council Brief dated 13 November 1991, the taxation loophole at that time was that foreign operators who had acquired ships or aircraft through limited partnership in Hong Kong were granted depreciation allowances for profits tax in the capacity as Hong Kong operators, whether this situation is different from that of "technically circumvent the definition" raised by the Government at present;

(e) of the reasons for the Government to amend section 39E(1)(c)(i) from "(i) the person holding rights as lessee is not a person who is deemed by section 23B to be carrying on a business as the owner of ships in Hong Kong; and" to "(i) the person holding rights as lessee is not an operator of a Hong Kong ship or aircraft; or" when section 39E was amended in 1992;
(f) given that the former Secretary for the Treasury referred to the amended section 39E as "the new provisions relating to leveraged leasing" at the meeting of the former Legislative Council on 11 March 1992, why the Government now claims that the scope of application of section 39E has been extended beyond "sale and leaseback" and "leveraged leasing" arrangements to cover all kinds of leasing arrangements;

(g) given that the Government has stated that section 39E is an anti-avoidance provision, on what criteria the Government has based to decide that, for the activities of Hong Kong enterprises engaging in import processing, the provision would be applicable to those related to commercial arrangements falling within the "specific scope of the provision", and whether it has assessed if such criteria are still applicable to the current economic and social situations; as the Government has indicated that the provision would be applicable to any commercial arrangement falling within the specific scope of the provision, why the Government still assured the former Legislative Council in 1986 that the Ordinance concerned would only be used to strike down tax avoidance;

(h) given that the Government has stated that the assurance (only to be enforced in circumstances of actual necessity) given by the then Commissioner of Inland Revenue (the Commissioner) upon resumption of the Second Reading debate on the Inland Revenue (Amendment) Bill 1986 (the Bill) was a general assurance in respect of the Bill as a whole rather than a specific assurance in respect of section 39E, as the provision was included in the Bill, whether the assurance concerned covers section 39E;

(i) given that in the appeal case with decision number D51/08, the counsel representing the Commissioner pointed out that the Departmental Interpretation and Practice Notes No. 15 (P. N. 15) updated in 2006 was not applicable before January 2006, whether it has assessed his grounds; if it has, of the results; if not, the reasons for that;

(j) why the term "lease" was explained in the P. N. 15 updated in 2006 but not in the P. N. of 1986 and that of 1992;
(k) given that the Government has stated that section 39E is an anti-avoidance provision, the Board of Review, however, pointed out in the appeal case with decision number D61/08, 24 IRBRD 184 that it was not stipulated in section 39E that there should be "an intention to avoid tax" in order for the provision to apply; whether the authorities have assessed if the two arguments contradict each other, and what the effects are on its decision of the Board not considering the statutory setting of the Bill in 1986 when making such a decision; and

(l) given that the authorities have stated that as long as the machinery or plants are wholly or principally used outside Hong Kong, the taxpayer concerned would not be granted depreciation allowance, what the meaning of "principally used outside Hong Kong" is, whether there are any objective and quantifiable standards to define "principally", and whether the taxpayer concerned is allowed to explain the use of the machinery or plants outside Hong Kong; if he is not allowed to do so, of the reasons for that?

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

(a) The Inland Revenue Department (IRD) must deal with depreciation allowances claims it receives from taxpayers according to the law. While taxpayers may provide information to prove that relevant activities are not restricted by section 39E, it is the responsibility of the IRD to verify whether the information provided by taxpayers meets the statutory requirements.

(b) The main purpose of that speech made by the then Secretary for the Treasury was to clarify the retrospective effect of the part of the 1992 amendment bill concerning ships or aircrafts, rather than to indicate the applicability of the original section 39E. Section 39E has covered machinery or plants other than ships and aircrafts since its enactment in 1986.

(c) and (d)

As mentioned in my reply to Dr LAM Tai-fai's written question on 25 November this year, the main purpose of amending section 39E
in 1992 was to prevent companies from abusing the conjunction "and", which separated sub-paragraphs (i) and (ii) of both sections 39E(1)(b) and (1)(c). Such abuse enabled certain leasing arrangements to circumvent the scope of "leveraged leasing", even though the machinery or plants (including ships and aircrafts) under such arrangements were principally used by other persons outside Hong Kong. "Technically circumvent the definition" generally refers to any arrangement taking advantage of the loopholes of section 39E. The IRD has not kept records of the number of companies involved in such arrangements.

(e) Under the original section 39E(1)(c)(i) in 1986, it was relatively easy for overseas users of ships or aircrafts to technically satisfy the condition of "carrying on business in Hong Kong", thus circumventing section 39E. The amendment in 1992 was to plug this loophole by stipulating that a user of a ship or aircraft under the leasing arrangement must be an "operator of a Hong Kong aircraft" or an "operator of a Hong Kong ship".

(f) In my reply to Dr LAM Tai-fai's written question on 25 November this year, I explained in detail the evolution of section 39E from its enactment in 1986 to its amendment in 1992. The scope of application of the current section 39E indeed goes beyond "sale and leaseback" and "leveraged leasing" arrangements as targeted in 1986.

(g) and (h)

Section 39E does not stipulate that the provision may only apply to leasing arrangements with "the intention to avoid tax". It is applicable to any commercial arrangement falling within the specific scope of the provision, irrespective of whether such arrangement is intended for tax avoidance. The IRD cannot enforce this provision selectively.

(i) The main issue in dispute in the Board of Review case D51/08 was the source of profits, not section 39E. In that case, the Board of Review decided that the Departmental Interpretation and Practice Notes No. 15 (DIPN No. 15) as revised in 2006 was issued after the relevant year of assessment and hence should not be applicable to that case. The decision was not related to the time limit set in the Inland Revenue Ordinance (IRO) for raising assessment.
(j) As mentioned in my reply to Dr LAM Tai-fai's written question on 25 November this year, the definition of "lease" has been provided in section 39E since its enactment in 1986. While the IRD updates the Departmental Interpretation and Practice Notes (DIPNs) as and when necessary to provide explanations and examples for individual provisions, such DIPNs cannot change any provision in the law.

(k) As mentioned in my reply to Dr LAM Tai-fai's written question on 25 November this year, section 39E of the IRO is a specific anti-avoidance provision. It is applicable to any commercial arrangement falling within the specific scope of the provision. It is not a factor for consideration whether there is "an intention to avoid tax". This point has been confirmed by the decision of the Board of Review case D61/08. There is no contradiction.

(l) Regarding the phrase "used wholly or principally outside Hong Kong", the IRD has given an explanation in paragraph 17 of DIPN No. 15 (2006 revised version). This is a question of fact, which has to be decided having regard to the circumstances of the case. Taxpayers can certainly provide explanations regarding their tax matters, but the IRD has the responsibility to verify the information provided by taxpayers.

Safety of Public Service Vehicles

17. MR CHEUNG HOK-MING (in Chinese): President, in respect of reducing casualties of passengers on public service vehicles (PSVs) in traffic accidents, will the Government inform this Council whether:

(a) it will consider extending the current requirement for passengers of taxis and public light buses (PLBs) to wear seat belts to those of tourist coaches and public buses; if it will, of the details; if not, the reasons for that; what specific measures are in place to further step up public education to raise the awareness of PSV passengers in wearing seat belts; and

(b) at present, it is stipulated that the vehicle bodies and seats of PSVs (including public buses, PLBs, taxis, tourist coaches, school buses and school private light buses) shall be able to withstand collision
impact of certain tonnes; if so, of the details; if not, whether it will study formulating a set of guidelines on safety standards for reference by the transport trade in procuring vehicles, so as to enhance the safety of vehicle compartments and reduce casualties in traffic accidents?

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

(a) We attach great importance to the safety of PSVs on the road. As seat belts offer a certain degree of protection to passengers, we have introduced in phases necessary requirements including the fitting and wearing of seat belts on appropriate vehicle types.

As for buses, particularly double-decked buses, not all seats can be retrofitted with seat belts due to technical problems such as the structure of buses do not have sufficient anchorage points to withstand the pulling force of seat belts; rearward-facing seats, side-facing seats and spaces for standees cannot be installed with effective seat belts, and so on. Therefore, at present, not all seats on buses can be retrofitted with seat belts. We will examine the need and feasibility of fitting seat belts on buses and making it mandatory for passengers to wear seat belts. Factors to be considered include safety performance, acceptability to passengers, practical enforcement issues, effects on bus operation, and overseas practices, and so on.

We have striven to raise awareness of passengers of PSVs to wear seat belts through law enforcement, publicity and education.

The police regularly conduct territory-wide education activities and enforcement operations targeting passengers of PLBs on wearing seat belts. In addition, the police also carry out regular enforcement actions on PSVs and goods vehicles, during which the police will adopt an approach of "education and publicity followed by prosecution" in tackling seat belt offences, and remind motorists and passengers of their responsibility to buckle up.
Publicity and education are important channels to raise awareness among passengers in wearing seat belts. The Road Safety Council and Transport Department (TD) remind the public of the importance of wearing seat belts and the relevant penalties for non-compliance through TV and radio Announcements for Public Interest (APIs). The TD has also produced TV APIs to remind passengers to buckle up if their seats are installed with seat belts.

(b) Regulation 5(1) of the Road Traffic (Construction and Maintenance of Vehicles) Regulations (Cap. 374A) stipulates that every vehicle including all body work and fittings shall be soundly and properly constructed of suitable materials; in good and serviceable condition; and of such design and method of construction as to be capable of withstanding the loads and stresses likely to be encountered in operation. Currently, there are no international regulations or standards prescribing the collision impact to be withstood by the vehicle body of PSVs.

At present, newly registered PLBs and student service vehicles are required to provide seats with proof that such seats comply with the ECE Regulation No. 80 of the Economic Commission for Europe specified in Schedule 15 to Cap. 374A. The ECE Regulation stipulates that the seat and its anchorage shall withstand about a half-tonne pushing force.

We will continue to keep in view the relevant international vehicle standards and review our legislation on PSVs to enhance road safety.

Tolo Highway Widening Project Works

18. **MR CHAN HAK-KAN** (in Chinese): President, the section of Tolo Highway beside Wan Tau Tong Estate, King Nga Court, Tak Nga Court and Classical Gardens is undergoing widening works to add a lane each for southbound and northbound traffic. Some local people have recently relayed to me that the widening works involve the felling or transplanting of a large number of trees and they are also worried that with the works going on and the future growth in traffic the noise problem will be aggravated. In this connection, will the Government inform this Council:
(a) given the information provided by the authorities to this Council on 19 December last year that the widening works would involve the felling and transplanting of about 11 120 trees, whether the number needs to be adjusted, and of the number of trees which have been removed; if the number needs to be adjusted, of the details and reasons for that;

(b) given that the green areas along the aforesaid road section are providing open space for many residents within the district, and they are also the habitat of a large number of birds, whether the authorities will re-assess the ecological impact of the widening works on the environment nearby;

(c) whether it will consider carrying out the widening works mainly on the northbound lanes which are relatively farther away from residential areas, so as to alleviate the impact on the residents nearby while the works are being carried out; if not, of the reasons for that;

(d) of the estimated increase in the daily vehicular traffic flow and the estimated increase in traffic noise after the completion of the widening works for the road section concerned; of the estimated number of residents to be affected by the noise; and

(e) of the details of the tree-replanting plan after the completion of the widening works, including the specific planting locations and dates, as well as the species of trees to be planted?

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): President,

(a) With the funding approved by the Legislative Council, the Government commenced Stage 1 of the Tolo Highway widening project (between Island House Interchange and Tai Hang) in August 2009. We pointed out in our submissions to the Legislative Council for funding application that about 11 120 trees within the area to be widened had to be removed for project implementation and the majority of the trees affected are common species and are planted within the man-made slopes along the Tolo Highway during and after its construction. Due to their existing location, if the
widening works were to be taken forward, there is no other choice but to remove the trees concerned. According to the latest estimation of the Highways Department (HyD), the number of trees to be removed remains unchanged and no revision is needed for the time being. As at end November, about 230 trees have been removed as required under the project.

(b) During the detailed design stage of the Tolo Highway widening project, we conducted a detailed Environmental Impact Assessment (EIA) for the project as required under the Environmental Impact Assessment Ordinance (Cap. 499) (the Ordinance). The EIA already covered the potential impact of the project on the surrounding ecological environment (including the woodlands along Tolo Highway in the vicinity of Wan Tau Tong Estate, King Nga Court, Tak Nga Court and Classical Gardens in Tai Po). According to the EIA Report of the project, for the project as a whole, the woodlands affected are of low to medium ecological value.

In accordance with the requirements of the Technical Memorandum on Environmental Impact Assessment Process (Technical Memorandum), a series of ecological environment mitigation measures were put forward in the EIA Report, including the tree planting proposal covering an area of about 8.5 hectares along the concerned road sections under the Tolo Highway widening project for the provision of ecological environment and as habitats for animals nearby. The report also pointed out that the proposed mitigation measures were considered appropriate and adequate to compensate for the impact of the project on the ecological environment.

The above mitigation measures have been included in the works project and will be carried out during the construction period. The HyD has, in accordance with the requirements of the EIA Report and the environment permit, set up an environmental monitoring and audit team for the works and engaged an independent environmental checker through their engineering consultant to regularly monitor and audit the environmental impact of the works during the construction period.
(c) We had thoroughly considered the specific locations of the works areas of the project and assessed the feasibility of different options during the planning and detailed design of the Tolo Highway widening project. Due to the close proximity of the northbound lanes of Tolo Highway to the existing Shan Tong Road and Shan Tong New Village, and there is insufficient space for carrying out the required works at the location, it is not feasible for the works to concentrate in the northbound lanes.

(d) We anticipate that upon completion of the project, the number of one-way vehicle trips per hour during peak hours at the road sections concerned will increase from around 4 200 currently by about 700, that is, to about 4 900. We will install noise barriers along the roadside of the project as recommended in the EIA Report to ensure that the traffic noise would not exceed the limits as stipulated in the Ordinance and the Technical Memorandum. As a result, the widening works will not increase the noise level along the road section concerned. Instead, for all residents (about 1 800 households) being currently affected by the noise impact originated from the existing road section, the noise level will be reduced by a range of 1 to 13 decibels due to installation of the noise barriers.

(e) Subsequent to the widening of Tolo Highway, more than 3 620 large trees with diameter over 75 mm, 44 000 seedlings and 50 500 shrubs will be replanted along the road section concerned. Except the elevated bridge sections where tree planting is not possible, the planting areas are widely spread over the flatlands and the newly built man-made slopes along both sides of the project area.

As proposed by landscape experts after considering the ecological and aesthetic factors, we will plant new tree species including Sapium sebiferum, Litsea glutinosa, Schefflera heptaphylla, Cratoxylum cochinchinense, Syzygium cumini, Crateva unilocularis, Jacaranda mimosifolia and Koelreuteria bipinnata. We will start the planting works upon completion of the major civil and bridge structural works under the project in mid-2012. Depending on the progress of the works under the project, both tree planting and the works will be completed in 2013.
Development of Wine-related Businesses in Hong Kong

19. **MS MIRIAM LAU** (in Chinese): President, the Financial Secretary has stated that Hong Kong has the prospect to replace London as the world's second largest wine auction centre after New York, and the authorities will strive to fortify Hong Kong's position as a regional hub for wine trading and distribution. In this connection, will the Government inform this Council:

(a) whether it has assessed the business opportunities and economic benefits for the wine-related businesses brought by Government's exemption of wine duty last year; which industries will benefit from the growth in the trading volume of wine, and the expected number of job opportunities to be created annually;

(b) whether it has compared the existing supporting facilities and the relevant government policies in facilitating wine auctions in New York and London with those in Hong Kong; if it has, in what aspects New York and London are better than Hong Kong; if it has not, whether the authorities will consider making such a comparison to provide reference when formulating policies conducive to establishing Hong Kong as a wine trading and distribution hub; and

(c) given that some wine traders have pointed out that Hong Kong lacks wine storage facilities, logistics services and talents, what solutions the authorities have in place; what short-term, medium-term and long-term measures the authorities will adopt to assist the development of the relevant industries and enhance Hong Kong's position as a regional hub for wine trading and distribution?

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

(a) The market has responded positively to the wine duty exemption and the various supportive measures that have since been rolled out. Businesses related to wine trading, distribution and auctions have grown. On trading, the value of wine imports has increased significantly. It reached $2.86 billion in 2008, representing an increase of 80% over 2007. In the first nine months of 2009, the imports continued to grow by another 41% year-on-year, amounting
to $2.71 billion. Many wine-related companies have set up or expanded their businesses in Hong Kong covering areas including trading, storage, retailing, and so on. The new policy has also brought benefits to related economic activities such as tourism, catering and hospitality, exhibitions as well as brand promotion.

The above vibrant economic activities have brought to Hong Kong direct economic benefits, as well as added job opportunities. The new jobs are mainly in the areas of trading, storage, logistics, and so on, ranging from professional sommeliers to front-line staff. While we do not have concrete figures at this stage, we are considering to carry out a more comprehensive survey on this;

(b) A total of 14 wine auctions have been held in Hong Kong since January 2009, with the aggregate sales amounting to some $496 million. In terms of total sales value, the industry is forecasting that Hong Kong should surpass London in 2009 to become the second largest wine auction centre in the world, just after New York.

The surge in wine auctions or for that matter wine-related businesses across the board is largely attributable to the following two factors:

(i) growing market demand. According to the consultancy study commissioned by the Hong Kong Trade Development Council (TDC) in 2007, the industry forecast that Asia (particularly Mainland China) would be the principal driver of global wine sales in the next decade and beyond; and

(ii) Hong Kong's favourable business environment, including our zero wine duty policy and the Government's supportive measures to facilitate wine-related businesses. We have seasoned professionals proficient in Chinese and English, who are armed with years of experience in wine trading as well as conducting business in the Mainland market. Hong Kong is also well-positioned geographically as an international gateway to the Mainland; and

(c) We have been in close dialogue with the industry and the relevant training institutions in exploring possible supportive measures in
areas including wine storage facilities, logistics services and manpower training.

On warehousing, many companies have responded to market demand by setting up storage facilities in industrial buildings. The supply of industrial building units is such that we believe that there should be adequate provisions to meet overall demand. To boost users' confidence, the Government is assisting the industry to develop, in partnership with the Hong Kong Quality Assurance Agency, a certification scheme whereby wine storage facilities meeting certain required standards would be accredited. The scheme is expected to be launched before the end of the year. It will first cover wine storage facilities, with possible extension to other logistics facilities such as vehicles later.

On demands for manpower training, the Government has been actively promoting liaison between the industry and training institutions in examining how best to meet such needs. We have also encouraged partnership between local and overseas training institutions through the signing of co-operation agreements with our trading partners. A good number of institutions have rolled out new courses/modules to enhance wine-related training at various levels, including programmes for managers, sommeliers and front-line catering staff.

On top of the above supportive measures, we have been working on the following fronts to enhance the further development of Hong Kong as a regional hub for wine trading and distribution:

(i) waiving the administrative controls hitherto prescribed to track the movement of wine as a dutiable commodity. As an added facilitation measure, the Customs and Excise Department (C&ED) may conduct customs inspection of wines at a warehouse of the trader's choice;

(ii) harmonizing the promotional and publicity strategies of TDC, Invest Hong Kong and Hong Kong Tourism Board. Apart from building on existing events, new initiatives are launched. Our first Wine and Dine Festival (held in October 2009) and
the second Hong Kong International Wine and Spirits Fair (in November 2009) were both very well received;

(iii) signing co-operation agreements with various wine-producing countries/regions for joint promotion of wine-related businesses, such as wine trading, investment and tourism;

(iv) enhancing the C&ED's enforcement capability to combat wine counterfeits through the setting up of a specialized investigation team, forming an alliance with the industry, and strengthening liaison with overseas enforcement agents to enable timely exchange of intelligence; and

(v) entering into an agreement with the Mainland Customs to provide facilitation measures for wines exported from Hong Kong to the Mainland. We are also exploring with the General Administration of Quality Supervision, Inspection and Quarantine of the Mainland the feasibility of introducing further facilitation measures, thereby fortifying Hong Kong's position as a regional wine distribution hub.

Monitoring of Operations of Finance Companies

20. MRS REGINA IP (in Chinese): President, recently, I received many complaints about finance companies being too lax in approving loans, such as granting large amounts of loans to young people who have no income or credit records, which adversely affects their growth and their parents will most probably have to make repayment for them in the end. Moreover, it has been reported that some foreign domestic helpers left Hong Kong after borrowing money from finance companies, and their former employers are often harassed by finance companies when the latter recover debts. In this connection, will the Government inform this Council:

(a) under the Money Lenders Ordinance (the Ordinance) (Cap. 163), Money Lenders Regulation and other relevant legislation,

(i) whether finance companies are allowed to make loans to persons who have no income or credit records;
(ii) whether finance companies have to follow a specific set of criteria or procedure for vetting and approving loan applications of young people and foreign domestic helpers; and

(iii) of the respective statutory rights and benefits of debtors and creditors in the situation where finance companies granted loans to persons who obviously lack repayment ability and such persons are unable to make repayment;

(b) whether the Government will, when studying Hong Kong's financial reform framework in the future, consider reviewing and amending the Ordinance at the same time, so as to protect people's interests more effectively; and

(c) given that some finance companies also take deposits and such deposits are fully guaranteed by the Government, whether the Government has assessed if there arises a situation of members of the public depositing large sums of money in these companies to earn higher interest income because they do not need to worry about the financial situation and stability of such finance companies, and thus these finance companies have abundant funds to make loans extensively?

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

(a) (i) and (ii)

At present, the Ordinance does not prohibit finance companies from making loans to certain persons. However, the Ordinance provides that a money lender must clearly set out the loan terms and the repayment arrangements for the information of the borrower and his/her surety. Separately, the Licensed Money Lenders Association Limited in Hong Kong has issued the "Code of Money Lending Practice", requiring a money lender to conduct a credit assessment of an applicant and consider his/her repayment ability in vetting his/her application before granting a loan.
In addition, if a money lender is involved in unscrupulous money lending practices, contravenes the licensing conditions, or conducts its business in a manner contrary to the public interest, the Court may make an order in respect of the situation to revoke or suspend its licence.

As regards the harassments mentioned in the question, currently the police will deal with the issue of debt collection agencies using illegal practices to recover debts in accordance with a number of other statutory provisions.

(iii) If a loan agreement meets the requirements of the law, the money lender is entitled to recover the money from the borrower in accordance with the agreement. However, under section 25 of the Ordinance, if the Court is satisfied that the transaction grossly contravenes the ordinary principles of fair dealing, the Court may, having regard to all the circumstances (for example, the borrower's age, experience, business capacity, and the degree to which he was under financial pressure and the nature of that pressure at the time of entering into the transaction, and so on), make such orders and give such directions as are appropriate, including reopening the discussion on the terms of the agreement and the respective rights of the debtor and the creditor, so as to do justice between the parties.

(b) At present, we do not have any plan to review the Ordinance. Nevertheless, the Administration will closely monitor the enforcement of the relevant law.

(c) Based on the records of the Hong Kong Monetary Authority (HKMA), no finance companies registered pursuant to the Ordinance are deposit-taking companies authorized under the Banking Ordinance.

As regards the regulation of deposit-taking companies, they are required by the HKMA to follow prudent principles in carrying out their lending business, including not to extend excessive amounts of
loans to students or young people with no income or credit records. The HKMA monitors whether the lending practices of deposit-taking companies comply with prudent principles as part of its regular supervision of these companies.

The HKMA introduced the deposit guarantee on 14 October 2008, and has since stepped up the monitoring of whether there is any unusually rapid growth in the deposit balances of authorized institutions. The total deposits of the banking sector increased by 11.6% between 14 October 2008 and the end of October 2009. The deposits of deposit-taking companies rose by a comparable magnitude of 12.2%. During the same period, the total loans of the banking sector decreased by 4.4%, whereas the loans of deposit-taking companies declined by 14.0%. These statistics indicate that deposit-taking companies as a whole have not expanded their lending business because of the introduction of the deposit guarantee.

BILLS

First Reading of Bills


BUILDINGS ENERGY EFFICIENCY BILL


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

Second Reading of Bills

BUILDINGS ENERGY EFFICIENCY BILL


The object of the Bill is to prescribe basic building energy efficiency standards through the mandatory implementation of the Building Energy Codes (BEC).

(THE PRESIDENT resumed the Chair)

The power consumption of buildings accounts for 89% of the total power consumption in Hong Kong. To enhance the energy efficiency in buildings helps improve our air quality and alleviate the adverse effects of climate change. Since 1998, the Electrical and Mechanical Services Department has launched the voluntary Hong Kong Energy Efficiency Registration Scheme for Buildings (Registration Scheme) with the aim to promote compliance with the BEC. However, the private sector has had a lower participation rate all along. For more than a decade in the past, though over 1,000 buildings participated in the Registration Scheme for compliance with BEC, 72% were government buildings.

Since our policy may not achieve the due results merely through encouraging voluntary compliance with BEC, we considered the introduction of mandatory implementation of BEC as essential after consulting the relevant sectors and the community. In fact, quite a few countries and regions including the European Union, Mainland China, the United States, Australia and Singapore have introduced mandatory implementation of basic building energy efficiency standards one after another. Therefore, we think that measures should be taken to enhance the overall energy efficiency in our society through prescribing basic building energy efficiency standards for building service installations.

The Government proposes that 13 types of buildings in both the private and public sectors must comply with BEC. Subject to the enactment of the new law, the newly added buildings covered after the commencement of the law can include in their designs the energy efficiency requirements under the law, so we propose that their major building service installations should comply with the prescribed energy efficiency standards and provisions. It is estimated that for new buildings, the implementation of the BEC will result in energy savings of
2.8 billion kilowatt hours and a reduction of 1.96 million tonnes of carbon dioxide emissions during the first 10 years.

As regards other buildings, the Government proposes that they must comply with the energy efficiency standards and provisions on the occasion of major fitting-out works.

Also, the Government proposes that the owners of commercial buildings and the commercial portions of composite buildings must ensure that energy audits are conducted for the public areas of these buildings once every 10 years, and the audit results must be displayed at a prominent position at the main entrance of the buildings.

After the completion of the three-month public consultation on the proposal to introduce mandatory implementation of the BEC last year, the Government has continued to collect views on the implementation details of the legislative proposal through the Industry Working Group and the Technical Working Group. The Government has also commissioned the conduct of a business impact assessment to assess the impacts of the legislative proposal on various sectors. The recommendations have the support of the Energy Efficiency and Conservation Sub-committee under the Advisory Council on the Environment and the Energy Advisory Committee. This July, the Government consulted the Legislative Council Panel on Environmental Affairs on this proposal and the Panel had no objection.

President, enhancing energy efficiency in buildings is an important and effective measure in Hong Kong in response to climate change. The Bill prescribes basic building energy efficiency standards and promotes the overall energy efficiency in our city. Therefore, I hope Honourable Members will support the Bill.

Thank you, President.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Buildings Energy Efficiency Bill be read the Second time.

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

PRESIDENT (in Cantonese): Members' motions. Motion moved under Rule 49B(1A) of the Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region.

I now call upon Ms Miriam LAU to speak and move her motion.

MOTION UNDER RULE 49B(1A) OF THE RULES OF PROCEDURE

MS MIRIAM LAU (in Cantonese): President, in accordance with Rule 49B(1A) of the Rules of Procedure (RoP), I move that the motion to censure Mr KAM Nai-wai for misbehaviour, as set out on the Agenda, be passed.

President, it is with a heavy heart that I move the motion alleging a Member of this Council for misbehaviour, which is actually very serious in both nature and consequences. Since the establishment of the SAR, this is the first time this Council has invoked Rule 49B(1A) of the RoP, initiating the procedure for disqualifying a Member of the Legislative Council from office for misbehaviour. Hence, the three other signatory Members, namely Dr Joseph LEE, Mr IP Kwok-him and Mrs Regina IP, and I were extremely solemn and cautious in drafting this motion. We had merely presented justifications supported by facts in an effort to be fair to the Member.

Although this motion has been moved under my name, I am not acting on behalf of Members in my capacity as Chairman of the House Committee, I hope Members can bear in mind the background to this motion today and the decision they have jointly made.

At the House Committee meeting held on 9 October, Mrs Regina IP, on behalf of Duty Roster Members (DRMs), reported that the Complaints Division of the Legislative Council had received 18 submissions and 19 telephone calls from members of the public expressing views on Mr KAM Nai-wai's integrity, his alleged involvement in sexual harassment and unreasonable dismissal, and 18 of them had requested the Legislative Council to conduct an inquiry into this matter. Actually, there was also extensive report of this incident by the media at that time. Noting the great concern expressed by members of the public and their hope that the Legislative Council could conduct an inquiry to follow up this
incident to dispel their misgivings, DRMs therefore referred the matter to the House Committee for discussions on ways to address it. It is mentioned in a relevant document provided by the Secretariat (LC Paper No. CP1479/08-09) that one of the ways proposed by DRMs to address the matter is to authorize the Legislative Council Committee on Members' Interests (CMI) to conduct an inquiry to follow up the incident. Here, I would like to point out three key concerns expressed by members of the public, which are set out in paragraphs 7(a) to (c) of the abovementioned paper. They include: First, the public hope that an inquiry will be conducted to ascertain whether the allegation of sexual harassment is true; second, the public are concerned about whether there was improper use of public money in the course of the dismissal, including whether the dismissal was reasonable; and third, the public are also concerned that the incident may involve the Member's integrity.

The House Committee had spent two hours discussing this issue in detail. To help Members recall the contents of the discussion held during the meeting in connection with the incident involving Mr KAM Nai-wai, the Secretariat has prepared a verbatim transcript for Members' information. During the meeting, a number of Members opposed authorizing the CMI to conduct an inquiry into a Member's conduct for the concern that the relevant power may be abused as a result of influence by political considerations. At that time, Dr Margaret NG pointed out that Rule 49B of the RoP had provided for an established mechanism to handle an allegation against a Member's misbehaviour. She also emphasized that, according to the existing mechanism, the procedure specified in Rule 49B of the RoP was the only mechanism for activating the conduct of an inquiry into a complaint involving the conduct of a Member. This mechanism could also ensure that the matter would be addressed in a fair and impartial manner. Echoing Dr NG's observations, a number of Members opined that only through invoking the mechanism prescribed in Rule 49B(1A) can the rights of the accused Member be protected. Although there was concern that the adoption of the procedure under 49B of the RoP to move a motion to disqualify a Member from office might be too radical, Members were convinced in the end. Consequently, the motion on moving a motion in the Legislative Council under Rule 49B(1A) of the RoP was passed, with 37 Members present at the meeting being in favour of the motion without any objection or abstention, to follow up the incident involving Mr KAM Nai-wai. Next, there was a discussion on which Member should move the motion on behalf of Members. Dr Margaret NG considered that the motion would seen to be neutral rather than a motion involving struggles between political parties/groupings should it be moved by the Chairman of the
Given that the relevant arrangement can uphold the dignity of the Legislative Council, Dr NG's proposal was endorsed by the House Committee. Subsequently, I was re-elected as Chairman of the House Committee, and so I took up the responsibility of moving this motion.

At the House Committee meeting held on 16 October, a paper (LC Paper No. CB(3)46/09-10) prepared by the Secretariat was presented to Members for consideration. The paper described details of the mechanism for censuring a Member for misbehaviour under Article 79(7) of the Basic Law and the procedure involved. It was pointed out in the paper that when the mechanism was devised, it was not envisaged that the censure motion would be moved by a Member in the capacity of the Chairman of the House Committee and a subcommittee would be formed to define the details of the alleged misbehaviour. According to the original intent of the mechanism, such motions should be moved by Members in their capacity as individual Members of the Legislative Council, and the notice of the motion should be signed by three other Members. After detailed discussions, the House Committee agreed that the censure motion should be moved by me in the capacity of a Member of the Legislative Council to facilitate the conduct of a debate on the censure motion. Moreover, I also expressed my hope that the other three Members who would jointly sign the notice of the censure motion should belong to different political parties/groupings. The House Committee also agreed that the wording of the censure motion should be drafted by the four of us, and so we were not required to account to the House Committee our drafting of the censure motion. At the same time, the subcommittee should assist the House Committee in considering matters other than the drafting of the censure motion. Subsequently, Dr Joseph LEE, Mr IP Kwok-him and Mrs Regina IP signed the notice of the motion and assisted me in drafting the motion proposed today. Here I would like to express my gratitude to the three signatory Members.

I have given a brief description of the sequence of events leading to the moving of this censure motion today. I have been reminded by Members that since this motion is to be moved in my personal capacity, I shall assume responsibility for the relevant actions. Should I be required to do so, I will definitely not shirk or evade my responsibility. I just hope that Members will not forget what has happened and what has been spoken. I also firmly believe that "justice lies in the people's heart".
As for the wording of the motion and the form and choice of words of the main body, they are basically restricted by Rule 49B(1A) of the RoP. The relevant misbehaviour is detailed in the Schedule.

Regarding the part relating to the misbehaviour, the content of the censure motion might contain more abundant and detailed information or another allegation might be made should assistance be provided by the former female assistant of Mr KAM Nai-wai, that is, the lady concerned. On 16 October, the lady concerned informed the Secretariat, through her attorney, of her willingness to provide assistance in connection with the wording of the Schedule to the censure motion. However, in the following week, she had still not offered any ways to assist in the drafting of the wording of the motion. The three signatory Members and I considered that the initial drafting of the motion should commence without further waiting. We also decided that the draft of the motion be handed to the lady concerned in the hope that she could give us advice, so that the wording of the motion can be further improved.

At the House Committee meeting on 9 October, Dr Margaret NG indicated that should Members decide to invoke the relevant procedure prescribed in Rule 49B(1A) of the RoP to follow up this matter, paragraphs 7(a) to (c) of the paper (LC Paper No. CP1479/08-09), as mentioned by me earlier, could be used as the basis for the allegations set out in the Schedule to the motion. These three short paragraphs set out the three major concerns of members of the public as mentioned by me earlier. The three signatory Members and I consider that this direction is correct.

Since the lady concerned did not provide any assistance or information, the three signatory Members and I consider that no follow-up can be made, and so no allegations concerning this whatsoever have been set out in the Schedule. As regards improper use of public money, colleagues of the Secretariat have confirmed that, except for the payment of normal salaries, Mr KAM Nai-wai has not made any applications for reimbursement of the payment in lieu of notice or compensation payable in connection with the dismissal of his female assistant, and so follow-up actions have not been taken regarding the public concern about this. The remaining issues are whether the dismissal was reasonable and the Member's integrity.

In drafting the Schedule to the motion, the three signatory Members and I adhered to three principles: First, due consideration must be given to facts, and no
speculation or presumption may be made; second, while responding to public concern, we must treat Mr KAM Nai-wai and the lady concerned with the greatest impartiality; and third, the drafting of the allegations must not be based on media reports or rumours. Before drafting the motion, we checked the relevant records in detail and carefully examined the remarks made by Mr KAM Nai-wai at a press conference on 4 October and in a radio programme on 6 October, as well as a written statement issued by Mr KAM personally on 4 October. Our conclusion was that we should present two allegations against misbehaviour as spelt out in the Schedule now. The first allegation against misbehaviour concerned Mr KAM Nai-wai's making of inconsistent remarks to the media and withholding of key information on the two abovementioned occasions, causing the public to have doubts about his integrity. The specific content of his remarks is in the Schedule. The second allegation against misbehaviour concerned Mr KAM Nai-wai's being unfair in dismissing his female assistant, whose overall work performance was judged by him to be good, after his expression of affection was rejected by her. I would like to point out that during the drafting process, we did not refer to any information provided in media reports. Instead, we checked the verbatim transcripts of the press conference and radio programme and examined the relevant information in detail. We believe Mr KAM Nai-wai will not deny his making of those remarks on the two public occasions.

On 3 November, I delivered the draft motion to the lady concerned through her attorney and enquired if she would provide any advice and information which might assist me in finalizing the motion. The Secretariat was informed by her attorney on 10 November that she would need one more week for consideration. On 17 November, I received a response from her through her attorney that she had decided that she would not further participate in any investigation due to the enormous pressure and anxiety caused by this incident.

As the drafting of the wording of the censure motion today (including the misbehaviours set out in the Schedule) is not dependent upon any views or information possibly provided by the lady concerned, but is based on the remarks made by Mr KAM Nai-wai on the two public occasions, I have given notice to propose this censure motion after consulting the three signatory Members again and obtaining their consent.

Some Members have made repeated requests for the withdrawal of the censure motion on the ground that the lady concerned was reluctant to assist with the inquiry. I would like to reiterate that the content of this motion is based on
the facts we have grasped, and the relevant content is not based on any information provided by the lady concerned. Furthermore, I would also like to point out that any censure motion proposed in accordance with Rule 49B(1A) of the RoP is not to be amended. Once moved, it cannot be withdrawn without the consent of the Legislative Council. Some Members held the view that the mover of a censure motion must be convinced that, once the alleged misbehaviour is established, there is adequate justification for disqualifying the relevant Member from office. This point was not raised at the House Committee meeting on 16 October when Members unanimously agreed that the procedure under Rule 49B be adopted and the Chairman of the House Committee be requested to move the motion. However, careful evaluation was made by the three signatory Members and I when drafting the motion. We believed that should the misbehaviours specified in the motion be established, it would convince some people that the Member in question should be disqualified. Of course, different people may use different yardsticks to measure the moral and integrity standards of Members. I cannot possibly make sweeping generalizations.

Although the lady concerned had indicated that she would not further participate in any inquiry, her attorney delivered to the Secretariat of the Legislative Council on 3 December a statement by her, in which she gave a detailed description of the sequence of events of the entire incident. I immediately requested the Secretariat to circulate the statement to Members. Although the censure motion today is not based on this statement from her, and I have to remind Members that this is merely a unilateral statement from her, it does provide one more piece of background information for the motion today. Just as what her attorney stated in the letter attached to her statement, and I quote: "We are instructed to write to you and are pleased to enclose the statement of our client for your reference. This could perhaps assist the Legislative Council Members in making their decision in respect of the censure motion against the Honourable Mr KAM". (end of quote) I believe it is the hope of the lady concerned that this statement can provide assistance to Members.

With these remarks, President, I beg to move.

Ms Miriam LAU moved the following motion: (Translation)

"That this Council, in accordance with Article 79(7) of the Basic Law, censures Hon KAM Nai-wai for misbehaviour (details as particularized in the Schedule to this motion).
Details of misbehaviours of Hon KAM Nai-wai are set out below:

(a) **Hon KAM Nai-wai made inconsistent remarks to the media and withheld key information, causing the public to have doubts about his integrity**

There were media reports on 4 October 2009 that Hon KAM Nai-wai dismissed his female assistant because of his unsuccessful advances to her. The female assistant was employed with public funds to assist him in performing his duties as a Legislative Council Member. At his press conference held on the same day, Mr KAM:

(i) denied that he had made advances to his female assistant and did not disclose that he had expressed affection towards her; and

(ii) denied that he had dismissed his female assistant because of his unsuccessful advances, and pointed out that the employment contract with his female assistant was terminated by giving one-month payment in lieu of notice which was in accordance with the employment contract, but did not mention that he had expressed affection towards her.

However, after the media subsequently reported that he had actually made advances to his female assistant, Mr KAM admitted on 6 October 2009 on a radio programme that he had expressed affection towards his female assistant when he was alone with her on one occasion in mid-June 2009.

(b) **Hon KAM Nai-wai was unfair in dismissing his female assistant, whose overall work performance was judged by him to be good, after his expression of affection was rejected by her**

In mid-June 2009, Hon KAM Nai-wai expressed affection towards his female assistant. Subsequently, he noticed some signs of his female assistant rejecting him. Between early September and mid-September 2009, Mr KAM invited his female assistant to dine
out and was also refused by her. Subsequently on 24 September 2009, he terminated the employment contract with his female assistant with immediate effect without reason assigned, although her overall work performance was judged by him to be good."

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

In accordance with Rule 49B of the Rules of Procedure, after the moving of a censure motion, the debate should be adjourned and the matter stated in the motion be referred to an investigation committee. However, a motion may be moved without notice that no further action be taken on the censure motion by the Legislative Council.

**MR PAUL TSE** (in Cantonese): President, in accordance with Rule 49B(2A) of the Rules of Procedure, I move that no further action shall be taken on the censure motion moved by Ms Miriam LAU. President, there are mainly three reasons for my objection as follows: First, the Legislative Council should have the authority to exercise self-control; second, the due process must be taken seriously; and third, the whole matter, procedure and Ms Miriam LAU's motion will not produce the anticipated results. If time allows, I will discuss these three points in detail later.

President, Rule 49B(1) clearly states that it could only be invoked when a Member was convicted of a criminal offence(s) and was sentenced to imprisonment for one month or more. Rule 49B(1A), that is, the provision invoked by us today, does not state under what circumstances it can be invoked, except for the general description of censuring a Member for breach of oath under the Basic Law or misbehaviour, as stated today. However, the definition of misbehaviour can be very wide.

President, the Legislative Council certainly possesses enormous powers and a mechanism in conducting investigations. However, my humble opinion is that the mechanism of the Legislative Council should not be activated casually. It must be activated only for the purpose of investigating matters of significant public interest. It is definitely inadvisable to invoke 49B(1A) immediately to
address the personal integrity or conduct of individual Members, or any illegal acts of transaction conducted by Members. This is because, in doing so, the Legislative Council will be turned into a court to try the integrity or conduct of the relevant Member, which is inappropriate. On the contrary, if there are any complaints, whether criminal or civil, an appropriate mechanism, including the Court, the Equal Opportunities Commission and other statutory bodies, is definitely in place for investigations and trials to be conducted and decisions made. The Legislative Council will take follow-up actions and invoke Rule 49B(1) or 49B(1A) only if the decision so made is worthwhile for the Legislative Council to act accordingly. Rule 49B(1A) should not be invoked indiscriminately as a mechanism for conduct of investigations. I consider this an abuse of process. Furthermore, President, I am afraid the precedent set today is not a question of pinpointing individual Members or the persons concerned, but things will simply see no end after the mechanism is activated.

Why do I say so, President? The entire procedure previously adopted by the House Committee is unimportant because of historical factors. It is therefore not important to us, insofar as our existing mechanism is concerned. A Member may propose a motion, provided it is seconded by three other Members, without going through the procedure of the House Committee. According to the past information provided by the Secretariat, this process is confirmed to be correct. So long as a Member proposes a motion, which is seconded by three other Members, the mechanism under Rule 49B can be activated immediately for an inquiry to be carried out without any need for discussion. This will cause the Legislative Council to use a lot of resources. Moreover, in the course of the investigation, instances of unfairness will often arise or privacy which should not be disclosed will be revealed as a result.

President, as I said earlier, the process will become endless, and it can be extremely dangerous in the sense that there is no safety valve to control risks. We have indeed held numerous discussions in the House Committee. However, once this mechanism has been activated, it would become unnecessary to go through any procedure in the House Committee, such that so long as a Member moves a motion, an investigation can be activated immediately. Is this what we wish to see? President, my motion will be subject to separate voting; yet the motion moved by Ms Miriam LAU just now would not be subject to the same. Provided that the motion proposed by her is seconded by three other Members, the investigation mechanism can be activated and an investigation committee will
then be formed. Of course, the result will be determined by two-thirds of Members of the Legislative Council in the end. However, the investigation mechanism itself is devoid of any safety valve, or a safeguard mechanism.

We must understand our own direction in doing anything. Some Members already clearly indicated on 6 October that even if this matter could be proved in the end, they still do not think that it will lead to the disqualification of the Member in question. Given that Members have already expressed their thoughts and made this clearly, President, will we, as in the case of treating a patient, suggest opening up the patient before considering whether the patient should undergo a heart transplant or "balloon angioplasty" if "balloon angioplasty" is preferred to a heart transplant? We will definitely not act in this manner. As I stated earlier, we must base on facts or it must be judged that the allegation can be established before the mechanism is activated. It is appropriate to use the mechanism only when the relevant results can be produced in the end. It is definitely not the correct direction to open up a patient before considering whether he or she should have a heart transplant, "balloon angioplasty" or having his or her wound stitched up, for the matter will go on forever as a result.

Second, I would like to discuss the question of a due process. Just now, Members should have clearly heard the report made by Ms Miriam LAU. Up till now, the lady concerned (perhaps I should declare that I have once met her and talked to her. I hope to make my interest clear, that I will not defend or argue for any one of them) is still maintaining her position that she does not wish to participate in any investigation. Anyone with legal background should clearly understand that it is not ideal even if you have the authority to compel a person who is unwilling to testify to be a witness. In the end, many things will occur, and the whole process will become unfair.

Furthermore, she has not made any declaration regarding her written statement. Therefore, she is not required to bear any criminal liability and consequences for making any false declaration. If a committee is really set up by the Legislative Council, on what ground can the committee investigate this case? For the time being, we have a defendant but no plaintiff. And once a committee is set up, we may probably face a scenario of having a defendant but not the plaintiff. Even if the defendant comes forth and gives evidence, on what ground can we doubt his words? On what ground can we judge the truthfulness of the evidence given? Of course, under the established court mechanism, we will have a proper safeguard procedure. For instance, we will have a proper
cross-examination mechanism to examine the reliability of the evidence given by the witness(es) according to law. However, without this mechanism and procedure, we will fail completely to prove how much of the evidence given is true or false. Furthermore, the incident took place over several months. The dismissal did not take place the next day after a certain statement had been made during a dialogue. This is not the case. The entire process lasted three months.

Today, I do not intend to raise questions one by one with respect to the case. I only wish to point out that the eventual outcome will be determined by a number of factors. If we have no opportunity to question or cross-examine the lady concerned, we will be unable to examine and ascertain the causes and circumstances of the incident. What is more, we cannot determine, with a very high standard of proof or a standard similar or close to criminal standard, whether the alleged incident really happened. President, in accordance with the relevant rules, we have completely failed to set any standard. However, insofar as the consequences are concerned, I believe the investigation committee will naturally adopt a very high standard of proof. Under the circumstances that the case is not without any doubt, the conclusion of disqualifying the relevant Member may therefore not be drawn.

Third, the relevant procedure is a waste of time and public money. As I mentioned earlier, given the extremely high standard of proof and the requirement of endorsement by two-thirds of Members …… even if the Department of Justice considers instituting prosecutions in similar criminal cases, no prosecutions will be instituted if there are no reasonable expectations of conviction, as this is unfair to the persons concerned, witnesses or defendants. Just as the heart transplant example cited by me earlier, we would not open the patient's heart to see if there is any problem before deciding whether or not to perform a surgery. Once this mechanism is activated, the investigation can be completed if evidence is sufficient and power can really be exercised to disqualify the relevant Member. However, if Members were convinced a long time ago — just as the point raised by Members right on the very first day — that the incident might not be so serious as to warrant disqualification of the Member concerned, they might merely exploit this mechanism to see how the whole thing develops in order to cope with the pressure exerted by the media and account to the public. Is this the procedure we want?

President, given the time constraint, I would like to stop here. I hope I can have the opportunity to give some additional comments after other Members have spoken during the little time left. Thank you, President.
PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr Paul TSE be passed.

PRESIDENT (in Cantonese): Before I invite Members to speak on Mr Paul TSE's motion, I would like to remind Members that, if Mr Paul TSE's motion is passed, no further debate shall be conducted on the censure motion proposed by Ms Miriam LAU. Even if Mr Paul TSE's motion is not passed, no debate shall be conducted on the motion, and the matter stated in the motion will be referred to an investigation committee first. This will prevent this Council from making comments on the relevant persons, including the relevant Member and person involved, without detailed investigation. Therefore, when Members speak on Mr Paul TSE's motion, please refrain from giving your views on the allegations presented in the censure motion.

MR KAM NAI-WAI (in Cantonese): President, as regards the motion moved by Ms Miriam LAU under Rule 49B(1A) to censure me, I have to stress here that I deny the two counts of misbehaviour accused of me ……

PRESIDENT (in Cantonese): Mr KAM Nai-wai, your speech now is exactly something we consider should not be raised at this moment.

MR KAM NAI-WAI (in Cantonese): President, I know ……

PRESIDENT (in Cantonese): You should speak on the motion moved by Mr Paul TSE.

MR KAM NAI-WAI (in Cantonese): I understand, President. What I am going to say is meant to facilitate and assist Honourable colleagues in dealing with Mr Paul TSE's motion.

I have to point out that, in respect of my dismissal of Ms Kimmie WONG, as well as the reason why I did not disclose the work performance of Ms WONG in the three months before dismissal and my supervisory advice previously is
because I think this is the suitable attitude of me as a former employer. But today, in order to facilitate and assist colleagues in dealing with Mr Paul TSE's motion, I must present to all Members the summary of my supervision record of Ms WONG during those three months. I believe Members must have already had a copy on the table before them, for I wish to set the record straight.

I have to reiterate, the overall work performance of Ms WONG in my office was good …..

PRESIDENT (in Cantonese): Mr KAM Nai-wai, you should not express your opinions on the specific contents of the censure motion. Please focus your remarks on Mr Paul TSE's motion, that is, that this Council immediately cease to act further on the motion.

MR KAM NAI-WAI (in Cantonese): President, I have to reiterate, when Members consider whether or not an investigation committee should be set up, I must present some justifications for consideration by all colleagues. Therefore, I must provide some background information. I hope the President will consider such background information because if Mr Paul TSE's motion is passed, an investigation committee will not be set up. So I must provide some background information to facilitate colleagues' consideration.

President, the reason for my having to present to Members the summary of supervision record of Ms WONG's work performance for the three months before dismissal is because in this document, Members will note the relevant information, for example, Ms WONG's refusal to attend meetings of the HKMA in connection with the Lehman Brothers and Smart bonds …..

PRESIDENT (in Cantonese): Mr KAM, you should not express your opinions on these specific contents because if you quote these information, naturally other Members may request you to elucidate, or question the information quoted by you, in that case, we would be advancing to proceed with the debate on the censure motion. I cannot allow such a debate to be opened at this stage. So please be more careful with your speech.
MR KAM NAi-WAI (in Cantonese): President, what I mentioned just now was the contents of the relevant background information which could facilitate everyone here in deciding whether or not to support the motion moved by Mr Paul TSE.

PRESIDENT (in Cantonese): You should not mention the specific contents of such information again.

MR KAM NAi-WAI (in Cantonese): I wish to reiterate, if you all don't know this background information, it would be difficult to make a decision. President, I will not read out in detail the summary tabled, but I merely wish to point out that I would only admit there were actually some problems in co-operating with Ms WONG in my work, and regarding these problems, I also wish to point out that I should not act with a bad temper and dismiss her immediately. This I would admit. But this fact has indicated that I have not dismissed Ms WONG because I was rejected in love; I wish to say, in the past and today, I wish to point out that in the past and today ……

PRESIDENT (in Cantonese): Mr KAM Nai-wai, I cannot but remind you again, if you continue to bring up the contents of the censure motion to reflect the judgment made by yourself, I cannot allow you to continue to speak.

MR KAM NAi-WAI (in Cantonese): I understand, President.

(Mr James TO raised his hand in indication)

PRESIDENT (in Cantonese): Mr James TO. Point of order? Mr KAM Nai-wai, you can take your seat first.

MR JAMES TO (in Cantonese): President, point of order. Just now, I heard the information cited by the mover of the original motion, and I also heard the
procedural motion proposed by Mr Paul TSE. It is true that Mr Paul TSE, in moving the procedural motion, included some situations which subject to a simple analysis, would conclude whether or not his motion should be supported. It seems he made one such simple analysis. With regard to certain circumstances in the case, Ms Miriam LAU, the mover of the original motion, raised whether the admissibility or otherwise would constitute the most serious consequence under our legislation, that is, compelling Mr KAM Nai-wai to resign from office. In this regard, what Mr KAM Nai-wai has said was actually his response to the information provided by Mr Paul TSE for consideration by colleagues. I cannot see why this would lead to the commencement of a substantial debate.

PRESIDENT (in Cantonese): Mr James TO, I think Members all understand that we must draw this line but of course, we must draw this line very carefully. I think that the comments made by Members when debating the motion moved by Mr Paul TSE should focus on his arguments for moving his motion since Rule 49(B) has laid down the procedure, that is, the motion shall be proposed by one Member and seconded by three other Members. After the motion has been moved, we shall adjourn the debate immediately and the matter stated shall be referred to an investigation committee for follow-up action.

Now, Mr Paul TSE also cites a provision in Rule 49(B), proposing that no further action should be taken. Just now, Mr TSE has stated his viewpoints and I have also listened very carefully to them. There was no need to argue over the specific details raised by Mr KAM, nor was there any need to argue whether a certain point was the fact or not and whether the claims made by a certain person were right or wrong. All these are unnecessary. Of course, he has his own arguments. For this reason, Members, at this stage, we have to decide whether, after moving this motion of censure, we should continue with the procedure specified in Rule 49(B) or we should terminate the procedure after passing the motion moved by Mr Paul TSE. This is what we have to do now. If we conduct a debate on the details of the censure now, the drafting intent of Rule 49(B) cannot be fulfilled.

Now, what we have to do is precisely to avoid having a debate at this stage, so Mr KAM can comment on what unfairness or problems would arise if we do
not carry out an investigation and take no further action at this stage. You can point this out but could you please try your best to avoid giving your personal interpretations of the details in this incident that have already been disclosed? I hope this can be done.

(Mr James TO stood up)

PRESIDENT (in Cantonese): Mr James TO, is it another point of order?

MR JAMES TO (in Cantonese): Yes, a point of order. President, I understand what you have said but I hope you can consider two points: First, whether or not we should support the shelving of this matter as proposed by Mr Paul TSE — I use this simple term to describe the motion proposing that the motion to launch the procedure be shelved but it does not necessarily mean that we want to debate the grounds cited by Mr Paul TSE. At this stage, we have to decide whether or not to support Mr Paul TSE’s motion that no further action be taken and our discussion on whether we support or oppose his motion proposing that no further action be taken cannot be confined to the views and facts put forward by Mr Paul TSE alone.

PRESIDENT (in Cantonese): Mr TO, I see your point. I do not want to argue with Members again and I only want to remind Members again that they should avoid using Mr Paul TSE’s motion to actually open a debate on the motion of censure. I believe Members all understand this, so Mr KAM, you can continue with your speech but I hope you can be more careful.

(Ms Cyd HO raised her hand in indication)

PRESIDENT (in Cantonese): Ms Cyd HO, do you have a point of order?

MS CYD HO (in Cantonese): President, a point of order. This is the first time the legislature has invoked Rule 49(B), which is a very solemn procedure with serious consequences, and all of us have no experience in this. I wish to be fair
to all the parties concerned. Since Mr KAM Nai-wai has prepared a speech, I suggest that the President suspend the meeting for 10 minutes, so that we can look at this matter clearly and give Mr KAM Nai-wai some time to decide how to continue with his speech.

PRESIDENT (in Cantonese): Could you please state clearly the reason for suspending the meeting? Is it to let Mr KAM Nai-wai look at this matter or to let other Members look at this matter?

MS CYD HO (in Cantonese): President, I mean to let Mr KAM Nai-wai reconsider this matter.

PRESIDENT (in Cantonese): In that case, Mr KAM Nai-wai, do you think it is necessary to suspend the meeting to give you some time to look at your speech again?

MR KAM NAI-WAI (in Cantonese): President, I think this is not necessary. I can continue.

PRESIDENT (in Cantonese): Then, please continue.

(Dr Margaret NG raised her hand in indication)

PRESIDENT (in Cantonese): Dr Margaret NG, is it a point of order?

DR MARGARET NG (in Cantonese): Yes, point of order. I do not wish to raise it either. President, you mentioned just now the reason for the ruling you made, which is, procedure-wise we could not touch upon the issue of right or wrong in respect of the motion moved by Ms Miriam LAU. President, may I suggest suspending the meeting for 10 minutes to see if any other Member has any proposal to make to the President.
Why do I say this? President, there is a reason for it. If a Member, I am not referring to Ms Miriam LAU, I am of course very clear about the background of the incident. If four Members talked nonsense and fictitiously moved a motion, other Members may point out that the motion is basically fictitious and that there is a background to it, making use of this as the reason to put an end to the whole process. Of course, what is involved is not only what have been said by the Members who proposed to take no further action on the motion. By then, will the President still think that this case should not be raised? Since this is the first time you have made a ruling in this respect, I reckon that Members have not thought about many things beforehand, or the President has thought about them already, but I feel that suspending the meeting could allow Members of all parties to put forth their views to the President, and this would be playing on the safe side. I request the President to consider this.

PRESIDENT (in Cantonese): I thank Dr Margaret NG for the suggestion. The issue has actually been thoroughly discussed in the House Committee, and I have examined the discussions by Members in great detail. Today, before the moving of the motion by Ms Miriam LAU, I also deliberated on Rule 49B in detail with the Secretariat, and Mr Paul TSE meanwhile gave me notice of his intention to move his motion. Thus, I have given careful consideration to this. If any Member has any query about my ruling, he can certainly raise it any time. But I do not think there is a need to suspend the meeting at this juncture because this would not help us very much.

Incidentally, I would have to point out, Dr Margaret NG said just now that if a Member has ground to prove that the censure motion was — when Members discussed the issue, a term, that is, "frivolous", was mentioned — a frivolous allegation, if anybody wishes to point out that what has been involved is frivolous and should not be proceeded with, he can of course point this out. But I have heard what Mr KAM Nai-wai said, and he did not agree with the motion moved by Mr Paul TSE. Hence, he did not mean to point out that we should not proceed with the motion; instead he wished to state that the allegation is frivolous. I hope Mr KAM Nai-wai will continue to speak, but I also hope that he would observe the spirit of Rule 49B by all means.

MR KAM NAI-WAI (in Cantonese): President, I will try to by all means for this is something new. As I mentioned earlier, President, I have prepared a summary
of supervision of Ms WONG's work records which are already put on Members' table. With regard to the texts of these emails, if Members decide to set up this investigation committee, I will submit the texts of the emails to the investigation committee. As I reiterated before, and let me reiterate this again today, I am prepared to give full support to the hearings of the investigation committee of the Legislative Council and answer questions. I will disclose in detail to the best that I can what happened in the entire incident and the reasons for as well as all circumstances revolving around the dismissal of Ms WONG Lai-chu, and I will give a full, accurate and detailed representation and response to the investigation committee and the public on some of the claims made by Ms WONG in her statement. Meanwhile, I hope that Ms WONG Lai-chu can attend the hearings of the investigation committee and answer questions. I sincerely hope that society can give me a fair chance and listen to my explanation. I sincerely hope that the Legislative Council will conduct a fair investigation, so as to allay public concern with facts. I strongly believe the Legislative Council and Hong Kong society where the rule of law prevails can accord me stringent proceedings and justice in tandem with any possible investigation by the Legislative Council.

President, for Members' convenience and to facilitate Members' discussion, I will withdraw from the meeting. I hope that Members can conduct a fair and impartial investigation, and I will give full support to it. Thank you, President.

DR MARGARET NG (in Cantonese): President, I speak in support of the motion moved by Mr Paul TSE's to take no further action on the censure motion.

At the House Committee meeting on 9 October this year, a motion was passed with 37 Members voted in favour of it, no Member voted against it, and no Member abstained, that the procedure under Rule 49B of the Rules of Procedure (RoP) be invoked to deal with the complaints about the conduct of Mr KAM Nai-wai. I was one of those who voted in favour of the motion.

President, in order to gain a correct understanding of this motion passed by the House Committee, we must refer to the House Committee procedure, matters and papers related to the motion. The paper being dealt with at that time was LC Paper No. CP1479/08-09. In the paper, it was pointed out that six Duty Roster Members (DRMs) received complaints from members of the public for an investigation to be conducted into Mr KAM Nai-wai with respect to three issues.
Having regard to these complaints, the six DRMs reported to the House Committee and made a suggestion. Let me quote the paper, "DRMs consider that given the serious nature of the issues raised in the relevant views, which has direct impact on the reputation of LegCo, the case warrants follow-up actions" (end of quote). It was also proposed that the current terms of reference of the Legislative Council Committee on Members' Interests (CMI) be expanded with power granted to it on a one-off basis to investigate Mr KAM Nai-wai.

The three issues of concern set out at that time were as follows (and I quote):

"(a) the public hope that an inquiry will be conducted to ascertain whether the allegation of sexual harassment is true;

(b) given that the assistant in the case was employed with public money, the public are concerned about whether there was improper use of public money in the course of the dismissal, including whether the dismissal was reasonable; and

(c) the public are also concerned that the incident may involve the question of the Member's integrity." (end of quote)

I stated very clearly at that time that I did not oppose the investigation, but I strongly opposed the idea of giving more power to the CMI on a temporary basis because the basic principle of a due process would thus be violated. I stated clearly in strong terms that the established procedure must be complied with for the purpose of investigating the conduct of a certain Member, and the disqualification procedure under Rule 49B was the only existing mechanism established by the Legislative Council.

This process cannot be activated without a clear allegation, as a clear allegation is required to ensure fairness of the investigation. This is the minimum condition for a due process. If no Member can or is prepared to make allegation(s), the process cannot be activated. As a result, Ms Miriam LAU was so brave as to join three other Members who were prepared to second ……

(Ms Miriam LAU raised her hand in indication)
PRESIDENT (in Cantonese): Ms Miriam LAU, what is your point?

MS MIRIAM LAU (in Cantonese): I would like to request Dr Margaret NG to clarify what she meant by being "brave". I wonder if she has looked up the verbatim transcript of the House Committee meeting to find out what happened at that time and why Ms Miriam LAU would become sponsor of the motion today. This I have explained earlier, but I still hope Dr NG can explain what she meant by being "brave".

PRESIDENT (in Cantonese): Ms LAU, you have raised the part for which you seek an elucidation. Dr NG, please continue with your speech.

DR MARGARET NG (in Cantonese): I would to thank Ms Miriam LAU for seeking my elucidation. While I am more than pleased to make a clarification, I cannot see why Ms LAU should consider this a point of controversy. President, we did talk about what should be done at that time should this mechanism be activated. In her earlier speech, Ms LAU also mentioned that I once proposed that the motion should be proposed by the Chairman of the House Committee for this could at least avoid struggles between political parties/groupings. At that time, Ms Miriam LAU indicated her willingness to do so. Today, I ……

MS MIRIAM LAU (in Cantonese): I have to make a correction. Perhaps I should clarify first and let Dr NG do so later.

PRESIDENT (in Cantonese): Ms LAU, you should be aware of the provisions of the Rules of Procedure.

MS MIRIAM LAU (in Cantonese): Yes, I will clarify after she has finished her speech.
PRESIDENT (in Cantonese): You must wait until Dr Margaret NG has finished her speech. If she ……

MR LEUNG KWOK-HUNG (in Cantonese): President, I am bored. What does being "brave" ……

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, it is not time for you to speak.

MR LEUNG KWOK-HUNG (in Cantonese): I am so bored.

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, please sit down.

MR LEUNG KWOK-HUNG (in Cantonese): You have to make a ruling on how "brave" can be interpreted.


MR LEUNG KWOK-HUNG (in Cantonese): You do not know what being "brave" mean, do you? It means that no one was willing to do it, and she was the only one who was willing to do it.

PRESIDENT (in Cantonese): Please sit down.

MR LEUNG KWOK-HUNG (in Cantonese): This is what being "brave" means, even if she was willing to do it for the sake of justice.
PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, please sit down immediately. Dr Margaret NG, please continue with your speech.

DR MARGARET NG (in Cantonese): President, there is absolutely nothing in my draft speech hinting that Ms Miriam offered to take up the responsibility. I only said that the House Committee was facing a thorny issue at that time, and then Ms LAU came forward bravely. Today, I have to thank Ms LAU for accepting my suggestion at that time. President, may I have your permission to finish my draft speech?

PRESIDENT (in Cantonese): Please continue.

DR MARGARET NG (in Cantonese): Let me go through this paragraph again. As a result, Ms Miriam LAU was so brave — in the sense as I explained just now — as to join three other Members who were prepared to second the motion to make the allegations. As explained by Ms Miriam LAU earlier in the meeting, although I proposed initially that the Chairman of the House Committee should move the motion to avoid struggles between political parties/groupings, it was clarified later that the motion could only be proposed by a Member in his personal capacity. I had agreed to this clarification, too.

There are discrepancies between the motion proposed by Ms Miriam LAU today, that is, the allegations set out in the Schedule, and the three major complaints spelt out in the paper read out by me earlier. The two allegations presented on the Agenda are listed in the Schedule (and I quote):

"(a) Hon KAM Nai-wai made inconsistent remarks to the media and withheld key information, causing the public to have doubts about his integrity;

(b) Hon KAM Nai-wai was unfair in dismissing his female assistant, whose overall work performance was judged by him to be good, after his expression of affection was rejected by her." (end of quote)

Most importantly, the first of the three main points, that is, the one related to sexual harassment, is missing. In her speech moving the motion, Ms Miriam
LAU already explained why this point is not particularized and the part concerning public money, with a part of it explaining why this point cannot be raised. Certainly, I respect Ms LAU’s decision and her reasons for not including the allegation of sexual harassment. I agree, if the lady concerned refuses to testify and answer questions, the allegation of sexual harassment will lack a basis. However, even if the remaining allegations are established, the matter is still far from being so serious that a Member has to be disqualified. This is why I support Mr Paul TSE’s motion on taking no further action. I consider it an abuse of the process if Members insist that an investigation be conducted regardless of the allegations. What is more, this will give rise to doubts about the ability of this Council to deal with the issue fairly and impartially.

President, the formulation of Rule 49B of the Rules of Procedure (RoP) was based on Article 79(7) of the Basic Law, that is, when a Member (and I quote) "is censured for misbehaviour or breach of oath by a vote of two-thirds of the members of the Legislative Council present", the President of the Legislative Council shall declare that Member of the Council is no longer qualified for the office.

In the course of drafting Rule 49B, the Committee on Rules of Procedure discussed whether "misbehaviour" should be defined to demonstrate what sort of misbehaviour and the degree of gravity should be taken as meeting the requirement of Article 79(7). After repeated deliberations, we came to the conclusion that it was inappropriate and not necessary to provide any definition because the degree of gravity is clearly reflected in other provisions of the Basic Law.

First of all, Article 79(6) requires (and I quote) that "When he or she is convicted and sentenced to imprisonment for one month or more for a criminal offence committed within or outside the Region" (end of quote). Clearly, the relevant conduct must not be a minor criminal offence, and the Member concerned is not sentenced to imprisonment by the Court for a minor offence. Not only will he be unable to perform his duties as a Member during his imprisonment, his reputation is also not acceptable to society. By the same standard, the gravity of the misbehaviour referred to in Article 79(7) should also be comparable. In other words, the gravity of sexual harassment of subordinates may also be the same. However, the allegations listed in the Schedule today do not reach this standard.

The principle of the Basic Law can be seen in the system of the Basic Law as a whole. Hong Kong permanent residents have the right to select Members of
the Legislative Council by vote. Members elected by electors through a lawful process must not be dismissed easily by other Members with excuses. In particular, there are different parties/groupings in the Legislative Council. It is all the more necessary to prevent Members from majority factions, whether they belong to the democratic camp or the establishment, to dismiss Members elected by the public at large easily through exploitation of the process.

All public officers, including Members of the Legislative Council, must have a stringent requirement for their own conduct and cherish their own feathers to avoid damaging public confidence in the exercise of powers by public officers. This is a strict criterion of self-discipline. We must exercise self-restraint when our conduct is still far from warranting dismissal. The more we respect our public office, the more self-disciplined we will become. A public officer might even need to give up his office to a person of virtue when there is a risk of his credibility being tarnished. However, this requirement of self-discipline cannot be mixed up with the yardstick adopted by the dismissal procedure.

Unless the misbehaviour of a Member has reached such an extent that he should be dismissed, his political future should be decided by electors. This Council should not deprive electors of their right to make the decision.

President, after Ms Miriam LAU had published the wording of her motion, the lady concerned issued a statement through the media, indicating clearly that she would not attend any hearings to give evidence. The statement that she is not prepared to answer questions should not be treated as evidence. However, if other evidence comes to light in future, every Member will have the right to propose a new motion under Rule 49B. Nevertheless, our procedure must be stringent and clear; it must not be abused and used as a tool of repression.

With these remarks, President, I support Mr Paul TSE's motion.

**MS MIRIAM LAU** (in Cantonese): President, I would like to clarify the earlier remark made by Dr Margaret NG that I was so "brave" as to propose the motion today. But according to the verbatim transcript of the House Committee ……
PRESIDENT (in Cantonese): Ms Miriam LAU, you can only clarify the part of the speech delivered by you earlier which is considered by you to have been misunderstood by other Members.

MS MIRIAM LAU (in Cantonese): I might be misunderstood as being brave at that time. But actually, when the Chairman of the House Committee then decided to move this motion, I was not yet elected as the new Chairman. Neither did I know which House Chairman. Later, a re-election was even conducted. Therefore, someone might have misunderstood that I was being brave at that time.

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

MR ALBERT HO (in Cantonese): President, in connection with the alleged unreasonable dismissal of his female assistant by Mr KAM Nai-wai and relevant allegations, the Democratic Party will maintain its consistent position in supporting the Legislative Council in conducting an independent investigation. However, the Democratic Party has also requested that the investigation be conducted in compliance with the principle of fair and impartial procedural justice. In the opinion of the Democratic Party, the activation of the mechanism under Article 79(7) of the Basic Law to carry out an investigation will not only affect Mr KAM Nai-wai's personal rights and reputation, as well as his seat in the Legislative Council — of course, the consequences can be extremely serious — it will also have a bearing on the dignity and integrity of the entire institution of the Legislative Council. Therefore, Members must consider the investigation procedure very cautiously and seriously.

The unprecedented investigation to be conducted by the Legislative Council will set a precedent for the future. The same might apply to any political parties/groupings or individual Members in the future, because the principle of fair and impartial procedural justice is meant to ensure each and every Member is to receive equal treatment and protection. Hence, Members taking part in the investigation must act in a way that transcends their own political parties/groupings. And they must not turn the investigation into an opportunity to suppress dissidents and eliminate political adversaries.
According to the procedure prescribed in Rule 49B of the RoP, in moving a censure motion to accuse a certain Member of misbehaviour and disqualify him or her from office, a mover is required to particularize the relevant details in the Schedule to the motion. The Schedule to this motion has also spelt out two allegations against Mr KAM Nai-wai: (a) Mr KAM Nai-wai made inconsistent remarks to the media and withheld key information, causing the public to have doubts about his integrity; and (b) Mr KAM Nai-wai was unfair in dismissing his female assistant, whose overall work performance was judged by him to be good, after his expression of affection was rejected by her. Furthermore, the Schedule has also set out the factual basis relevant to the two allegations. According to Rule 49B(2) of the RoP, no amendment may be moved to a motion moved under subrule (1) or (1A).

President, we believe that when drafting this censure motion and its Schedule, the mover of the motion expected that the female assistant was not prepared to take part in the investigation (as she claimed through her attorney), and so the media reports about Mr KAM Nai-wai’s remarks had to be used as the main basis of proof of what Mr KAM had committed. However, a public statement recently issued by the female assistant through her attorney disclosing facts as claimed by her has placed Mr KAM Nai-wai before an opinion trial.

The motion moved by Mr Paul TSE today to terminate the investigation is based on the fact that the lady concerned has indicated clearly through her attorney that she will not render assistance by attending any investigation conducted by the Legislative Council. I believe this is mainly because she mentioned in her statement issued recently that she hoped to put a full stop to the matter after issuing her statement. Her remarks have also implied that she would be very likely to maintain her position of not assisting with the investigation. The Democratic Party understands and respects Mr Paul TSE’s principle and judgment, that is, if the female assistant does not come to the Legislative Council to assist with the investigation, the hearing will become one with a defendant but no plaintiff, and so the investigation will fail the principle of procedural justice. However, considering some acts of the lady concerned — she has initially indicated her refusal to be involved in any manner, but then she issued a statement afterwards — we consider that she might still change her mind. Given the present circumstances, we in the Democratic Party consider that the investigation does not necessarily have to be terminated. We still hope that, if the lady concerned decides in the future to take part in the investigation, all the facts can be made public to do all the persons concerned justice. In view of this
special consideration, the Democratic Party decided today that we could only abstain from voting.

However, the Democratic Party still emphasizes and reiterates the importance of upholding procedural justice in the future investigation. We hope that before carrying out the investigation, the investigation committee to be established in future must see clearly the difference between this investigation and the investigation by an ordinary Select Committee. In general, the latter will investigate all the facts involved without a pre-established position (including allegations against a certain institution or person). In accordance with the procedure under Rule 49(B), however, an investigation will be conducted on the basis of some allegations made against a certain Member for misbehaviour. Therefore, the investigation is actually, by nature, a disciplinary hearing.

For this reason, on behalf of the Democratic Party, I would like to express our hope that the investigation committee, should it be set up in future, must first draw up some basic rules. I would like to raise a few points in the hope that the future investigation committee can give them serious consideration.

First of all, during the first stage of the investigation, the investigation committee should decide whether there is sufficient _prima facie_ evidence showing that the allegations and relevant facts can be established, including the need for the committee to summon witnesses. During this stage, the most important task is to summon relevant witnesses who will produce evidence to establish facts to substantiate the allegations. Of course, insofar as this case is concerned, we believe the attendance and participation of the lady concerned is essential.

The allegations are very serious. Actually, it is more than having adverse consequences. President, one of the consequences is disqualification of a Member from office. In part a(ii) of the Schedule, Ms Miriam LAU seemed to be implying that Mr KAM Nai-wai dismissed the lady concerned because of his unsuccessful advances. This allegation will also cause extremely serious damage to a Member's reputation. In view of the gravity of this allegation, we consider that the investigation committee must adopt a stringent standard of proof before the credibility of facts can be established. Although we do not necessarily have to adopt the criminal standard of proof, I believe many legal principles have clearly provided that if an incident might lead to serious
consequences, the standard of proof must be commensurate, and the requirement must be higher and more stringent.

Furthermore, witnesses who give evidence must attend the hearings conducted by the investigation committee to answer questions raised by members of the committee as well as the complainee, that is, Mr KAM Nai-wai, in this case. The committee can absolutely not accept or casually accept written evidence or hearsay evidence, thereby depriving its members or the defendant of the right to ask the witnesses questions.

Furthermore, based on the principle of equality and fairness, the investigation committee should also meet with other witnesses. However, it must absolutely not conduct search and gather evidence in the manner of a fishing expedition, which is unwarranted, because this disciplinary hearing should be regulated and impartial.

Upon the completion of the first stage, members of the committee should sum up all prima facie evidence in support of the allegations to inform the defendant of all the evidence and counter-evidence as the basis of his defence. In addition to giving personal testimony, the defendant can also request the committee to meet with other witnesses who will help his defence.

In view of the gravity of the incident, I am of the opinion that in addition to the legal advisor to the investigation committee, the committee should also allow the complainee to be present at the meetings held throughout the entire hearings so that he will know what accusations are made against him or listen to evidence given by the persons concerned. Meanwhile, the female complainant, that is, the lady concerned, should enjoy the same right.

I also hope the investigation committee will consider allowing the defendant to ask questions at appropriate times during his attendance or permitting him and his attorney to make winding-up speeches to express their views before the conclusion of the hearings. Of course, we must also examine carefully and seriously whether the attorneys should be allowed to be present throughout the entire hearings and their roles, especially the role played by the attorney representing the defendant.

President, in view of the background to this case, the investigation committee should respect the wish of the lady concerned. If she is reluctant or
does not wish to face any more public pressure, she should not be mandated to attend the hearings to testify. Should she eventually decide not to attend the hearings, the committee should curtail or even terminate the hearings for reasons of the principle of equality and submit a report on such developments to the Legislative Council. As regards whether the Legislative Council will convict Mr KAM Nai-wai merely on basis of what he said to the media, it will be up to the Legislative Council to decide according to its conscience.

The Democratic Party has put forth these proposals in the hope of establishing a fair and impartial hearing procedure and system to ensure that the mechanism under Article 79(7) of the Basic Law will not be abused. It is hoped that the investigation committee to be established in the future can seriously consider these proposals, so that a precedent which will be respected and followed can be set.

I so submit.

MR CHIM PUI-CHUNG (in Cantonese): President, today we are discussing Mr Paul TSE’s motion to take no further action on the censure motion proposed by Ms Miriam LAU. Just now, some Members said this is the first time, but they were wrong. Actually this is the second time. The first time was in 1998 when the Legislative Council invoked Rule 49A of the RoP, with the consent of two-thirds majority of Members, to expel me from the Legislative Council. At that time, I made a very serious and strict demand because ….. Right, according to Article 79(6) of the Basic Law, when a Member is convicted and sentenced to imprisonment for one month or more for a criminal offence committed within or outside the Region, two-thirds of the Members of the Legislative Council may expel him from this Council. But, President, this is written in the Basic Law. The laws as implemented in Hong Kong are in three-tier, first, first trial; second, appeal and third, final appeal. Members of the legal profession could so outrageously show contempt of common law in Hong Kong, and to invoke the Basic Law when necessary, and while it was not necessary, Mr Andrew WONG, then President of the Legislative Council to …..

PRESIDENT (in Cantonese): Mr CHIM, please speak to the question.
MR CHIM PUI-CHUNG (in Cantonese): I am citing …… President, I am citing what had happened in the past and it proves that some Members of this Council had used the banner of justice to realize their personal desires. This kind of spirit, especially for Members representing the legal profession, should warrant the citing of facts and criticisms.

President, today we are ……

DR MARGARET NG (in Cantonese): Point of order.

PRESIDENT (in Cantonese): Mr CHIM, please sit down. Dr NG, what is your point of order?

DR MARGARET NG (in Cantonese): President, there is only one Member representing the legal profession in this Council, which is me. In his remarks just now, Mr CHIM Pui-chung said the Member representing the legal profession had, hoisting the banner of justice, tried to — if my memory is correct — realize one's personal desires. President, if he does not withdraw this remark, I am obliged to ask you to rule that this is offensive language.

PRESIDENT (in Cantonese): Mr CHIM Pui-chung, did your remarks just now refer to the Member of this Council who is the representative of the legal profession?

MR CHIM PUI-CHUNG (in Cantonese): President, there have been only two Members representing the legal profession. I can't stop the one from checking in the seats.

PRESIDENT (in Cantonese): According to Dr Margaret NG ……
MR CHIM PUI-CHUNG (in Cantonese): No one can force me to say anything. If she takes it personally, so be it. I didn't say anything to that effect.

(Mr Ronny TONG stood up)

PRESIDENT (in Cantonese): Mr Ronny TONG, is it a point of order?

MR RONNY TONG (in Cantonese): President, point of order. I am also a lawyer. But I was not here at that time, so I am certain that he must not mean me. Yet, I think that an accusation of this kind against any Member is offensive, irrespective of whether the Member in question is representing the legal profession. Since Mr CHIM Pui-chung might not mean any particular Member just now, but all Members, I think he should withdraw this remark.

PRESIDENT (in Cantonese): Mr CHIM Pui-chung, please note that the Rules of Procedure provide that no Member shall make any offensive remarks about other Members, nor should he impute any motives to other Members. Your remarks just now ……

MR CHIM PUI-CHUNG (in Cantonese): President, I know. Since I have become a Member in 1991, I have been enjoying my privileges ……

PRESIDENT (in Cantonese): Did you remarks just now impute any motive to Members of this Council?

MR CHIM PUI-CHUNG (in Cantonese): Regarding this, you were also here at that time. I do not know if you all had any motives. I did not make any specification. It is a matter of perception, and we have differences in understanding. I do not wish to make any comments. President, please claw back some time for me.
PRESIDENT (in Cantonese): Mr CHIM Pui-chung, Dr Margaret NG has made a request, which is, for you to withdraw your earlier accusation of Members of this Council representing the legal profession. Are you prepared to withdraw it?

MR CHIM PUI-CHUNG (in Cantonese): I will definitely not withdraw it. It is the fact. The fact is I was victimized by Article 79(6) of the Basic Law. Now, we are debating today ……

PRESIDENT (in Cantonese): Mr CHIM Pui-chung, please sit down for the time being. Since Dr Margaret NG has made the request that, if Mr CHIM refuses to withdraw his remarks just now, I should make a ruling. Before making a ruling, I have to review in detail the remarks made by Mr CHIM earlier, I suspend the meeting now.

3.32 pm
Meeting suspended.

3.45 pm
Council then resumed

PRESIDENT (in Cantonese): During the suspension of the meeting just now, I had listened attentively to the part of the speech made by Mr CHIM Pui-chung earlier which led to Dr Margaret NG's allegation. Mr CHIM Pui-chung did say that some Members of the Legislative Council sought to pursue their desires under the banner of justice. Then he said that this was particularly so with Members from the legal profession.

I think such a statement can constitute imputing motives to other Members and using offensive language to the Members concerned. Therefore, I demand that Mr CHIM Pui-chung withdraw these two remarks made by him earlier.
MR CHIM PUI-CHUNG (in Cantonese): President, it is very normal for us, being Members of the Legislative Council, to have different political views and hold debates. I have no direct intention to rebuke representatives in the Legislative Council but President, if they have automatically taken those earlier remarks of mine personally and felt uneasy about them, I would change them. I would certainly withdraw them, and though in the President's opinion I am withdrawing them, this, in my opinion, is just making a turn.

President, I have wasted more than 10 minutes of my speaking time, so I do not want to waste any more time. Therefore, I will now come back to discussing the details of the motion. Just now, Mr Paul TSE presented three arguments: The first is that it was only necessary for one Member to move a motion and three Members to second it before an investigation into other Members' behaviour could be launched. Concerning this point, this is done with the help of the legislation. If we consider that the legislation is not good enough, we can amend it. Members can consider this.

Secondly, just now, Dr Margaret NG …… in fact, I do not wish to mention names. In fact, this matter was raised by her in the House Committee, but does she think that the entire Legislative Council is controlled by her? It was her who raised this matter but it was also her who has voiced opposition. Is she being hegemonist on behalf of the legal sector? She really has to do some self-examination. She once queried if Ms Miriam LAU, in holding that it was necessary to establish an investigation committee for this incident, would be able to effect the expulsion of Mr KAM Nai-wai from the Legislative Council. As a member of the legal sector, she should understand that according to the law, it is necessary to have an offence first before a charge can be brought against a defendant and that although the maximum penalty may be, say, capital, it may not necessarily be handed down. A judge may convict the defendant of manslaughter or rule that the defendant is innocent. In view of this, if she says right away that this motion can be proposed only if the allegations can be substantiated and will lead to certain consequences, this shows her understanding of the law and this is also her wishful interpretation.

In fact, lawyers have two sides. When they represent the defendant, they say one thing but when they represent the plaintiff, they say another thing, so I think that …… it is true that at the early stage, I had some misgivings about whether or not the Legislative Council was too rash in taking this course of action. Why did I have such a worry? In fact, no matter who lodges a
complaint against whom, if the matter comes before the Legislative Council, first of all, there should be a plaintiff. No investigation would be launched immediately to see if the claim of the plaintiff is true or not. It is when there is a plaintiff that the mechanism will be activated and our mechanism will not yield results overnight. For this reason, I think that insofar as the incident is concerned, initially, the relevant division or that responsible for complaints in the Legislative Council acted rather rashly. There should first be a plaintiff, and it is only after a legal representative has come to the Legislative Council to give a statement and the second step of examining whether it is true has been completed that the third step of summoning the defendant would be taken. In this way, everything would be foolproof.

Well, having gone thus far, what is the situation now? If the Legislative Council thinks that no investigation should be carried out, this would give the outside world …… the public have special expectations for the conduct of Legislative Council Members. We really must do an even better job than other people and we must also behave ourselves. As regards whether or not they would behave, this is a matter of personal choice and freedom. All right, if it is said all of a sudden that the Legislative Council would not carry out any investigation, what would be the response of the mass media? They may say that the Legislative Council is protecting one of their own numbers, protecting itself and covering up mistakes, that it is very active when dealing with other people but relents when dealing with one of their own. Compared with continuing with the investigation, in fact, this allegation is actually far more serious.

Third, chances should be given to Mr KAM Nai-wai to give an explanation. At least, he should give an explanation on why he offered a compensation of $150,000 and the reason for the numerous rumours. If he thinks that he has no explanation to give, it does not matter either. The Democratic Party said just now that they would abstain from voting. Originally, I also intended to abstain from voting but at any rate, regarding the numerous constraints imposed by the Democratic Party just now on the committee even before it has launched an investigation, I believe this is unnecessary as the investigation committee will naturally know how to deal with this. Imposing too many requirements on them will restrict it in other ways or effectively be making demands on them or intimidating them, so what would other people think of this? For this reason, I think that this is not necessary.
In particular, the Democratic Party should understand that they have vested interests because they are often the subject of headlines in newspapers. They may not agree that they are enjoying this intangible interest and may ask how possibly negative news can be favourable to them. Ultimately, if people in politics receive frequent press coverage …… Just look at the surveys, he now ranks 10th among Members and I am not joking. No matter what, the Democratic Party should feel that they have caused a lot of trouble to the Legislative Council and Honourable colleagues.

For this reason, they should not think that other people are targeting them. I firmly believe that as Legislative Council Members …… just now, I was not trying to defend my past actions; I was only asking society to be forgiving and when we have a problem, we should raise it for discussion. This does not matter and it matters even less if we have different political opinions because we only have several decades of time and in these several decades, politics changes a great deal and anything can change. Regarding the helplessness and grievance experienced by the Chairman of the House Committee just now, I express my deep sympathy and support.

In any event, we hope that this investigation committee can reach a conclusion as soon as possible, then give an account to society, so that the Hong Kong public can have greater confidence in the Legislative Council and in the whole system in Hong Kong with its separation of powers and the executive, the legislature and the Judiciary can express their own opinions and give full play to their social functions.

For this reason, I think the Legislative Council should deal with this matter very impartially. I firmly believe that all along, the Legislative Council has dealt with matters in various areas very impartially. In the final analysis, the 30 directly-elected Members among us as well as the 30 Members from functional constituencies all have their own representativeness and their own value judgments. President, in these circumstances, I think this motion had better be withdrawn, so that the investigation committee can launch its work as soon as possible and the whole matter will not bother us anymore.

How would the future situation be like? I am convinced that the truth of this matter will be uncovered. Just as Mr KAM Nai-wai himself said, in the future, society will give him a fair judgment and this will not lead to the situation
that Dr Margaret NG is worried about, that is, the Member concerned would be reprimanded or punished in some other ways.

President, like the Democratic Party, I will abstain from voting on this motion.

MR PAUL CHAN (in Cantonese): President, I oppose the motion moved according to Rule 49B(2A) of the RoP by Mr Paul TSE today, that no further action be taken on the censure motion moved by Ms Miriam LAU.

First of all, I declare that during the Legislative Council Election last year, I became acquainted with the former female assistant of Mr KAM Nai-wai, Ms Kimmie WONG, who is mentioned in the censure motion and whose identity was disclosed later. However, we are simply nodding acquaintances, not friends. In addition, since I am a member of the Committee on Members' Interests (CMI), in the course of deliberating what to do with this motion concerning Mr KAM Nai-wai's suspected misbehaviour, I received enquiries from people who claimed to be assisting Ms WONG in this matter about the work procedures of the CMI and some procedures and rules of this Council, to which I replied according to the facts that I know.

Today, it is the first time that a motion is moved in the Legislative Council according to Rule 49B(1A) of the RoP to deal with allegations against a Member and this is a very solemn procedure. Moreover, to the person concerned (that is, the Member concerned), the consequences can be very serious. For this reason, when considering whether or not to support this motion, I am being very prudent and must take into account the views of the public, the pros and cons of the Legislative Council passing this motion and the possible consequences of this motion becoming a precedent in future.

When considering the views of the public, I noticed that many people considered the expression of affection by Mr KAM towards Ms WONG and the subsequent dismissal of Ms WONG to be a matter between them and it should be dealt with by Mr KAM or the Democratic Party, to which Mr KAM belongs and that the Legislative Council should not commit its precious resources and time to an investigation. In fact, there are many other far more important territory-wide issues requiring the urgent concern and attention of Members, so they really
should not waste their precious resources and time on this matter. To some extent, I subscribe to such views.

However, on the dismissal of Ms WONG by Mr KAM, the Complaints Division of the Legislative Council has received quite a number of complaints that must be addressed squarely. After summarizing the complaints, it can be seen that there are two points of concern to the public: first, whether or not, as a Member, Mr KAM did abuse his position and power to act unjustly and second, issues relating to Mr KAM's integrity.

These two points are important considerations in deciding whether or not to support the motion to proceed no further with the investigation. In the meeting of the Legislative Council House Committee on 16 October, when Members were discussing whether or not to follow up the complaint against Mr KAM according to Article 79(7) of the Basic Law, I indicated that the Legislative Council should follow up by carrying out an investigation or I would consider that to be unjust. Until mid-November, my position remained unchanged.

However, through her attorney, Ms WONG made clear to the Chairman of the House Committee, Ms Miriam LAU, on 17 November that since this matter made her feel a great deal of pressure and anxiety, she decided not to take part in any investigation any further. Since Ms WONG decided that she would not be involved in any investigation carried out by the Legislative Council, at that time, I could already foresee that even if the motion moved by Ms LAU could be passed, given that there is no plaintiff and without the evidence from a crucial party in the incident, the investigation would not yield any result. For this reason, when answering the enquiries of the mass media, I said publicly that I no longer supported any investigation.

However, the attorney of Ms WONG submitted her petition to all Members through the Legislative Council Secretariat on 3 December. Is the account given by Ms WONG at great variance with that given by Mr KAM before the release of the petition? This became an important consideration in reconsidering my position on this motion.

President, I have compared the versions given by Ms WONG and Mr KAM and found that the facts stated by them differ significantly. Let me cite a couple of examples. For example, in Ms WONG's version, Mr KAM expressed his affection for her in June this year. Ms WONG rejected him and made clear a
number of times that she would resign (see line 2 of page 2 of Ms Kimmie WONG's petition). Mr KAM said that he hoped Ms WONG would not resign but he also requested that she reconsider their relationship at home. Subsequently, Mr KAM requested to meet Ms WONG in private a number of times. On 23 September, Mr KAM again invited Ms WONG to have lunch in private with him. After being refused by Ms WONG, Mr KAM pursued further by asking if she could have an appointment with him on the next day.

If we then look at the version given by Mr KAM, initially, he denied ever expressing his affection or sexually harassing her, still less dismissing Ms WONG due to her rejection of his advances. However, a couple of days later, Mr KAM admitted to having expressed his affection to Ms WONG and apologized to Ms WONG. Mr KAM had had private appointments with Ms WONG but subsequently, he said that he did not make any advances. Mr KAM invited Ms WONG to a meal in mid-September and said that he could not rule out having given Ms WONG the impression that Mr KAM was dating her again.

The second example relates to what may have been the fuse for the dismissal of Ms WONG. President, Ms WONG said that on 24 September, she attended a staff meeting and was writing an article while having the meeting. Mr KAM was dissatisfied and requested other colleagues to leave the office and continue with the meeting at another venue. The next day, Mr KAM dismissed Ms WONG immediately on the ground that no further co-operation was possible. However, in the version given by Mr KAM, Ms WONG did not attend the staff meeting on 23 September and he dismissed Ms WONG on the next day immediately.

President, in view of the versions of the incident given by Ms WONG and Mr KAM, apparently, there is a case to answer in this complaint case of concern to the public and it can be referred to the Legislative Council for follow-up action by establishing an investigation committee. I think this is the right thing to do. Otherwise, this will amount to injustice. Although the details of misbehaviour as particularized by Ms LAU do not include the details in Ms WONG's petition and although Ms WONG pleaded with the public in her petition to respect her feelings and refrain from pestering her with questions, as I said at the beginning, my consideration is based on two points of concern to the public, that is, first, whether or not the Member has abused his position and power and second, whether or not there is any problem with his integrity.
Hong Kong is a highly developed place with a prosperous economy, an open society and the free flow of information. The education standard of the public is very high and together with the monitoring of the mass media, the public have set certain standards for public officers. In particular, as Members, we have the mandate from voters to comment on politics in the Council, scrutinize bills, examine and approve budgets, raise questions, handle complaints from members of the public, endorse the appointment and removal of the judges of the Court of Final Appeal and the Chief Judge of the High Court, summon the persons concerned to testify or give evidence and even impeach government officials. We have powers and naturally, the responsibility to observe certain ethical standards in our conduct.

What is now called the Advisory Guidelines on Matters of Ethics in relation to the Conduct of Members of the Legislative Council of the Hong Kong Special Administrative Region in their capacity as such was issued as early as 1996 in the era of the former Legislative Council, so President, it can be seen that all along, the legislature has attached great importance to the ethics of Members.

After Ms WONG had publicized her petition, Mr KAM immediately held a press conference to give his response. I have read the relevant press reports and the impression he gave me is that he does not think that he is in the wrong.

I am a Christian, and I have the conviction that we should be forgiving. Everyone makes mistakes but with a forgiving heart, we can start anew and so can other people, so this is a blessing to other people and oneself. Ms WONG did not want other people to pester her with questions and I have also considered respecting her wish by supporting Mr TSE’s motion and pursuing this matter no further. However, as I said just now, in this matter, I really cannot see Mr KAM express his sincere remorse or regret. His behaviour in the press conference made me feel that ……

**PRESIDENT** (in Cantonese): Mr CHAN, your remarks carry the implication that Mr KAM must have remorse or regret for what he did. Is this what you mean?

**MR PAUL CHAN** (in Cantonese): I do not ……
PRESIDENT (in Cantonese): If not, I think it is not appropriate to say so at this stage.

MR PAUL CHAN (in Cantonese): President, if I can finish this sentence, the meaning will perhaps be clearer, only that I have not read out the whole sentence. What I want to say is that this makes me think that he may actually be the aggrieved party.

President, since the Democratic Party and Mr KAM are both willing to accept an investigation, I can sense that they feel they have been aggrieved in this incident. In that case, the motion moved by Ms LAU today will lead to the establishment of an investigation committee to carry out an investigation and it is a course of action that may vindicate them. This is the same consideration applied by me when I gave my support to the motion on conducting an inquiry into Mr LEUNG Chin-man, that is, to enable an investigation by the Legislative Council to do justice to various parties and to allay the doubts of the general public about the integrity and behaviour of a Member and whether or not he has abused his powers.

Some people hold that invoking Rule 49B of the RoP to carry out an investigation is somewhat making a mountain out of a molehill because given the nature of the incident and the division of camps in the Legislative Council, the investigation will not lead to the disqualification of Mr KAM from office. I understand that this may be the ultimate outcome, but given the existing terms of reference of various committees in the Legislative Council and the RoP, there is really no other channel to take lawful follow-up action. In response to any injustice in society and no matter what people are involved, apart from levelling criticisms, the Legislative Council can also carry out investigations to find out the truth and make justice prevail if necessary. Does one mean that we can turn a blind eye and a deaf ear to matters relating to the conduct and behaviour of Legislative Council Members on the ground that the existing channels and mechanism are not satisfactory? However, I stress that in the event that an investigation is really conducted in the future, we cannot simply rely on the reports of the mass media. The procedure of the investigation must be fair, impartial and stringent. In order to avoid the application of Rule 49B of the RoP to cases that Members consider not so serious again, in the future, the Legislative
Council can separately reconsider whether and how follow-up action should be taken on complaints against the conduct and behaviour of Legislative Council Members but, President, this is a matter to be discussed in the future.

President, I so submit.

MR IP KWOK-HIM (in Cantonese): President, today, we are discussing using the mechanism stipulated in Rule 49B of the RoP to censure a Member and carry out an investigation into whether or not there is any misbehaviour on the part of Mr KAM Nai-wai in dismissing his female assistant. This is the first time that this mechanism is activated in the history of the Legislative Council. We must deal with this matter prudently because not only has it aroused public concern, it also has significant and far-reaching implications on the reputation and image of the Legislative Council as a whole. As one of the three Members seconding the motion, I wish to talk about my views on this matter.

Firstly, I am grateful to colleagues in the Secretariat for preparing a verbatim record of the relevant parts of the two meetings of the House Committee on 9 and 16 October within a short time upon the request of Members. As a result, Honourable colleagues who were not present at the two meetings can also have a clear picture of the discussion. The record has clearly recorded in black and white the repeated deliberations by 37 Members for more than two hours, who unanimously agreed in the end to activate the mechanism under Rule 49B of the RoP. This was endorsed without any objection from any Member. The motion today was sponsored by the Chairman of the House Committee and the three Members who seconded it, including me, were responsible for drafting the censure motion today.

In fact, in the course of drafting the motion, I and the other Members, in particular, Ms Miriam LAU, strove hard and exercised great caution to base the motion on facts, in the hope that through proposing a motion, an investigation into the incident can subsequently be launched. In this process, we stressed that everything must be founded on facts, in particular, the remarks made by the persons involved, and Mr KAM Nai-wai in particular, instead of unverified information reported by the mass media. We hope very much that an account can be given to the public, answers can be given to resolve the doubts of the
public about this incident and the concerns of the public about this incident can be addressed.

President, the most valuable thing about Hong Kong is that under the protection of the Basic Law, all of us enjoy full freedom of speech. Many Honourable colleagues hold different views on this incident and of course, they can voice different opinions. However, the indisputable consensus is that on that day, it was agreed in the House Committee meeting that a motion be proposed in accordance with Rule 49B. Since Mr Paul TSE did not take part in the discussion of the House Committee on 9 October, I can understand his moving the motion today that no further action be taken. However, if any Member who took part in the discussion on that day now requests or supports the motion that no further action be taken, I think this is obviously at odds with the consensus reached on that day after discussion. I find this inconceivable.

In the last meeting of the House Committee, some Members began to voice the query of whether or not Members who proposed or seconded the motion should assume political responsibility for their action. I felt that this comment is extremely unfair to the four of us. In the meeting of the House Committee on 9 October, in fact, Dr Margaret NG made herself very clear. I quote, 

"(Translation) In fact, I really want the Chairman of the House to propose this motion because in this way, the motion would be a neutral one that upholds the dignity of the Legislative Council instead of one that results from the rivalry among political parties.". For this reason, in proposing on 9 October that Ms Miriam LAU shall move the motion, it was surely not simply an act driven by a bolt of bravery and I myself was not driven by a bolt of bravery either. I only wanted to find out the truth. Due to this resolution among ourselves and the belief that an investigation had to be carried out, I became involved in this matter. For this reason, I find it necessary to clarify this remark.

In the meeting on 9 October, Members voiced many views and had a discussion. In this course, there was a great deal of discussion on whether Rule 49B should be invoked and I will try to quote some remarks again. In fact, Dr Margaret NG said on that day — and I am still quoting the actual words, 

"(Translation) Rule 49B was passed after careful deliberation by the Committee on the Rules of Procedure and after consultation and discussion among all Members. It has been passed for a period of time and is an established mechanism ...... The approach adopted in Rule 49B is that there is an activation
process and an investigation. The outcome of the investigation will lead to the immediate conclusion of whether or not the Member concerned should be disqualified and whether he should be vindicated, so that there will be a conclusion to the matter." It is clear that in raising this point, Dr Margaret NG wanted to advocate and recommend invoking Rule 49B, believing that this is an appropriate course of action. I remember clearly that in that meeting, many Members also held such a view.

Mr LEUNG Yiu-chung also voiced his views in the meeting, saying that …… I have to look up the paper. Perhaps let me talk about Mr Alan LEONG first — sorry, I mean Mr Ronny TONG. Mr Ronny TONG said, "(Translation) If the procedure specified in Rule 49B is adopted, in the end, it will be necessary to have an open debate. Before voting, it will be necessary to have a debate and if it is believed that the outcome does not warrant the disqualification of the Member concerned, you can reprimand him or strongly criticize him in the debate but in the end, you can vote not to dis …… not to disqualify him from office.". Therefore, some Members believed that they should lend their support. Of course, there were also Members who considered this approach inappropriate. I will also cite the opinion of Mr LAU Kong-wah. He said, "(Translation) If an investigation is to be carried out, particularly in relation to such a serious allegation, I will not do so with a conclusion in mind. There must be an investigation first before reaching a conclusion. Is it necessary to disqualify anyone? This will be settled only at the next stage. Therefore, if a mechanism — an existing one — since the so-called Committee on Members' Interests has the experience in carrying out such investigations, I think this would be a very appropriate course of action.". In fact, there are different views on this matter.

Some Members think that Rule 49B should be invoked but others think that this matter should be referred to the Committee on Members' Interests for investigation. After a discussion of over two hours, a decision was made in the House Committee. The result was that the initial proposal to let the Committee on Members' Interests carry out an investigation evolved into an agreement by 37 Members to activate the mechanism under Rule 49B to conduct an investigation. I also wish to point out that Dr Margaret NG also said that she supported this and she was one of those 37 Members. I can see clearly from the record that the person who strongly advocated invoking Rule 49B, that is, the person who advocated a discussion on using the approach adopted today is Dr Margaret NG. However, having heard her speech today, I really have difficulty understanding
why she now voices opposition. The ground cited by her is that the allegations are not strong enough to warrant the disqualification of the Member concerned. Since she was aware of this, why did she point to this treacherous path and make 37 Members follow her? I really cannot figure this out. If she does so, does this amount to double-crossing? Is this the case? Even now, I still have difficulty understanding this.

In view of this and having come to this stage, I think the relevant investigation should be conducted. For this reason, we also think that it is not appropriate of Mr Paul TSE to propose the motion that no further action be taken at this time. We also believe that if an investigation is really carried out, then the question of how the investigation committee would proceed should be left to members elected from among Members themselves to handle properly in a fair, impartial and open manner. I do not think that anyone would make use of the investigation to remove a rival. At least, the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) definitely does not have such an intention. I only hope that justice can be done to the persons concerned and to the legislature, the facts can be found out and everyone can know the truth of this matter. For this reason, we will oppose the motion moved by Mr Paul TSE today. Thank you, President.

MR LEUNG KWOK-HUNG (in Cantonese): President, it also took your good self quite a while to consider the term "duty-bound". I exactly want to talk about this point. Ms Miriam LAU ……. I was out of town on that day, gone to the United States. However, I still managed to grasp the developments of the whole incident. Today, I feel very unhappy on hearing the negative comments made by many people about Dr Margaret NG. Of course, there is a personal element because I respect her very much. However, I should also uphold the cause of public justice.

Members, what does "duty-bound" mean? Even because of personal privacy ……

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, the term that I heard repeated several times just now is "driven by a bolt of bravery".
MR LEUNG KWOK-HUNG (in Cantonese): Right, "driven by a bolt of bravery". "Driven by a bolt of bravery" can be for the cause of personal justice or public justice. Ms Miriam LAU is the Chairman of the House Committee, so Members think that it would be better for her to take charge of the investigation of this matter. In fact, Dr Margaret NG has already said that if Ms LAU is in charge, it can show that it is not on account of political parties and groupings that this action was taken. In fact, she assumed this role for the cause of public justice, not because she actively wanted to do so. This is because she is in such a position and other people think that it is more appropriate for her to do so, so she assumed the role. It was found out only later that the Chairman of the House Committee was not allowed to do so. So, there is nothing worth arguing about, is there?

Be it for the cause of public justice or personal justice, today, I may be upholding the cause of public justice. I feel very unhappy on seeing these attacks on Dr Margaret NG. There is a personal factor in this, as I have explained. However, I think that I am upholding public justice in defending her. That is why I said that we have to hold this discussion here actually shows that the knowledge of our people is poor, insofar as this case of being driven by a bolt of bravery is concerned. There are two kinds of justice. For example, if Mr Wong Yuk-man requests me to do something considered to be personal justice by saying, "Long Hair, you say something as I have something else to do.". This is a personal matter but this is also public justice because I have to speak on behalf of the League of Social Democrats.

Therefore, talking about public and personal justice, is there any personal justice between Dr Margaret NG and Ms Miriam LAU? This is not an issue that I want to look into. I just want to say that Ms Miriam LAU is upholding public justice. At that time, she was looking for the best and most impartial channel for the Legislative Council to deal with this problem. Therefore, there is actually no point in arguing about this. What Ms Miriam LAU did on that day was definitely public justice.

All right, why do we have to come back to this discussion today? I have heard many different interpretations. In fact, what is one of the crucial points in this matter? The crucial point is that there is no witness. How can we conduct a trial without any witness? I have gone through many trials. If the police lost a video cassette relating to my case, they would say, "Mr LEUNG, we can no longer put you on trial in Court as we have lost a video cassette.". Even though
the police know full well that I have done something, without the video cassette, buddy, or if I cannot be seen in the video recording (that is, the Court cannot see my image in a video recording), the police cannot tell the judge, "On that day, Mr LEUNG Kwok-hung did assault the police officers in such a way.". This would not be admissible.

Now, what kind of situation are we in? We are merely relying on his words, or we cannot say that those were his remarks because the mass media merely reported that somebody had said so, therefore, it was alleged that he had made those remarks. What the people concerned said is evidence that cannot be verified by cross-examination. That is to say, that person can put something on record and having done so, that is it. If public justice is to be upheld, it is now time we talked about justice. How can an investigation compliant with the strict requirement of upholding public justice be conducted? This is the key to the action of this Council. It means that if a witness is to be summoned at the beginning of an investigation, say, Witness No. 1, and if Witness No. 1 does not come, what should we do? Should we end the investigation there and then? If Members do not heed Mr Paul TSE's advice, let us just go ahead with the investigation. After Witness No. 1 has come, the investigation can no longer be called off. We can proceed in this way and perhaps everyone would be happier because we have done something after all. Since we have been talking about establishing an investigation committee for such a long time, in that event, we can proceed by following the process of natural justice. If no witness comes forward to testify, saying that he or she cannot and will not accept any cross-examination, we can then end the investigation at that stage. Is this what Members want to do now? If Members have that in mind, prepared to appear smart while doing something foolish, there is nothing I can do. Do Members want to do that? If they do, I will have a chance to cast my vote. That is to say, if Ms WONG does not come here but we establish an investigation committee to carry out an investigation all the same, in that case, it will end up being disbanded.

However, the present situation is not like this, is it? It certainly is not. What should we do then? It will lead to a public trial. There were too many such instances during the Cultural Revolution. I found that in the books and articles of the Cultural Revolution Period, LIU Shaoqi was described as a traitor, covert spy and public enemy. I have been to the Xinghuoliaoyuanguan museum, where all sorts of incriminating evidence can be found, for example, handwritten letters. LIU Shaoqi could not overturn the verdict, nor could he question the
people concerned. Members, it was in such circumstances that the President of our Republic died in Henan, without even a name for him. At that time, there was a special team to investigate the case of LIU Shaoqi.

President, you and I grew up in the same era and we know about the three words "lack of credibility". This kind of thing will not happen in Hong Kong today. Under your leadership, it should not be found in the Legislative Council. It is not possible to put anyone on a public trial. The present situation is almost like a public trial. That means a stage would be set up here to conduct a trial without any concrete evidence and anyone can adduce hearsay evidence or violate the principle that a witness can be cross-examined. That is a public trial. That is what the Congress of the United States did to Bill CLINTON. That is, he was treated as though he more than deserved something, right? His wrongdoing was a lack of integrity. Why did such a situation happen in the United States? Because the United States Government did not allow others to carry out investigations, buddy. Therefore, an investigation into him must be conducted before the President can be impeached and only in this way can it be considered fair to the President. The President is entitled to immunity. An investigation has to be carried out if it is ruled half way through that he is not suitable to be the President. Therefore, Bill CLINTON became "the ugly bride who sooner or later has to come face to face with her father-in-law."

However, is the situation like this in Hong Kong? No. President, there are so many mechanisms in Hong Kong. Ms WONG can actually use the mechanisms established by the Government and make use of the avenues applicable to her situation, such those dealing with unfair dismissal and sexual harassment, then open a file for investigation. If, upon investigation, evidence is found and the case is referred to this Council, then Mr KAM Nai-wai is disqualified, this would be more reasonable because this course of action is neutral. Mr KAM Nai-wai will surely receive protection in law and everything is very strict. The Chief Executive, whom I have no respect for, will appoint some trustworthy people to do this job. The disqualification of a Member has to go through such a mechanism. This is the mechanism that I am going to "enjoy". For instance, the sentence of imprisonment imposed on me in relation to the civil disobedience action taken by the Citizens' Radio is more than one month. This matter will be referred to the Legislative Council, which will decide whether or not to disqualify me. In fact, I did not cite any defence for myself because the Court has sentenced me to more than one month of imprisonment. Do Members think my head has to roll? If a Member says,
"No, he was just upholding public justice.", in that case, even though I have committed an offence, I should not be driven out of the Legislative Council. If someone wants to get rid of me, there is in fact a mechanism. However, I can keep my head if two thirds of all Legislative Council Members do not endorsing so.

In fact, there is a mechanism to disqualify a Member. On this problem, Dr Margaret NG has said repeatedly that since the allegation of sexual harassment cannot be substantiated, the other two allegations may not necessarily lead to the disqualification of the Member concerned. So, what should we do if this Council invokes an ordinance to take action but the ordinance cannot help advance the goal? Talking about integrity, I am second to none in terms of integrity, right? I lambaste people. If I am at fault, I will admit it honestly and others can also lash out at me. However, the question is whether or not this issue of integrity is sufficient ground for disqualifying a Member. If so, political parties that change their political platforms all the time should go. Will I make such a proposal? Of course not. Voters will punish them. It is not necessary for us to punish them using an internal mechanism, is it? For example, your political party always changes the year for universal suffrage. I would not mobilize members of the public to complain against your party here, then request that an investigation committee be established to examine if there is sufficient ground for disqualifying you as Members. I would not do that. I am not dumb. This issue of so-called integrity will have an effect on the next election. Anyone without integrity will surely get nowhere. We trust our voters. As to the question of whether or not the issue of integrity involves corruption or bribery, prosecution can also be instituted. When a case is substantiated, it can then be referred to the Legislative Council to decide whether or not to disqualify the Member concerned.

What do we want now? That is the only question left, that is, the employment of a staff member with public funds? That is the only item left. However, is this allegation sufficient to lead to the disqualification of a Member? I think it certainly is not. Members, please take a look at Rule 49B(1) of the RoP, which states that a criminal offence should involve a sentence of imprisonment for one month or more. Buddy, that is not a light punishment. Here, with the exception of Mr CHIM Pui-chung and me, who have been put in jail before, nobody else has experienced anything like that, right? These are very special circumstances.
Therefore, in the final analysis, today, for Members who still want to establish an investigation committee, it can be said that they have no ground. They say that we have to do justice to the public. Have we got the ability to do so? This is the most important thing. This is just like back then, when Chairman MAO ordered an investigation into LIU Shaoqi to see if he was a traitor, covert spy and public enemy. Can one really find out whether or not LIU Shaoqi was a traitor, covert spy and public enemy using this method? There was no witness, no witness to be cross-examined. Everything was just hearsay. What can be done, President? Nothing can be done.

Therefore, I think that the crux of the matter is that Members have let morality dictate a procedure. Morality is certainly important. Recently, I also said that in order to prepare for my resignation, I had read more books and I read about what CHEN Duxiu described as morality. What is it? Morality is to exercise strict self-discipline before judging others. If we ask what exercising strict self-discipline first means, of course, it refers to social morality. However, social morality cannot be enshrined in law, can it? This is merely preaching, asking people to abide by it. For example, is there any unethical behaviour on the part of Legislative Council Members? Certainly. I have also been accused of unethical behaviour before, have I not? I was alleged to have spoken foul language, brought the Legislative Council into disrepute, and so on. Now, they can find someone to lodge a complaint against me …… I believe that this is possible if they can do that to Mr KAM Nai-wai, but do we want this? It is terrible to judge by moral. Members also know that Thomas MORE was sentenced to death for this and so was Socrates. They were both convicted of a moral offence.

Acts that violate moral and ethics, so much so that they seriously affect one's integrity must not be tolerated by the law, so the person concerned should resign of his own accord rather than other people asking him to do so. Therefore, among all the reasons …… I have heard the grounds cited by Mr Paul CHAN, but I found that he failed to hit the nail on its head. How can it be fair to Mr KAM Nai-wai? He said that we had to be fair to him, but the investigation will not yield any result. I wonder if Members know that in the investigation of incidents like those relating to Mr LEUNG Chin-man and the Lehman Brothers minibonds, we have requested witnesses to bring along their statements to give explanations of their own? We cannot rule that a Member must give up his seat. Let me give an example. If we ask Mr John TSANG to come here, and then say to him that he has no integrity and ask him to give an explanation, we may not be
satisfied with him and we can reproach him, but we cannot demand that he be escorted away.

Therefore, having said so much, regarding this issue of the disqualification of a Member, in fact, we have not made any clarification. Up to now, can the allegations against Mr KAM lead to his disqualification? This is not sure. Second, the question is whether or not, at present, there is an adequate mechanism and sufficient information concerning the allegations to enable the matter to proceed in compliance with procedural justice. So far, these two points cannot be met. This being so, why do we not change our minds? We have to change our minds to avoid wasting our time. In fact, Mr Paul CHAN put it very well when he said that we should not waste our time because we would not get any result.

What should we do if we would not get any result? In fact, the League of Social Democrats has long since opposed this whole thing. We are of the view that there is no need to proceed. In fact, I think and I agree with the allegations made on the first occasion. The only basis on which it can be said that he should be disqualified is the allegation of sexual harassment. In fact, sexual harassment is a disgusting offence, especially if a public officer uses public funds to hire a subordinate and then engages in sexual harassment. This is certainly disgusting and such behaviour may lead to his disqualification as a Member. Therefore, Members agreed to carry out an investigation at that time. However, if such an allegation no longer exists, there is no testimony and even Ms Kimmie WONG has repeatedly said that no such thing had happened. What should we do then? Why do Members still insist on carrying out an investigation today? The conclusion that I have drawn is that firstly, we are trying to appear smart while doing something foolish; secondly, there may really be a hidden agenda, which is to cause Mr KAM Nai-wai to lose his seat as a Member and thirdly, there is the intent to stage a public trial. In fact, in terms of human morality, all these three points are absolutely wrong. I will not do such things.

I also wish to talk about one story — The Story of Ah Q. The "spirit of Ah Q" is that when someone verbally abused him, he would ask that person who he was swearing at and he would even ask, "Do you mean me?" This is how it is like. Therefore, just now, I have seen the manifestation of the spirit of Ah Q in flesh. Thank you, President.
MR RONNY TONG (in Cantonese): President, having heard the weighty remarks made by Dr Margaret NG just now, I think that actually I need not speak because I really cannot advance any argument better than hers. However, just now, Mr IP Kwok-him mentioned me in his speech — although I think he did not talk about me in critical and accusatory terms, I still think that I must make some clarifications because Mr IP Kwok-him read out the comments I made in the meeting of the House Committee on that day, apparently thinking that I or the Civic Party have reneged on our words, without a firm position.

President, what I talked about on that day belongs to a completely different level from the motion proposed by Mr Paul TSE today. What I said on that day was this. If there was a case to answer, will such an allegation warrant the disqualification of a Member? After a fair investigation, Members can have an open discussion and make a decision. Another major reason at that time was that, as far as I can remember, the Chairman, Ms Miriam LAU, reminded us that the lady concerned had notified the Legislative Council Secretariat through her attorney that she was willing to assist in making the allegations — or at least, in preparing the wording of the allegations — and this indicated that to some extent, the lady concerned was willing to co-operate with the Legislative Council in following up the incident. President, in those circumstances, of course, our consideration and the decision on whether or not an investigation should be carried out were different from those today.

Another important factor is that the allegations on that day did not merely say that "Mr KAM Nai-wai made inconsistent remarks", rather, the allegations included some that may morally and legally be far more serious. For this reason, the decision we made at that time was that if there were allegations with a case to answer, the only channel that we could adopt was to carry out an investigation and voting in accordance with Rule 49B of the RoP. However, what we are discussing today is not the issues that I mentioned just now — President, you have also ruled that Members' speeches today should not cover the details of the allegations. What we must discuss today is whether or not, having regard to the developments so far and on seeing the details of the allegations, we should stop the procedure.

In this regard, there are several considerations that we must respect. First, when conducting any investigation in the Legislative Council, the investigation itself already amounts to a very serious negative criticism of the Legislative
Council Member concerned. In particular, from the viewpoint of a politician, the fact of being investigated will perhaps have a profound lifelong impact on his career. For this reason, when making the decision, we must examine clearly whether or not, firstly, this is in line with the stipulations of the RoP and the Basic Law and second, from the most objective viewpoint possible, even if these allegations are founded and fully substantiated, should the Legislative Council follow them up?

President, just now, Dr Margaret NG mentioned Article 79 and if we look at what is stated in Article 79, we will find that it refers to some fairly serious situations. It is serious from the political point of view, rather than the moral point of view — of course, a serious moral issue can also give rise to a serious political issue — but you will find that the problems stated in the seven paragraphs are all fairly serious.

President, let us look at the allegations now. The details of the first allegation state that "Hon KAM Nai-wai made inconsistent remarks to the media and withheld key information, causing the public to have doubts about his integrity". President, what do we actually mean by "integrity"? I believe it certainly does not refer to political integrity. If it means political integrity, "Long Hair" has also explained quite clearly just now that in the Legislative Council, due to our different political views and standpoints, we may also think that other Members have questionable political integrity. If we simply use political integrity as the criterion, President, I believe the same allegations can be made against many Honourable colleagues here at any time and they can even be disqualified, so this is a criterion that we cannot endorse in the Legislative Council. If this matter is not considered simply from the angle of political integrity, does it refer to personal moral integrity? President, I wish to raise a simple question: Has any Member here never lied? They all surely have. I believe no one in the world dare say he has never lied and the point is how serious the consequences of lying are. Even when we teach kids, sometimes, we would also lie.

The question now is how the lines should actually be drawn. Just now, Mr Paul CHAN flip-flopped, giving the reasons for his repeated changes of position but in the end, it seemed his ground was that the remarks made by the lady concerned to the mass media was apparently inconsistent with those made by Mr KAM Nai-wai to the mass media. President, if their remarks were
consistent, there is no need to investigate at all. However, if the remarks were inconsistent, is it definitely Mr KAM Nai-wai who is at fault? This may be a matter of different viewpoints and different angles and interpretations of events. In the Legislative Council, Honourable colleagues often have different interpretations when discussing motions. That is to say, even if the first allegation is fully substantiated, I believe that according to the spirit of the Basic Law, it does not constitute any offence that warrants censure or disqualification of Mr KAM Nai-wai. This being so, our consideration must be careful as this course of action may lead to unfair allegations against a certain Member. Do we not consider carefully if no further action should be taken?

President, concerning the second allegation, we all know that it is a more serious one, namely, "KAM Nai-wai was unfair in dismissing his female assistant, whose overall work performance was judged by him to be good, after his expression of affection was rejected by her". President, it seems that this allegation is about "unfairness" but I do not see how such an allegation can be regarded as sexual harassment or an act that should be condemned morally. To Legislative Council Members, is being "unfair" an allegation that warrants censure and even disqualification? In the same vein, President, I often think that my opponents, be it Legislative Council Members or government officials and even your goodself, President, can also be unfair. Should we consider this allegation today using our own yardsticks? Even if it is proven that all the allegations are true, is this the basis on which reprimand and even censure can be made? If not, why should we continue to carry out an investigation which, as I said just now, would have such a profound impact on his career?

President, even so, I must state that I fully understand the position of the Democratic Party. However, my concern is that this process should not be exploited as or degenerate into a political tool. In the same vein, I understand that the position of the Democratic Party today is actually political. I think that it is not based on a spirit of sensibilities, rationality and lawfulness or on the underlying spirit of the RoP. They hope that they can have a defence of an even higher political dimension. Although I agree with and understand the position of the Democratic Party, I have to tender them my apologies here because my view is different from theirs.

President, this motion today cannot be amended. This is the stipulation of the RoP and there is no scope for improving the motion either because what it
contains are those allegations. Even if other incriminating evidence is found through the investigation, it is not possible to use such evidence in addition to these allegations to support this motion, so as to censure or criticize the Member concerned. Since there is not any room for improving this motion, even if all the facts are substantiated, I believe that not only is this unfair to Mr KAM, it is also possible that this will be somewhat unfair to the operation of the legislature as well as to its impartiality and credibility.

President, my speech today may have offended some colleagues, particularly Honourable colleagues of the Democratic Party. However, I really think that no matter how we look at it, we should still consider this matter in terms of the system. We should by no means set a bad precedent for abuse of this system due to some special reasons. President, this is my greatest worry. Thank you, President.

MR LEE CHEUK-YAN (in Cantonese): I speak in support of Mr Paul TSE’s motion, that no further action shall be taken on the censure motion. I do so not because I am against conducting an investigation. I think any alleged serious misbehaviour of a Member of the Legislative Council should be investigated, and I have always agreed with conducting an investigation. However, the question now is the investigation must be fair, and I believe all members of the community agree with this. But is a fair investigation possible now? Because after a fair investigation, either justice will be done to Mr KAM Nai-wai and his name will be cleared or the Member who is subject to this allegation will be held responsible for his conduct. The outcome will be one of these — either justice will be done to him or he will be held responsible for his conduct. It will be desirable and all of us would like to see a conclusion reached after a fair investigation.

However, what is the problem now? The problem now is whether the prerequisite of a fair investigation can be met. Many Members have mentioned just now that the process must be fair, and I think no one will object to this. There is no reason why we should accept a process in which only affidavits are available and no cross-examination by Members is allowed. Similarly, regarding Mr KAM Nai-wai’s claim today about the 10 short messages or his comments on the conduct of his assistant, we cannot believe in one version of the story only. We will have to ask KAM Nai-wai and also the assistant concerned whether the incident is true. However, if one of the parties declines to appear as
witness, we will be unable to ask — we will be unable to ask the lady concerned questions about her allegations; neither will we be able to ask questions about KAM Nai-wai's defence or allegations made by the other party — how can we proceed with the investigation?

I think we have now come to a point where, instead of gainsaying what we advocated in the past, a very, very significant change in nature has emerged in the process, that is, the lady concerned has stated clearly that she will not come forth to give evidence. As she has stated this clearly and I believe we will not summon her to give evidence by invoking the Legislative Council (Power and Privileges) Ordinance because we have to respect the lady's personal wish as privacy is at stake, we are indeed unable to conduct an investigation. How then could we proceed with this investigation?

Mr Albert HO said just now the investigation should be discontinued only if it has come to such a point. However, if it is already clear that it will come to such a point, we had better not commence the investigation at all. Once the investigation is commenced, resources — including the resources of this Council and time — will be wasted on an investigation in which fairness will clearly not be upheld. We had better not commence it. There are still plenty of issues to tackle in Hong Kong. Certainly, I am not saying that this issue is unimportant. As I said just now, investigations must be conducted into serious allegations, but as this is actually impossible, we had better stop before it is too late and proceed no farther.

President, I hope Members will consider this point: When it is clearly known that the lady concerned will not come forth to give evidence, is a fair investigation possible? If it is clearly known that this is impossible, why should we bother commencing it at all? This is the question I would like Members to consider. Thank you, President.

MR TOMMY CHEUNG (in Cantonese): President, the issue of whether Members of the Legislative Council, as representatives of public opinions, have integrity and have committed any misbehaviour is a solemn question, an issue of public concern. In the present case, Mr KAM Nai-wai is involved in an incident which has aroused public concern about his integrity and whether or not he has committed any misbehaviour.
The House Committee has therefore made a collective decision to exercise the power under Rule 49B(1A) of the Rules of Procedure and asked Chairman of the House Committee to move this censure motion on a neutral and ad personam basis for purposes of activating the mechanism to set up an investigation committee to look into the incident thoroughly. In other words, the investigation committee will be given charge of establishing the truthfulness of the details particularized in the censure motion and give advice on whether the facts thus established constitute grounds for censuring Mr KAM.

Two representations are made in the motion today to censure Mr KAM for misbehaviour: one of them alleges that Mr KAM "made inconsistent remarks to the media and withheld key information, causing the public to have doubts about his integrity" and the other alleges that Mr KAM "was unfair in dismissing his female assistant, whose overall work performance was judged by him to be good, after his expression of affection was rejected by her".

However, I have to reiterate that we have in no way determined that Mr KAM has any problem, and neither have we judged that he was at fault. As something has really happened and made headlines in the media and aroused public concern, and given that some members of the public have even lodged complaints directly with the Legislative Council, there is no reason why this Council should ignore it, for this would mean a failure of this Council in holding itself accountable to the public.

It is definitely premature to say now what outcomes will come out of it or whether any action will be necessary after the investigation. Still less is it predictable. These will be subject to Members' joint decision made in the light of the findings and recommendations of the investigation committee.

As for Mr Paul TSE's concern about the impropriety of proceeding with the investigation "without a plaintiff" for the lady concerned has not hitherto undertaken to help with the investigation, I agree it would indeed be undesirable if the lady concerned firmly refuses to help with the investigation. However, as long as the investigation committee discharges its duties impartially and makes decisions on the basis of established facts instead of only believing in one side of the story, I believe the impartiality of the investigation will not be jeopardized.
Therefore, President, the Liberal Party supports the conduct of a thorough investigation into the incident by the investigation committee in order to find out the truth for the public, and we do not support Mr Paul TSE's motion that no further action shall be taken on the censure motion.

President, I so submit.

MS CYD HO (in Cantonese): President, I speak in support of Mr Paul TSE's motion without notice that no further action shall be taken on the censure motion moved under Rule 49B(1A) of the RoP. Under Rule 49B of the RoP, either the relief of duties or censure stipulated in subrule (1) or (1A) may ultimately lead to a Member's disqualification from office. As the consequence is very serious, a stringent procedure must be followed. Therefore, we must ensure that the allegation is commensurate with and proportionate to a Member's disqualification from office before the relevant procedure can be activated.

The Schedule to the motion moved by Ms Miriam LAU consists of two allegations: the first one is that he has made inconsistent remarks, causing the public to have doubts about his integrity; and the second one is that he was unfair in dismissing his assistant after his expression of affection was rejected by her — there is no allegation of sexual harassment. However, I do not think the Legislative Council should initiate an investigation into these two allegations because they do not fall within the scope of the business of this Council.

First of all, if the investigation seeks to find out whether the dismissal was fair, the case would be labour dispute that falls under the ambit of the Labour Department. If the dismissal was made on the premise that his expression of affection was rejected, the case would fall within the ambit of the Equal Opportunities Commission which shall examine whether there is any contravention of the Sex Discrimination Ordinance. As to the question of whether there were unsuccessful advances, this is a personal matter between the two parties and their families only and does not fall within the scope of the business of this Council. When it comes to relationship matters, inconsistent remarks made due to emotional reactions or as an attempt to protect one's families or the parties involved should be considered separately from inconsistent remarks made in handling public affairs, and the difference in significance between them is very evident.
As for the relevant Member's conduct and whether his way of handling personal matters are acceptable to the public, the decision should be left to the public in future elections.

This is the first time this Council invokes Rule 49B of the RoP. Although every one of us exercised all due diligence, the two to three hours of discussion at the meeting of the House Committee were indeed not comprehensive enough. Therefore, it is necessary for us to review the situation as it unfolds.

The essence of Rule 49B is that the investigation procedure should not be casually initiated simply on the basis of an anonymous complaint or extensive media coverage because it will easily become a means for political suppression. Therefore, the rule requires that the Member who proposes the motion shall do so in his/her own name and shall be held personally accountable for it. This seeks to be fair to the Member who is subject to the allegation because if the allegation is unreasonable, members of the public will make their own judgment. However, when the motion is proposed by the Chairman of the House Committee on Members' behalf, it will become a collective decision, thereby defeating the purpose of holding the sponsor accountable for the allegation.

President, I have to tender my apologies here because during the first discussion on this issue at the meeting of the House Committee, I was one of the 37 Members who raised their hands to support that the wording of the motion be drafted by the Chairman of the House Committee. However, after repeated reviews, I subsequently made a clarification at the meeting of the House Committee and requested Ms Miriam LAU to affirm that she would move this motion in her capacity of an individual Member instead of Chairman of the House Committee on Members' behalf because otherwise we will set a precedent that motions moved in the capacity of the Chairman of the House — a person who does not have to be politically accountable for such acts — may enable Members with ulterior political purposes to evade public accountability. Therefore, this precedent must not be set. Subsequently, Ms Miriam LAU affirmed that she was willing to bear the relevant responsibilities, and I also respect the power conferred on Members by Rule 49B. Today, after reading the wording of the Schedule to the motion, I support the motion moved without notice that no further action shall be taken on the motion moved under Rule 49B(1A) of the RoP.
President, the incident has evolved to a stage where Mr KAM Nai-wai and the Democratic Party are under trial by publicity on the basis of some ex parte information provided by the dismissed assistant. I understand that both Mr KAM Nai-wai and the Democratic Party greatly hope that an open and fair investigation will be conducted so that justice will be done to them. However, as an investigation initiated under Rule 49B carries some constitutional significance, and in view of the wording and content of the Schedule to the motion, I support that no further action shall be taken on the motion moved under Rule 49B(1A).

Thank you, President.

MR FREDERICK FUNG (in Cantonese): President, my stance and position has always been one of disagreement to any investigation carried out in the capacity, status and name of the Legislative Council into matters not necessarily related to the interests but possibly some other aspects of a Member because I often find it most inappropriate and improper to turn this Council into some kind of a Court to pass judgment on a Member for the following reasons.

First, this Council is not a Court, and it may not be able to follow the strict procedures of a Court fully; second, unlike judges, Members may not be able to raise questions or even make decisions without being influenced by this Council, their political background, political stances and motives. Even if they are aware of the need to be impartial, can they be seen to be so? Or will they themselves be unable to tell whether or not they are impartial? Therefore, I think this Council should strive to .... I even hope this Council will not be used as a platform for hearing cases or conducting the so-called hearings which are actually trial proceedings to investigate whether Members are at fault.

Members may still remember that some time ago there was a suggestion to expand the power of the Committee on Members' Interest (CMI) so that it can handle matters other than Members' interests. At that time, I lobbied not only Members of the pan-democratic camp but also other Members against it in order to disallow an expansion of the CMI's power. My stance is very clear. There are some matters which can be put in clear, quantitative terms. As regards Members' interests, for example, the amount of money received and on what item an amount is spent, these can all be put in quantitative terms. However, if there are matters which cannot be put in quantitative terms, and because of public
opinions, we — Ms Miriam LAU said earlier that we had received 18 complaints from members of the public, but 18 complaints are actually not a lot. Therefore, I think it would be a serious problem if the number of complaints is taken as the basis.

Second, there would be a problem even if ethical standards were adopted as the basis, for ethical standards vary with time. For example, the ethical standard with regard to the relationship between the two sexes nowadays is different from that in the early period of republican China, the Ching Dynasty and the Tang Dynasty. Even in the same era, men and women may have different perceptions on ethics, or the youth and adults may have different ethical values. In that case, what exactly is commonly recognized to be ethically — I am not saying legally — correct? This is quite difficult to decide.

Paul mentioned earlier we could use religion, such as Christianity, as the basis. But this is even more dangerous. What if I were a Muslim? While a Christian can have only one wife, I could marry many wives because different religions may have different views on certain issues. When I studied in the United Kingdom, I made some observations on their political parties and found that they would allow their members to hold views different from those of their political parties on certain issues. President, please allow me to cite a few examples because I would like to illustrate the point that we should not make judgment on certain issues. When the following three kinds of issues are discussed in the Parliament, the Labour Party and the Conservative Party will allow their respective Members of Parliament to make decisions according to their free will. The first one is matters of ethics, the second one is religious matters and the third one is matters relating to the interests of electors of their respective constituencies, for example, issues unique to Sham Shui Po. Let me cite some examples with which I am more familiar. For example, as California is abound with oranges, when it comes to matters involving interests derived from oranges, then, sorry, the relevant Congressman must protect the interests derived from oranges from California. That Congressman must support local orange farmers even if the political party to which he belongs opposes it. Members are allowed to make their own decisions on these three kinds of issues on an exceptional basis. My point is that both the legislature and political parties may come across exceptional issues which cannot be resolved in politics, and I do not know whether these issues are higher or lower in level than politics.
Under such circumstances, regarding the two mechanisms for dealing with Members' matters, namely, the CMI and investigations conducted pursuant to motions moved under Rule 49B(2A), I think we should strive to, or rather entirely, avoid conducting investigations into Members' alleged faults in relation to these issues as a result of public opinion or on ethical or religious grounds.

Apart from the reasons I have just mentioned, namely this Council is not a Court, we do not have the professional expertise to hear cases, and we do not deal with issues from the perspective of the legal profession, the backgrounds of Members are quite complicated. Certainly, there is also a positive side to such complicated backgrounds because of the benefit of more diversified views which may possibly be consolidated to yield the best outcome. The complicated backgrounds may be the result of the fact that all Members in the Chamber have gone through an election and competition process, during which disputes might have arisen. I may support or oppose certain people, or I may have allied with some people while competed with others in an election campaign. Notwithstanding the existence of these political considerations and backgrounds, Members are bound to have allies and opponents in the election.

No matter what conclusion comes out of this in future, when we make judgment on the person concerned, regardless of whether the judgment is in support of or to censure the person concerned, there may easily be doubts about whether it is inspired by political motives. Even if we state to the contrary, or are seen to be so, things are simply unpredictable sometimes. May I ask how we can open our heart to allow people to see us clearly as we are? But putting it in another way, it may also give rise to an unfair situation. Just because he was once an opponent and competed for the same seat with me, I might be more lenient to him in order to avoid being accused of exerting political oppression on him because he used to be my opponent. This similarly poses a problem. In either case, that is, we are being too lenient or too strict, an unreasonable judgment will be made. Therefore, I think it is a very difficult task for the Council to make any judgment.

Mr CHIM Pui-chung said earlier he had faced this kind of situation before, but his circumstances were actually different. Mr Paul TSE's remark as I heard from the radio was exactly a response to Mr CHIM Pui-chung's situation. Mr CHIM Pui-chung's case was initially determined by a third party, that is, a body specially tasked to handle a certain issue. For example, before making a decision on whether the person involved should be censured, the Court, the Equal
Opportunities Commission or the Labour Department responsible for handling labour affairs or even departments or tribunals under the co-ordination of the Labour Department have to reach a conclusion that the case is serious and we should then invoke Rule 49B(2A) to decide whether or not to censure the person in question. Such a judgment is made in accordance with the relevant mechanism, a result recognized, approved and acceptable even in law. And then a decision as to whether or not censure should be exercised will be made by us. Now we have to conduct both procedures at the same time and then exercise censure. I have reservations about this and I think this may not be appropriate.

Actually, this has all along been my stance and view since I have joined this Council. However, the imminent voting may be a bit difficult for me because I have been pondering how I should vote for a few days or even more than 10 days. Ever since this incident took place …… I have left out one point, that is, I think the hearing process will already caused adverse effect on the person concerned. The hearing process itself will cause harm, irrespective of whether or not he will be proved to be innocent eventually. Certainly, this is my view. But whether any harm will be done in the end, and whether the parties concerned …… because given the developments of the incident, so far, there has been extensive press coverage, and the lady concern has also issued a written statement. To Mr KAM Nai-wai, this has already become the so-called media criticism or justification for making him the subject of criticisms or even judgment. Should we not pass our judgment and assume that the incident had not happened? In other words, insofar as Mr KAM Nai-wai is concerned, is it an appropriate approach to withdraw or negative Ms Miriam LAU's motion or endorse Mr TSE's motion in the voting? Or should a committee be designated to investigate the incident before we make a judgment on whether or not he is innocent? Which is the better course to take? As I am neither the person concerned nor a Member of the political party to which the person concerned belongs, it is quite hard for me to decide which course is more desirable or appropriate.

Based on the principles I mentioned at the beginning of my speech, I think this is not appropriate. However, as the person concerned has suffered a certain degree of harm, what is the best course of action in his view? At the present stage, I am more inclined to looking at it from the perspective of the "victim" — I do not know exactly how to put it, perhaps I should put it in parenthesis. If the person concerned also thinks this is the best and most effective and appropriate approach for him to clear his name or even prove his innocence, and if other political parties also share this view — I have been conducting internal debates
on these two questions over the past eight to 10 days, and the Hong Kong Association for Democracy and People's Livelihood and I have also discussed how we should vote. Finally, last Saturday, after repeated discussions, members of my party had to make a decision, albeit difficult, and that was we would make our decision based on the feeling of the person concerned because we think that …… There are only public opinions and ethical concerns before us now, but the person concerned (I regard him as the victim) has not had any opportunity to present his case, other than having chosen the course pursuant to Ms Miriam LAU's motion, that is, to set up an investigation committee and conduct an investigation in accordance with Rule 49B(2A), which in his opinion is appropriate, or acceptable to them. Actually, I have asked Mr KAM Nai-wai thrice today whether he considers this an appropriate course of action, and I have also asked the Democratic Party twice whether they think this is the best course to take for KAM Nai-wai. The responses I got were all in the affirmative.

Therefore, with reluctance, I will abstain from voting on Mr TSE's motion. An abstention almost means disagreement. Another alternative is to allow the motion moved under Rule 49B(2A) to proceed. However, I have to reiterate that as a Member, I think it is improper to conduct hearings against a Member by way of a political instrument or a political mechanism. Thank you, President.

PRESIDENT (in Cantonese): Mr Paul CHAN, you considered your speech just now misunderstood. Do you wish to make a clarification?

MR PAUL CHAN (in Cantonese): Yes, President. I made this request in accordance with the RoP. Just now a number of Members have made a few comments on my speech. I think they have misunderstood it. First, referring to my remark on Christianity, Mr Frederick FUNG said it would be even more dangerous to look at the issue from this perspective. I only wish to say that when I mentioned that I was a Christian, I was talking about forgiveness. I support this investigation not on the ground of my Christian faith. Therefore, do not take me wrong.

Second, in his speech just now, Mr Ronny TONG referred to my comparison of the two versions, that is, Mr KAM's version and Ms WONG's version. He said the fact that there were differences in the two versions did not necessarily mean Mr KAM was at fault. However, I wish to point out that the
existence of differences in the two versions was important reference in my reconsideration of this motion. It is exactly because there are differences between them that I consider it necessary to find out the truth. I did not say Mr KAM was at fault.

Third, just now Mr LEUNG Kwok-hung said that I supported this investigation in order to do the public justice. But what I said was to do Mr KAM justice because if the allegation is not substantiated after investigation, he will be in the clear, and thus justice will be done to him. Thank you, President.

MR LAU KONG-WAH (in Cantonese): President, the remarks made by Mr Frederick FUNG just now showed that all Members have drawn their conclusions after thorough consideration, regardless of the angles adopted by them in considering this issue. No matter what conclusion is reached today, I think all Members have made their own judgment and considered the views of the community. Certainly, Mr Frederick FUNG's conclusion is also my conclusion because I also disagree with Mr Paul TSE's motion to discontinue the investigation.

First of all, I would like to review the whole incident. The incident, when initially occurred, attracted not only media coverage but also grave public concern. As a Duty Roster Member (DRM), I had a discussion with a few Honourable colleagues at that time. Besides taking into account the number of complaints from members of the public, more importantly, we also discussed it repeatedly. It should be borne in mind that there were six DRMs on the roster, and five DRMs, from different political parties and groupings, were present. All the DRMs arrived at the conclusion in a placid, rational and calm manner, that the case should be referred to the CMI for investigation, which I consider a most appropriate course of action.

Certainly, when the issue was subsequently brought before the House Committee, Honourable colleagues had different views, which we also respect very much. The remarks made by Dr Margaret NG at that time suddenly made me realize something. She said, to this effect, "I would like to remind Members that Rule 49B was passed by the Committee on Rules of Procedure after thorough consideration and in consultation with each and every Member …… Why? Because the premise on which we raised this issue was that it would affect the credibility of this Council as a whole. Therefore, if the issue relating to a
Member whose reputation is tarnished is not resolved, the credibility of this Council will continue to be affected ….. but the approach stipulated in Rule 49B will mean a commencement and an investigation, and the investigation outcome will be an immediate conclusion." I agree with this very much.

At that time, Dr Margaret NG raised the issue of credibility. Actually, as she took credibility very seriously, so much so that she considered it necessary to invoke Rule 49B and she also mentioned that there should be a commencement, an investigation and also a conclusion. Today, however, Dr Margaret NG has fallen exactly into a fallacy. What fallacy is it? It is to draw a conclusion before the investigation. Actually, at the meeting of the House Committee, Members already had a thorough discussion and were totally aware of why this task should be carried out. Members also had a clear understanding that a motion would be moved, and an investigation and a debate would follow before voting would be carried out. However, if Dr Margaret NG draws a conclusion today only by referring to the wording of the motion, she has actually gainsaid what she had previously advocated, according to her speech made on that day. The way she treated Ms Miriam LAU, Chairman of the House Committee, was all the more unfair. Today, she said that Ms LAU had acted on a bolt of bravery for a just cause, but I have gone through all the records and found, as should be clear to Honourable Members at that time, that Ms Miriam LAU only did so upon Members' request. Therefore, as she has done her part, I think Members should respect her. Actually, each and every procedure conducted so far has been very fair and transparent, utterly unquestionable.

President, as Mr Paul TSE was not present at the first meeting of the House Committee, I actually understand very well why he moved this motion. I do not know whether he has gone through all the minutes of the meetings, but it would be very well had he done so. A very detailed investigation was actually conducted at that meeting, and this conclusion, which had the unanimous support of all the 37 Members, was reached after very thorough discussion and careful consideration. Certainly, I have already pointed out just now that some people have rebutted this outcome, inference and conclusion. I would not take issue with this because everyone may hold different views at different times. However, from the various speeches made in support of Mr Paul TSE's motion today, I noticed two key points. I have already mentioned the first point, that is, the point that the incident was already very clear and there was not much to investigate, and even if the allegations were substantiated, no censure could be
exercised. On what basis did the relevant Members make such remarks? The investigation has not even been commenced, and these remarks should only be made after an investigation and a genuine debate have been conducted and when they are supported by facts, or else they will give rise to another incidence of injustice and unfairness.

As for the second viewpoint, as represented by Mr LEE Cheuk-yan, it is assumed that the investigation would be unfair. Certainly, he cited some examples, such as whether the parties involved would come forth. Much as I understand this, may I ask how we should assume that the actual investigation would be unfair? May I ask why we should assume that the seven Honourable colleagues would handle the issue in an unfair manner when an investigation committee is really set up? Would this be unfair to the Honourable colleagues who will conduct the imminent investigation, if an investigation will really be conducted? Mr Paul TSE must understand that in regard to point the stress by him, and which may be shared by many members of the community, namely what should be done when there was only a defendant without any plaintiff, when Mr Paul TSE raised this viewpoint, Ms Kimmie WONG might not have issued the statement. The present statement is a signed one, clearly setting out some details. Mr Paul TSE queried whether the statement was underpinned by a declaration, but is this not exactly what should be dealt with in the future? However, is there really only a defendant without any plaintiff now?

Today, Mr KAM Nai-wai has placed some information on our desks, much among which is his counter-accusation against Ms Kimmie WONG. Therefore, insofar as the situation today is concerned, there are actually two plaintiffs, and both of them are also defendants at the same time. Under such circumstances, how can one say there is only a defendant but no plaintiff? This is exactly the background against which we have to find out the truth through an investigation, and this is a very sound basis.

Therefore, in front of the media, Mr Paul TSE — I do not know whether or not this is true — mentioned that …..

(Mr LEE Wing-tat raised his hand in indication)
PRESIDENT (in Cantonese): Mr LAU Kong-wah, please sit down first. Mr LEE Wing-tat, what is your point?

MR LEE WING-TAT (in Cantonese): I would like to make a clarification after Mr LAU has finished his speech ……

PRESIDENT (in Cantonese): Do you wish to seek an elucidation from him?

MR LEE WING-TAT (in Cantonese): It is on the issue of two defendants. There is only one defendant in this agenda item, that is, this resolution.

I would like to seek an elucidation from Mr LAU Kong-wah on why Ms Kimmie WONG is a defendant in this case because in pursuance of whatever resolutions of this Council, Ms WONG would never be penalized or dismissed from office, then why is there an issue of her being the defendant?

PRESIDENT (in Cantonese): Mr LEE Wing-tat, you may sit down. Mr LAU Kong-wah, Mr LEE Wing-tat has raised a question for your clarification.

MR LAU KONG-WAH (in Cantonese): President, if we refer to the statement of Ms Kimmie Wong and the one prepared by Mr KAM Nai-wai today, we would naturally come to such a conclusion. This is my conclusion and of course, Mr LEE Wing-tat can disagree with it.

President, Mr Paul TSE also mentioned one point to the mass media and I wonder if it is true, that is, he said that Ms Kimmie WONG's statement was tantamount to sniping. It seems that in making this comment, he already had an established position, that is, he has already taken side with a certain party. I hope that before an investigation has been carried out and a conclusion drawn, Members should not side with the position of any party.

President, I think that this incident is very serious per se and the allegations are also quite serious. I think any rivalry among political parties must be set
aside and this matter must be dealt with fairly and impartially in order to live up to the expectations of the general public. I wish to cite the editorials from the mass media — of course, the mass media have written many commentaries on this incident and it is worthwhile for all Members to make reference to them — this excerpt comes from the editorial in *Ming Pao* on 6 October. It says, to this effect, "For this reason, we believe that this incident cannot be resolved in private ….. If it can be dealt within an institution, it offers a good opportunity to enhance the parliamentary culture. If a private resolution is reached by using money to settle the issue, this will be a slip in the development of the legislature ….. the truth of this matter should not be buried under the workings of money and interests. The most important thing is to ascertain what is right and wrong and only in this way can the core values of Hong Kong be manifested.". President, Honourable colleagues can agree or disagree with this comment, but we cannot deny that some people in society hold such a view and there are also people who demand that this matter be considered from such a perspective. Should those Members who often talk about the core values of Hong Kong not reflect deeply on this point? Otherwise, having come to this stage and having taken so many steps, if we stop abruptly without any unfairness being detected in the procedure, the public will think that we are taking this matter lightly. Moreover, the arguments presented by Members who voiced opposition were inadequate and in some cases, they have reached a conclusion even before an investigation is commenced. I find this unacceptable.

President, finally, as a directly-elected Member, I have seen many inquires and hearings in the Legislative Council and I think I am now quite experienced. I believe the most important point is that an investigation must have credibility and it must be founded on three points. This is my conclusion. First, in activating the mechanism, all *prima facie* evidence must be dealt with in full compliance with the procedure but the investigation cannot be carried out with a conclusion in mind. This I must insist. Second, the investigation can proceed in any appropriate way or approach that will enable all people concerned to fully express themselves — and I stress appropriateness. Third, when drawing a conclusion, I think it is essential to hold collective, adequate and thorough discussions but no political party or grouping should be allowed to use such an occasion to vent its emotions or use it as a tool of attack. I believe that so long as the investigation complies with these three points, the general public will accept that this is an investigation with credibility.
In view of this, I appeal to — of course, just now, I heard the Chairman of the Democratic Party, Mr Albert HO, mention some expectations and demands and I think we must respect his views. Whoever can eventually join this investigation committee can consider in detail what is meant by appropriateness. In the past, we also presented many investigation outcomes and conclusions that were accepted by the general public. For this reason, I am fairly confident that so long as we insist on the three points mentioned by me just now, it will be possible to attain the goal completely and hopefully, the doubts of Mr Paul TSE can also be allayed at the same time. Regarding the views voiced by Mr Paul TSE, I do not necessarily oppose all of them, but I hope that he can think twice with due regard to all information, the entire procedure and the speeches made today. Thank you, President.

PRESIDENT (in Cantonese): No matter if an investigation is conducted or not, it should be pronounced as "調 (diu6)查 (tsa4) ". We can "(調 (tiu4)解 (gai2)) (to mediate)" or "(調 (tiu4)停 (tinj4)) (to carry out a mediation)" but we are now considering whether an investigation (調 (diu6)查 (tsa4)) should be carried out.

DR PRISCILLA LEUNG (in Cantonese): President, this Council discusses today the question of whether or not an investigation should be conducted into the incident concerning Mr KAM Nai-wai. Mr Frederick FUNG said just now that after pondering upon this issue for more than 10 days, he finally decided that the choice of the parties concerned should be respected. I consider this inappropriate. The decisions of this Council should not rest with whether complainants would, after lodging the complaints, choose to use this Council as an instrument to investigate the incidents. Therefore, I have all along avoided addressing them as victims. I think we should avoid using judgmental adjectives on either the male party or the female party, who should at most be addressed as the male and female parties or the parties concerned. We must not make any judgment at this stage.

What is more, I hope that after the debate today, I will no longer hear any colleague say that someone or some political parties or groupings have made use of this opportunity to achieve certain political motives or purposes in the process of deciding whether or not to conduct this investigation. Today, I heard Mr Albert HO's remarks in a radio programme, and my view in this respect is very
similar to his. Actually, I believe the decisions to be made by individual Members in the present case will transcend partisan conflicts. The four of us in the Professional Forum may have four different views. Therefore, one should indeed refrain from making such a comment. Regarding this issue, I believe Members have to respect the personal decisions of individual Members.

I went through the verbatim record, and I have just gone through it again in detail. That day, I was personally very reluctant to set up an investigation committee in accordance with Rule 49B of the RoP because this was basically only an observation. Regarding this incident, should such a solemn mechanism be activated right from the beginning? I have repeatedly explored with the President other alternatives, such as setting up a committee under the House Committee to collect some basic evidence before deciding whether or not to set up an investigation committee. However, the atmosphere towards the end of the discussion that day might have dictated the result.

I did explain that day why it might be necessary for this Council to deal with this incident. But the question is what approach should be adopted. We know there are numerous existing mechanisms that can resolve different disputes in society, and there are certainly mechanisms to deal with cases of sexual harassment. Now, both the male and the female parties have published their respective written documents, to which they are already liable without any declaration. If the parties are displeased, they may already bring their case to Court against the other party for defamation. They may also lodge a complaint against unreasonable dismissal with the Labour Tribunal. Actually, however, according to my experience of handling similar hearings, when the relevant incident has developed to a certain stage, the organization, be it public or private, may very often conduct an investigation on its own initiative to resolve the problem of sexual harassment involving its staff or between superiors and subordinates in the organization or to find out whose case is unjustified.

Insofar as the Legislative Council is concerned, as some members of the public have repeatedly — I believe different Members may have received different views from the public. We may be reproved if we do not conduct any investigation. I have said that I had not expressed any view on this issue, and yet my supporters asked me why I had not done so. Therefore, I have to follow it up. Hence, this Council will be reproved irrespective of whether or not it will conduct an investigation, and everyone will deal with this incident based on
his/her personal judgment. Although I did not agree to invoking Rule 49B on that day, given that many Honourable colleagues considered it acceptable, so as a new Member, I was indeed unsure whether this was the first time the Rule was invoked (Mr CHIM Pui-chung said just now that this was not the first time, and I was also able to obtain some new information as a result). That day, 37 Members expressed agreement, and I was probably the last one to raise my hand. However, I remember that the discussion that day did not mention specifically whether it was necessary for the female party or the male party to be present, while the issue of whether or not to invoke the Legislative Council (Power and Privileges) Ordinance was lightly touched on. However, Members thought it was too early to discuss this issue that day and they preferred not to invoke it. My impression is Members mentioned this issue during the discussion, and I also indicated that I would respect Members' decision if, for example, Ms Miriam LAU and the other three Members would still move the relevant motion after studying the information or reviewing the case for a period of time. Personally, I would regard this as the first stage of investigation. They are mature individuals who are able to judge whether there is enough information to support the moving of this motion in this Council. Therefore, I support their moving a motion.

However, the development of the incident has taken an unexpected turn, as in the case of many similar hearings. The female party has issued to the media, through her attorney, a written statement of nearby five pages. If she has ever sought advice from counsel, she should know that she has to bear significant legal responsibilities for such an act. Compared with making an oral statement, this has put her integrity at stake. If Mr KAM Nai-wai does not agree with her statement, he may sue her at any time. I have helped quite a number of clients make defamation charges in such circumstances. When defamation proceedings may be initiated even in the case of anonymous letters, her statement made in her name and issued through an attorney can definitely be used as support for such charges. Today, Mr KAM Nai-wai has also made a written statement, and he has also done so at the risk of his integrity. Given the developments, I think it is impossible for this Council not to conduct an investigation. Actually, both parties have provided plenty of information, and I think the conduct of an investigation by this Council is crucial to the public images of both the male and the female parties, all individuals involved and this Council. Regarding this kind of hearings, I have been the investigator and also the complainant, so I can say that there may be uncertainties in the process. Even if both the male and
female parties say that they will come forth, someone may disappear or suffer from amnesia, or someone may provide additional documents at that time. All these circumstances have to be dealt with.

Today, A, B, C, D and E may say they will attend the investigation, yet they may not show up eventually. Therefore, the investigation committee should definitely not decide whether or not to proceed with the investigation on the basis of the subjective judgment of both parties. So we have to make our own decision. We may adopt different approaches in the hearing process. We may adopt a particular approach if the parties are present and adopt another when they are not. We give them an opportunity and the right to be heard, and they may express their own views. If they give up this opportunity of representation, we can still write up our judgment. We may not support the person who did not show up, nor may we necessarily believe in the written statements provided. They may eventually choose to attend the investigation for the sake of their own integrity, and the party willing to be present may be found to have lied and may lose his/her integrity as a result. One will definitely make one's final decision on attendance. They may say one thing today and act differently two months later. These situations happen all the time.

Therefore, now that we have come to this stage and as 37 Members have already made this decision, I think we must proceed with the investigation. The conclusion coming out of the investigation should be left to the investigation committee which will probably be set up soon. It has to follow a set of objective criteria to determine which party to believe. I remember I had a heated argument with Dr Margaret NG on the last occasion. I think such an investigation committee must be set up at least with the specifications of a select committee, and I hope the criterion that it should consist of Members from different political parties and groupings will be met. At that time, she did not agree with my view. I sought advice from the Secretariat and was told that partly because when such an issue was brought up, some political parties and groupings would indicate, as they have done on this occasion, and they would not participate in it, thus rendering the investigation outcome open to judicial review. I would like to point out that, for different reasons, the four of us from the Professional Forum have not participated in the Select Committee to Inquire into Matters Relating to the Post-service Work of Mr LEUNG Chin-man. That being the case, will the investigation outcome of the Select Committee be open to judicial review? I think this should not be used as a criterion for consideration.
One of the criteria for setting up the investigation committee should be that members of the committee shall come from different political parties and groupings. I even think there should be Members of the Democratic Party. I believe they will participate in the investigation in a fair and impartial manner. Therefore, as a Legislative Council Member, I would welcome the participation of Members from their political party.

To date, this Council has actually discussed this issue for a period of time. I would like to make a clarification here. Members of the media have kept asking me with keen interest about a point which was also mentioned in the verbatim record. I have said that when a man looks at a woman with a particular look in his eyes, he may have already got himself "in trouble". I would like to clarify here that I was referring to a particular case I had dealt with in which a female student lodged a complaint against a male teacher as she felt offended after being stared by him with a particular look in his eyes at her sexual parts for a very long time. I am not going to talk about the outcome of the complaint, and all I would say is he was "in trouble". Actually, when a man, a male superior in particular, is complained against by his female subordinate, he is already "in trouble". No one would like to be accused of alleged sexual harassment or the like. Therefore, I am only giving a piece of advice with the best of intentions instead of saying that an ordinary look in the eyes may also put a person "in trouble"; and the fact that the person involved is "in trouble" does not necessarily mean an look in the eyes may constitute sexual harassment. However, it cannot be ruled out that some ladies may feel offended and lodge such complaints as a result. Certainly, the authorities have to conduct an investigation after receiving the complaint before an objective outcome can be reached.

If it is really decided today that an investigation committee be set up, first, I consider that members of the committee must come from different political parties and groupings; second, I hope there will be a similar number of male and female Members. It will be fairer that way as males and females may have different perceptions on such issues. Therefore, in setting up the committee, I think a similar number of male and female Members should be encouraged to join the committee by all means, which will be fairer to both parties.

Last of all, I would like to reiterate here that I support proceeding with the investigation. Actually, it has come to a stage where this Council must bring a close to the incident. I dare not say now which party will benefit more from
such conclusion, but if the relevant individuals or one or both parties choose(s) not to come before the committee, the investigation committee may not believe in the relevant information provided by them in writing by virtue of their decisions. Therefore, I think the setting up of the relevant investigation committee by the Legislative Council at this stage is in order insofar as the overall institution is concerned, and also in keeping with the public request that the Legislative Council shall give an account of the relevant incident. Thank you.

MR LEE WING-TAT (in Cantonese): President, originally, I was not prepared to speak as the Democratic Party had decided that our chairman would speak for all of us. However, I wish to make a clarification after listening to the speech made by LAU Kong-wah just now. At present, the investigation to be conducted in accordance with Rule 49, and even the penalty or disqualification from office which may or may not be determined, is only targeting at KAM Nai-wai. Therefore, I totally disagree with LAU Kong-wah's remark about the information tabled by KAM Nai-wai today having given rise to two defendants in this incident. First of all, this is not a question of defendants. Rather, it is the content to be investigated. In this motion, KAM Nai-wai is the one who may probably be condemned or even be disqualified from office. Therefore, all penalties will only be imposed on him. This motion will not impose any penalty on Ms WONG. However, just as LAU Kong-wah mentioned, comments in the community may have some implications on her. But this will happen to the two parties. Both KAM Nai-wai and Ms WONG will meet the same scenario.

President, why am I also worried about the concerns expressed by Honourable colleagues? In conducting the investigation …… This investigation is the first of its kind. In the past, there were very strict requirements for our select committees to follow. I heard a colleague refer to the adoption of a so-called "appropriate approach". But such expression can be interpreted in many different ways. This was mentioned by LAU Kong-wah, which is also a worry to me. What does "appropriate" mean? Is it the case that if four among the seven members of the committee endorse it, such an approach will be regarded as appropriate? The term "appropriate approach" will not be used in Court. Rather, prima facie evidence will be used to establish a charge. Parties to proceedings have to testify in Court and a clear process of prosecution is also in place. Any information which has not been submitted to the Court or
cross-examined by both parties cannot be admitted as evidence. This was mentioned by Albert HO, which is also one of the Democratic Party's concerns. We are worried that the standard adopted is not the strictest one, but the penalties so imposed will probably disqualify a Member, elected by several tens of thousands of voters, from office.

I concur with some arguments. We can no longer debate on those criminal offences which have been convicted in Court — as Mr CHIM Pui-chung is present, I do not wish to say much about this — there is no need for us to debate further on his case which has already been settled through a solemn process in law. Why will Members from the democratic camp be relatively cautious once they touch upon the question of personal conduct? It is because each elected Member has to be subject to various assessments by voters during the election, including their work performance and moral conduct. If there is anything which is unacceptable to voters, they will not be selected in the election.

In fact, I hope that the DAB or other Honourable colleagues can make a response after hearing the remarks of Albert HO — they have not made any response actually — LAU Kong-wah has only said that he will consider this question seriously and respect the criteria mentioned by Chairman Albert HO. These criteria have been stated clearly. First of all, does the charge have any established *prima facie* evidence? The establishment of such *prima facie* evidence should not come in a written form. Or as mentioned by Dr Priscilla LEUNG, "Is it not solemn enough to have a charge initiated by a lawyer?" In an investigation committee or all select committees under the Legislative Council, witnesses should give evidence under oath, and come forth in person to confirm that the information submitted is true by way of a declaration. Of course, information submitted by a lawyer will be more solemn than that submitted through oral representation. However, in the most solemn process in the Legislative Council, this cannot be regarded as evidence. It is because this witness has not appeared before the investigation committee to evidence in front of its seven members after taking an oath. This is the point mentioned by Albert HO just now, and it is also the greatest concern to us.

We hope that a solemn process can be ensured now. However, we find that something can in no way be achieved, including that the witness is not willing to appear before the investigation committee under the Legislative
Council and the committee does not wish to invoke its power to summon her. It then resorts to some information of a lower quality to conduct the investigation. Information of a lower quality refers to that released through her lawyer or reported by the media, or any other information. Is it appropriate to do so? Is it an appropriate approach as mentioned by LAU Kong-wah? If so, sorry, I have to tell you that this fails to meet the basic requirement of conducting a solemn investigation to disqualify an elected Member from office. I, being a Member, also find such an approach inappropriate. Therefore, just as Albert HO said, the first step is to figure out whether, the party concerned — I mean Ms WONG — is willing to appear before the investigation committee to turn all her evidence into ……

(Mr LAU Kong-wah raised his hand in indication)

**PRESIDENT** (in Cantonese): Mr LEE wing-tat, please hold on. Mr LAU Kong-wah, do you have any queries?

**MR LEE WING-TAT** (in Cantonese): I can stop speaking at any time.

**MR LAU KONG-WAH** (in Cantonese): President, I would like to clarify a few points.

**PRESIDENT** (in Cantonese): If you wish to make a clarification, you have to wait until Mr LEE wing-tat has finished his speech.

**MR LAU KONG-WAH** (in Cantonese): I just raised my hand to indicate my wish first.

**PRESIDENT** (in Cantonese): Mr LEE wing-tat, please continue with your speech.
MR LEE WING-TAT (in Cantonese): Thank you, President. I also waited until he had finished his speech before pressing the "Request to speak" button just now. I was very patient as I waited until three Members had finished their speeches first. This is the first thing which our chairman, Albert HO, is concerned about. If that lady refuses to come forth, shall we use some information which is not provided under oath in the committee to launch our further investigation?

Today, none of those Honourable colleagues opposed to Mr Paul TSE’s motion and supportive of proceeding with the investigation — I have listened to them for a long time — has made a concrete conclusion on this question, including Mr Paul CHAN whom I respect very much. In fact, I have listened attentively to him and noted that he has mentioned a point twice. What we have to bear in mind is that once an investigation is conducted into a person, his reputation has already been tarnished. Worse still, if we conduct the investigation with information which is not provided by the witness on oath, there will be no difference with "fishing" as mentioned by Albert HO. That is to say, we will conduct the investigation in a way that the next course of action is determined by what information we can capture.

Although it is not a nation here, I respect the RoP very much as this is a very important part of the parliamentary profession. All Members of the Legislative Council should be held responsible jointly for each part of it. And for this reason, we do not agree to what LEUNG Kwok-hung would do sometimes. I am really very sorry about this. We have our point of view regarding this Council, which has transcended the so-called perspective of our political party.

If, on some most basic questions …… none of the colleagues who object to Mr Paul TSE can state their views precisely today, so they have only caused me to question or suspect — speaking less seriously, there is a doubt — even if they do not have the most stringent evidence for investigation, they still wish to conduct another kind of investigation. Even if no witness appears before the investigation committee and no evidence is provided by witnesses on oath, another kind of investigation will be conducted. Such an approach is most undesirable, so much so that people may even challenge the purpose of conducting an investigation into this incident.

President, I have spoken without obtaining the approval of the chairman of my political party today as it makes me feel very uncomfortable if I do not do so.
If I am not a Member from the Democratic Party, I will support Paul TSE. This has transcended my personal point of view regarding the operation of a parliament. In the so-called investigation, when the committee is gradually operating in a pace that it does not want to stop, it would become something inconceivable to us in the first place.

Of course, President, I still hope that I can trust those colleagues who are going to form the committee and conduct the investigation later. If there is any political party which members have yet spoken, I hope they can answer a question, for I have not heard of this question yet. In case Ms WONG does not attend the investigation committee and give evidence on oath, shall we proceed with this investigation? Thank you, President.

PRESIDENT (in Cantonese): Mr LAU Kong-wah, do you wish to explain the part of your speech which has been misunderstood?

MR LAU KONG-WAH (in Cantonese): President, Mr LEE Wing-tat has misunderstood my speech in respect of a few points. First of all, regarding the point about two plaintiffs and two defendants, what I mean is that they have pointed the finger at each other. The second point is about appropriateness. This is in fact very simple. What I mean is to see if it is the most suitable approach, that is, whether it is in order under the RoP. Rather, it is not as complicated as what Mr LEE has imagined. The actual situation is not like this. The third point is that I respect some expectations of the Democratic Party. However, we have to all the more respect the seven members of the investigation committee which will probably be formed. This is a combination that transcends political parties and groupings. Under such a situation, there is no question of how the DAB will respond. However, I appreciate that the Democratic Party or Mr LEE Wing-tat may be so keyed up today that they have made such comments. I fully understand this.

(Mr LEE Wing-tat raised his hand in indication)

MR LEE WING-TAT (in Cantonese): President, I wish to make a clarification.
PRESIDENT (in Cantonese): Mr LEE Wing-tat, what do you wish to clarify?

MR LEE WING-TAT (in Cantonese): What I wish to say is very brief. I am not keyed up at all. And thus, I speak in a very relaxed manner. Thank you, President.

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

MS EMILY LAU (in Cantonese): President, Mr LEE Wing-tat has in fact raised a very important point. I have also listened to the speeches given by 16 Members here. Among those Members who support proceeding with the investigation — unless I have missed out anyone — none of them has pointed out that if the plaintiff refuses to attend the committee, the investigation can in no way be conducted. Of course, they can proceed with the investigation. However, will this deal a blow to the credibility of the Legislative Council? As they all know, there will also be other ways to express dissatisfaction, President.

I think there is a golden opportunity today for those who support the investigation to state their reasons clearly. However, from about 1.00 pm to 5.00 pm now, none of them has done so. President, I think those sitting in front of the television set will arrive at a conclusion that the investigation will be proceeded with even if the plaintiff does not attend the committee.

President, I consider such an approach neither proper nor fair, only that no one wishes to make it clear here. Perhaps, it is due to the fact that they are prepared to proceed with the investigation. Regarding the investigations conducted by the Legislative Council over the past years, we have secured the trust of many people and various political parties and groupings. However, if such trust is ruined because of any unexpected events, I think many people may not be able to bear the responsibility. President, if there is such a good chance for them to state their reasons, people in front of the television can know how this investigation will be conducted. However, as they are unwilling to do so, people should know what the approach is and whether it is a fair and impartial investigation.

The Democratic Party hopes that this investigation, similar to any other investigations, can be conducted in a fair and impartial manner. Therefore,
Members are duty-bound to give an account to the public and the Council, telling us how to deal with something which is very likely to occur once it really occurs. I think we all want to know it today, President.

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

(Mr LEUNG Kwok-hung raised his hand)

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, your speaking time is exhausted, unless you wish to raise a point of order or other questions. What question do you wish to raise?

MR LEUNG KWOK-HUNG (in Cantonese): I have a question. I would like to ask LAU Kong-wah to make a clarification on the so-called appropriateness. Does he mean that if Ms WONG refuses to come forth, the investigation cannot be conducted?

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, will you please sit down first. The provision about clarification is that it should not be used as a tactic to prolong the debate. Your speaking time is used up. Even if you do not concur with the views put forth by Members who speak after you, you are not allowed to continue the debate by requesting them to make clarification.

PRESIDENT (in Cantonese): Does any other Member who has not spoken wish to speak?

MRS SOPHIE LEUNG (in Cantonese): President, during our discussion in the House Committee, we knew that several Duty Roster Members (DRMs) had made that decision on Thursday. They also told us their decision with very strong justifications. I do not wish to recap the decision made by some people here. I have no intention to do so. What was my view at that time? I had just rushed back. In fact, I was one of the DRMs. Although I had not taken part in
the discussion, I also called back and queried if it was most desirable to refer the issue to the Committee on Members' Interests (CMI) for discussion. I had made such a suggestion. At that time, the DRMs…… under the leadership of Mrs Regina IP had made the relevant suggestion, but it was opposed by some other people immediately. They pointed out that as there was Rule 49B in the RoP, we had no alternative but to adopt this proposal. Moreover, this was exactly the wish at the time of making such a rule, according to them.

President, when making this rule — Dr Margaret NG should of course be much more senior than me, and I remember that she was also the then Vice Chairman of the Committee on Rules of Procedure. Therefore, I did believe what she had said. Certainly, also because of the legal point of view — if my memory is correct, I remember that Ms Emily LAU also fully supported invoking Rule 49B at that time. If I am wrong, my apologies. However, Ms Emily LAU is also a Member whom I respect very much. Therefore, I listened to her attentively when she was making her speech. And thus, I may be confused, thinking that she has made such a comment as well. However, it does not matter. I also stated my reasons of objection at that time, that is, the subject of this motion was presumed to have done it or he had to be censured because of this. An investigation committee would be formed upon submission of this question. Is this not so appropriate? I also said that if I had to draft the wordings of the motion, I would certainly be unable to do so. It is because, in the first place, I do not know the incident in detail at all. I did not insist on referring this matter to the CMI, only that it appeared inappropriate to handle the matter in this way.

Nevertheless, we had a discussion for more than two hours. Members who strongly supported invoking Rule 49B were very convincing. They also pointed out that although I did not understand it, I should believe that the approach was correct. Eventually, seeing that as so many Members from the legal sector also considered the approach correct, I just followed them. After all, it was the norm in the Legislative Council that the minority should obey the majority. President, sometimes, those with a low voice would obey those with a loud voice. Even though I had such a feeling, I just forgot it as I had always been the low voice. I simply followed them. As all of us agreed with it, we just went ahead as all of us should be responsible for this. Because of this reason, that is, collective responsibility, the Chairman of the House Committee took up the charge. As far as I can remember, she did not volunteer to do so on
her own initiative. Rather, someone said that it would be most desirable for her to take charge of it. Hence, she took up the charge.

Now, we have made the first step and come to this point. Of course, we had already found it necessary to form a subcommittee at the meeting. Therefore, at the next meeting of the House Committee, we proposed to set up a subcommittee to discuss the wordings concerned. Once again, we placed the burden on the Chairman of the House and several Members who were willing to take up such a difficult task.

But now, we say that it is not a good idea and call it to a halt. Certainly, there are many reasons for the halt, President. Am I right? In this Council, we can have many reasons to say whether a matter is black or white. We have heard of a lot of such cases. Therefore, I may also find it confusing occasionally, wondering why sometimes it is black and sometimes it is white. However, it does not matter. Today is white, and it does not matter even it was black last time. Just forget about what we have said. This is fine with me, too.

However, Mr Paul TSE stated a lot of reasons at the last meeting of the House Committee. I also understand that Mr Paul TSE did so because of a kind of …… that is, he looked at a matter from his angle, and rightly so. I can understand this. As this is already decided by 37 Members, we have no alternative but to follow. Frankly speaking, even though you may not believe in this committee to be set up in future, all committees are formed in this way without exception. Since 1997, the Legislative Council has conducted investigations in this way, has it not? All investigation committees, independent committees and even the Public Accounts Committee conduct investigations in this way. How many times have we really been biased and partial? I really do not think that anyone or a small group of people can be biased and partial, right? Even if this investigation committee is formed this time, and the Democratic Party also honours its commitment made on the outset that it will not participate in it — in fact, I do want them to participate — even without the participation of the Democratic Party, can we act in such a hegemonist manner and make it a mess? Surely, we will not. Moreover, insofar as a committee under the Legislative Council is concerned, it is not the case that a small political party can be so influential to control its work.

In fact, no matter under what circumstance the committee is formed, it will be subject to public monitoring. Our work has all along been monitored by the
public. Why are we so worried about this? As we have given the go ahead, we should try it out first. President, as we had received so many complaints, the DRMs had no alternative but to convene a meeting at once. Could we simply ignore all these complaints? Could we refuse to give them a reply? We could not.

As 37 Members had a long discussion at the two meetings of the House Committee, we should work as it goes. In case it becomes really impossible to go any farther, we can then follow the statement frequently made by Mr LEUNG Kwok-hung that "not being able to move one single step" and consider what we should do next. Or because of our procedures, in case we cannot proceed with the investigation, we will then give an account to the House Committee, telling it that we are really unable to proceed any farther. After that, we will consider what to do next.

We have our own procedures. Why do we become so scared at this moment? We behaved so bravely at that time, right? It really baffles me, President. We should have trust in others in respect of their integrity and their way in handling matters according to their conscience. If we have no trust in such a simple thing, how can we implement "one country, two systems" in Hong Kong? And how can there be any mechanism of mutual trust between the Central Authorities and the Hong Kong SAR Government? No kidding please.

Now, the question is: Do we wish to secure the public's confidence? Shall the Legislative Council secure the public's confidence? We have held two meetings in the House Committee and 37 Members have agreed to deal with this matter. But we then stop suddenly midway and refuse to go ahead. How can we face society? Although the voice of complaint may be very small, we still have to deal with it. As mentioned by many Honourable colleagues, we should give an opportunity to a colleague in this Council to defend his innocence clearly, to make his case. In fact, he also wished to say a few words just now. But the President asked him not to do so as we are not supposed to discuss the matter today. Just let us give him an opportunity.

President, I fully understand the good intentions of Mr Paul TSE. I believe he looks at the whole matter from an absolutely right angle. However, as 37 Members have agreed to deal with this matter, we cannot stop it as we wish. Today, I say that I do not like it; tomorrow, I may say that I like it; and the day
after tomorrow, I may put the whole matter to an end. I think this is not feasible. We should consider seriously how best the whole matter can be drawn to a conclusion. At least, we should deal with it till the end.

Thank you, President.

MR WONG TING-KWONG (in Cantonese): President, originally, I was not prepared to speak today and just wanted to observe Members' reactions. But I have witnessed how they spoke so eloquently today, presenting something bent as something straight and vice versa.

When invoking Rule 49B of the RoP, some Members, who are now present, said that this was the only option. But now, they have disproved it, saying that it is not an option at all. As mentioned by Ms Emily LAU just now, during their speeches in front of the television for several hours, none of them has mentioned what to do if Ms WONG refuses to turn up. I remember that during our discussion on this issue in the House Committee, the surname "WONG" of this lady was not mentioned at all. She was only an anonymous lady. However, the name of "WONG Lai-chu" is already known to us now. We have also received a letter from her attorney, addressed to the Legislative Council. This issue is made clear now. She has her own version of the story. If there was no investigation, how could we have achieved such an outcome now? President, even now I still do not understand why some Members have seemingly passed a judgment on the issue relating to Mr KAM Nai-wai, thinking that he must have definitely "cooked" it. In fact, he may not necessarily be "fried" after the investigation. Rather, we may give him a chance to prove his innocence, so that he can continue to be a Member peacefully, right? Why do some Members insist on passing judgment on him now, saying that he would definitely be "fried" after the investigation? This may not be the case. I think it is too early to make a judgment on this matter now. Therefore, I am really baffled.

Secondly, taking an investigation by the police as an example, they will pass it to the Department of Justice for prosecution upon completion of their investigation. However, now, some people do not allow us to conduct an investigation and even make a judgment even before an investigation is carried out. I cannot recall who mentioned just now: "Someone can act in such a hegemonist manner. After all, he can do whatever he likes." I really do not understand this. Therefore, I hope we can endorse the conduct of this
investigation today. As Ms Emily LAU said just now, the audience and the public in front of the television should see clearly what some people are trying to do. Thank you, President.

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

MS STARRY LEE (in Cantonese): President, regarding this issue, I have also been thinking about it over and over again for a long time. Like Mr Paul TSE, I did not take part in the discussion in the House Committee on that day. Because of other commitments, I did not take part in making the decision by the parliamentary group of my party on that day, either. I knew, upon conclusion of the discussion in the House Committee, 37 Members had decided to move a motion to censure Mr KAM Nai-wai. I was very surprised by this. To me, I really could not imagine that we would activate the procedure to censure a Member because of this matter. However, I then looked up the discussion record of the House Committee. And having listened to the discussion among several Honourable Members just now, I respect the House Committee's decision and believe that the decision was made after a long discussion.

This matter has given rise to another point that makes me think about it from another angle. Now if the lady concerned refuses to come forth to the Legislative Council to testify, I, like many people and Honourable Members, wonder if it would result in a situation that there would be only a defendant making representation from one side, but no plaintiff at all. In that case, it seems that we should waste neither Members' time nor public money to deal with this matter. In view of this, I have discussed it with Members from the DAB. At that time, we did not draw any conclusion, hoping to observe how this matter would develop.

However, with the emergence of Ms WONG's letter, I really have a new thinking. It is because after the matter has been widely reported, I consider that an open platform should be provided for the two parties, especially the male party, who is a Member, to give explanations. I think Members present here should have had the experience of being subject to some unfair reports by the media or other people. We really find it unbearable and may even find it hard to say a word. If the Legislative Council can provide a platform for the parties to
explain their case, I think the matter can be handled fairly and impartially on all fronts. Moreover, the party concerned has indicated that he is willing to assist in the inquiry today. He also finds such an approach fair to him.

Actually, I hope to respond to the questions posed by Ms Emily LAU and Mr LEE Wing-tat here. If the female party really does not turn up by that time, how will the investigation be conducted? In fact, as we all know, if Mr Paul TSE's motion is negatived today, that is, we endorse the formation of an investigation committee, this matter will certainly arouse public concern. Moreover, as each inquiry is conducted openly, those Members who are involved will put their integrity at stake. The public will assess whether they have handled this matter impartially. If they have dealt with any matter improperly, there will definitely be criticism from various parties.

I also agree with Dr Priscilla LEUNG that there may be changes at any time. Similarly, I have never imagined that Ms WONG will issue a statement at the last moment. Therefore, we cannot rule out the possibility that she may turn up for the investigation at the last moment.

Therefore, I hope Honourable Members can trust our colleagues. I have also taken part in the Public Accounts Committee for a period of time, and found that we all conduct investigations in a fair and impartial manner. In such an open environment, I believe that the investigation committee can do justice to all the parties concerned.

President, I so submit.

MS MIRIAM LAU (in Cantonese): President, I shall be very brief. As many Honourable Members have spoken in support of proceeding with the investigation, I fully concur with their viewpoints. However, I still wish to comment on a few points.

First of all, I have to clarify the procedure to be invoked in accordance with Rule 49B of the RoP. In fact, this is the second time. However, this is the first time to invoke the procedure in accordance with Rule 49B(1A) of the RoP. Mr CHIM Pui-chung mentioned that this was the first time to invoke the procedure in accordance with Rule 49B(1), rather than Rule 49B(1A), of the RoP. Therefore,
this is really the first time that the procedure relating to misbehaviour is invoked in accordance with Rule 49B(1A).

Why do we have to conduct the investigation this time? That is, handling this matter in accordance with Rule 49B(1A) of the RoP. In fact, it is to respond to the public's concerns. I am not going to repeat the details here as I stated them already in moving the motion. In fact, at that time, this matter had aroused public concern and was widely reported by the media. I once thought that the public had become less concerned about this matter. However, in attending a meeting with residents in the New Territories East last Saturday, some residents whom I did not know came forth and said: "Miriam LAU, I support you." I wondered what they wanted to support me for. It turned out they requested me to continue to investigate into this matter. They wanted to know the truth. Therefore, I believe the public are still very concerned about this matter. Of course, is it necessary for us to invoke Rule 49B(1A)? As far as I can remember, at the meeting of the House Committee — if you are interested, you may look up the relevant verbatim record — Dr Margaret NG was the first one who proposed to invoke Rule 49B. My immediate reaction was: "Should we invoke this rule?" It was because this was a procedure of triggering the disqualification of Member from office. However, many Honourable Members advanced their arguments eloquently and eventually, convinced other colleagues of it.

Moreover, even if the procedure under Rule 49B(1A) of the RoP is triggered, it will not necessarily result in the disqualification of a certain colleague from office. I was so impressed by Mr Ronny TONG's speech for he put it so rightly (I quote) to this effect: "Given the procedure under Rule 49B, we should conduct open debates at the end. Before you vote, you have to debate. If you feel that the outcome does not warrant the disqualification of that Member from office, you can censure or strongly criticize him during the debate, but eventually you can vote against dismissing him or disqualifying him from office." In other words, it is not the case that once Rule 49B(1A) is invoked, it will definitely result in disqualification of that Member from office. On the contrary, we have to initiate an investigation. Why do we have to do so? The aim is to respond to the public's concerns, as they are still concerned about this matter. Similar to a vehicle, if we stop it today, what will the public think about the Legislative Council? As far as my stance is concerned, I take the dignity of the Legislative Council seriously, and I also take the public's views of the Legislative Council. As we have activated a procedure, which is widely recognized as fair
and impartial in keeping with the RoP, we cannot stop it unless there are extremely sound reasons. We cannot stop it simply because of various reasons or worries about a lack of information. I think the question of whether the information is sufficient or not should be determined after the completion of the investigation. Eventually, we will make a decision in this Council.

Some Honourable colleagues queried whether this investigation committee would act in a fair and impartial manner. Earlier on, many Honourable Members have pointed out that we have a good track record. We trust the investigation committee, with the assistance rendered by the Secretariat, will act impartially and give an account to all of us on all matters. And eventually, the report of the investigation committee will be made public and will not be kept in the drawer. If there is any impartiality, we should also bear the responsibilities. I wish to make an appeal to Members who have queried the impartiality of this investigation committee, calling on them to act heroically and join this investigation committee, so as to ensure its impartiality. I think this is the correct approach. On the contrary, we should not, before its establishment, anticipate or imagine what it will be. When drafting the terms of reference of the investigation committee, we should not act in this way. There should not be any anticipation or imagination. Rather, we should be pragmatic. This is also what we, being Members, should do.

Moreover, regarding the statement made by the lady concerned last week, I may describe it as background information. In fact, as far as the wordings of my motion are concerned, it is appropriate to take it as background information. Of course, the allegations in my motion do not involve that part. But it is an important piece of background information. Regarding this statement, Mr KAM Nai-wai does not quite agree to it and has thus stated his own version. If no investigation is conducted, or if Mr KAM Nai-wai considers that what the lady concerned has said is incorrect, I think he will feel greatly aggrieved because there is neither a platform nor an opportunity for him to state his own version. In order to be fair to both Mr KAM Nai-wai and the lady concerned, I think the only method is to conduct an investigation. We should thus vote against the motion moved by Mr Paul TSE today, so that the investigation committee can be formed. Eventually, we will come back here to discuss on how to handle this matter. However, we should in no way stop at this point today as the consequences will be really very serious. 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 Mr Paul TSE to reply. This debate will come to a close after Mr Paul TSE has replied.

MR PAUL TSE (in Cantonese): President, I would like to express my gratitude to Honourable colleagues for expressing their views on this question. First of all, I wish to clarify a number of points. Our main direction is that we must not fall into any fallacy, particularly as mentioned by Mr LAU Kong-wah. The thrust of his speech is that prior to our investigation, how can we make an assumption at such an early stage that nothing can be uncovered? I think the most serious fallacy is that he has a wrong interpretation of the nature of the investigation. This is not an ordinary investigation committee under the Legislative Council, which aims at uncovering the truth and then deciding what to do. Rather, it is something similar to a charge in criminal court. This point is very clear, that is, whether the charge is substantiated or not. Even the remarks made by Ms Miriam LAU just now also have some misunderstanding of this matter. We now have a charge. Unless you can prove that there is evidence, it will be regarded as a lack of information. It does not mean that, after the investigation, we will then consider how to modify the charge or take other follow-up action. At the end, you have to decide, based on the facts, whether there is sufficient evidence to substantiate the accusation or the charge. That is so simple. This is not a death inquiry. Mr LAU Kong-wah, you will never uncover the truth and draw any conclusion. From day one, you are fully aware that if this charge is as proved, that is, proving that you are absolutely right, the charge can be fully substantiated — anyone reading his first year of criminal law (Mr Abraham SHEK is now studying it) should know that if the information is really insufficient, you should acquit him, that is, there will be no conclusion. This is entirely different from an open-ended enquiry.

President, secondly, many Honourable colleagues have said that we should be accountable to the public. As many complaints have been received now, if we do not follow up, there may be negligence of duty on our part. President, many people in society also have a lot of grievances, and many cases also involve Members of the Legislative Council, such as those relating to investigations,
conduct and handling of cases. Many people also feel dissatisfied. But is it necessary to refer all these cases to the Legislative Council for examination, to see if those Members have done anything wrong? We say that we have to do justice to both Mr KAM Nai-wai and Ms WONG. However, tens of thousands of people outside may not have seen justice done to them. Shall our resources be wasted in this way?

President, there are many channels for us to find out the truth. Regarding this incident, the Legislative Council is neither the only channel nor the most appropriate channel to find out the truth. First of all, many Honourable colleagues have pointed out just now that a lot of loopholes are found in the procedure, including that there is no chance for the two parties to take oath before giving evidence; and there is no chance for us to examine them and proceed with a lot of actual investigation work. Therefore, this is simply a process of wasting our efforts.

President, there are many paradoxes in this incident, including some individual Members. If time allows, I will point them out one by one. In fact, let us take a look at the background of this incident. As far as the whole incident is concerned, we have never thought of invoking Rule 49B of the RoP. If we leaf through the investigation report made by Mrs Regina IP, we will know that it was related to the mechanism of declaring personal interests at the very beginning. This is very clear. However, some Members suddenly proposed to invoke Rule 49B of the RoP and induced some arguments. It was entirely not a calm discussion as mentioned by Mr Paul CHAN. I have leafed through the transcript as I was not present at that time. But having leafed through the transcript, I am sure that there was a heated debate at that time and various factions and parties presented their respective views and opinions. Suddenly, there was a surprise. Dr Margaret NG came up with a proposal. I think they had not gathered any information in advance and no document was available. Ms Emily LAU had suggested, and Ms Miriam LAU had also asked, if they had to leaf through the papers of the Legislative Council to see how to invoke Rule 49B and then take a further step. However, after some arguments, they swiftly decided to invoke Rule 49B without any thorough consideration.

President, because of this matter, the public has been given the impression that the integrity of the Legislative Council is most flimsy. If the matter develops further in this way, it will only bring more serious harms. I am a Member with the lowest seniority here, ranking the 59th here, being just more
senior than Mr Samson TAM. But why does this small potato have to voice out? Because I have found some impropriety. I hope, even if there is only one voice, I can make you all know that this is a waste of resources. The public will find us very stupid, thinking that we are not fair at all, simply doing something with hullabaloo, just like putting on a show, a soap opera. Therefore, we should call this to a halt. President, let me take a breath first.

President, as my speaking time is running out, I may perhaps speak in the other way round from the end. At the outset, I have looked at this matter from three levels, that is, the highest, middle or lowest levels, and put forth these three reasons to explain why we have to call it to a halt. The highest level is that we should not set a precedent. This is different from the case cited by Mr CHIM Pui-chung. Of course, he has his grievances. I did not agree to any co-ordination with him on how to make our speeches in advance. His grievances are that prior to the completion of his appeal, this Council had already moved a motion to censure him and disqualify him from office. In this regard, he has his personal views. However, there was at least a judgment passed by the Court in his case. As for the timing, I agree that that motion should have been moved only after a judgment had been passed by the Court of Final Appeal. This might give him an opportunity to turn the case around. This point is open to argument. However, to my understanding, he was not given such an opportunity at that time. Therefore, he was unhappy about this around. The question is, should there be an investigation into this incident this time around, it has to be conducted by a third party, or a body which is relatively impartial and has no political background, or a body which is not suspected of having any political background. We can then assure the credibility. It is because we are not now investigating a case which involves public interests or the Government, but one of our own numbers. We belong to different political parties and have different backgrounds. As mentioned by Mr Frederick FUNG, his reason of objection is that we are always perceived to be political. The public will always think that we carry political backgrounds. It is impossible for us to disprove it.

Why should we ask a third party to conduct this investigation? For example, the Court, as it does not have any political background, or at least, we believe so. The Equal Opportunities Commission does not have any political background, either. We can trust its judgment. Now, even the Hong Kong Human Rights Monitor is unwilling to take up this investigation. What can we rely on to go ahead and make the public believe that our conclusion will not be
biased by any political background or other reasons? President, we will never achieve this.

Ms Miriam LAU has also made a clarification just now, and I wish to raise one point, too. Mr CHIM Pui-chung's case is very different from this incident. This is the first time we are invoking the RoP without a court judgment, alleging a Member of misbehaviour and probably disqualifying him from office. The consequence is very serious. Once a precedent is set — the background of the House Committee meeting is only something very interesting — but once the mechanism under today's motion is really triggered, it will bring us endless troubles. In future, in case there is any political oppression or anyone disagrees with others, this mechanism can be triggered by "one Member plus another three Members". We have no reason to say that there is no such mechanism anymore as a precedent has been set. By that time, the Legislative Council will become a kangaroo court, making the public feel that we are putting on a soap opera. We all know what the most popular story is now. Even the Americans are following up the affairs of Tiger WOODS happily. They are eager to know how his mistress looks like and what is happening to him.

President, the most paradoxical point is that in this case, all Honourable colleagues …… I will give Ms Cyd HO a credit as she is the only one who admits that she has taken the wrong path. No one will admit his own fault. I am also at fault for I was not in Hong Kong on that day and could not attend the meeting concerned. If I were, I would certainly have stated my views and stance. But I am very responsible and debate with you all after reading all papers and transcripts. President, it is possible to rectify our mistake. However, we should not make the mistake continue. Once we press this button, we will set a very, very bad precedent.

Regarding speeches made by individual colleagues, I wish to say a few words if time allows. Let me start from the end. I have also mentioned the point made by Ms Miriam LAU. What we are talking about is a charge, or an accusation. Every lawyer should know what a charge is. We are not talking about an open enquiry. Rather, we are talking about something with an outcome or an outcome which is already known. If we know that nothing can be achieved through being proved as charge, we should not go ahead with this. By the same token, the Department of Justice will not initiate any prosecution against this case. If there is no chance, even what the plaintiff has said regarding this
charge is fully substantiated, it will not result in any accusation or penalty at the end. But why should we take this course of action? It is because this is a charge.

The paradox I wish to comment is Mr KAM Nai-wai. Originally, I am not prepared to criticize him as he is also facing enormous pressure now. However, I think various parties are abusing this procedure, including Mr KAM Nai-wai himself. He should not insist on being investigated. Why? As he knows that there will not be any outcome and he will not be found guilty upon completion of the investigation, why should our resources be wasted on the investigation? Is this the only way to allow Mr KAM Nai-wai to prove his innocence? Is there any better option? Under this circumstance, why should he be bold in facing up to this issue? It is because he knows that given the circumstances, nothing can be uncovered and no outcome can be achieved in this investigation, and so, he will not be disqualified from office.

Why do I speak in such a loud voice? The Democratic Party wants to take the moral high ground. I understand why they have to act in this way. But I agree with Mr Ronny TONG who has made a very polite comment that, regarding this matter, if the Democratic Party occupies the moral high ground, it should have the courage to come forth and say, "We are neither pretending to be fair and neutral nor practicing any favouritism to Mr KAM Nai-wai. Rather, we have to safeguard the dignity and credibility of this Council." If this incident had happened to another party, or any political party for that matter, we should still make the same statement in all fairness. That is, under such a situation, we should not set such a bad precedent. If you have the moral courage, do come forth and say that you are not afraid of being suspected of practicing any favouritism. It is because we should attach more importance to the integrity of the Legislative Council rather than that of a political party.

President, I think it paradoxical as Dr Margaret NG, who actually started it all, might have made the suggestion without thorough consideration or on the basis of the situation, background and facts at that time. I understand this. However, if it is really wrong ……

(Dr Margaret NG stood up)
PRESIDENT (in Cantonese): Dr Margaret NG, is it a point of order?

DR MARGARET NG (in Cantonese): I wish to make a clarification on his comments about me. I do not know whether I should raise it now or wait until he has finished his speech.

PRESIDENT (in Cantonese): Dr Margaret NG, will you please sit down first. As your speaking time is exhausted, you cannot respond to any comments about you by other Members, including Mr Paul TSE. However, if you think that Mr Paul TSE has misunderstood any part of the speech you made earlier, you can give a brief explanation after he has finished his speech.

DR MARGARET NG (in Cantonese): Thank you, President.

PRESIDENT (in Cantonese): Mr Paul TSE, you may continue with your speech.

MR PAUL TSE (in Cantonese): President, I do not agree that we have to follow Dr Margaret NG merely because she is a senior Member and a barrister. However, if we find that there is something wrong now, even though 37 Members had pressed the button and voted for it at that time, so what? If we know that this approach is not feasible today, shall we stop?

Ms Miriam LAU has just left. When she heard someone commend her for being brave to do what is righteous, she may feel a little bit uncomfortable. At a certain stage, she really found that someone had made her meat of the sandwich. As she had to be responsible for drafting the allegations, she felt not so comfortable about this. Because she was the Chairman of the House Committee at that time, someone requested her to take charge of it. In fact, she had refused to do so. Members will know what happened by simply leafing through the transcript, especially page 6.

As for Mr KAM Nai-wai, as I said just now, it is most paradoxical. Surprisingly, he has taken the initiative and requested others to investigate him. On the one hand, I agree with Dr Priscilla LEUNG that we should not accommodate ourselves to the wish of the party concerned. But strangely, she
said at the same time that complainants or electors had asked her to conduct the investigation. She did not have her own stance and was swayed by others. On the one hand, she said that we should not be controlled by the subjective will of Mr KAM Nai-wai; and yet on the other, she was swayed by other members of the public. Every one of us should be responsible for our own decision and should not be swayed by others under any pressure, or simply because of the fact that 37 Members have made a decision. Just as Mrs Sophie LEUNG has mentioned, her voice is not loud enough and thus, she can do nothing but to follow others. In that case, we fail our capacity as Members. Every one of us should have our own independent thinking, character and opinions. We should have the courage to speak up and bear the responsibility. Take Mr CHIM Pui-chung as an example. Although I may not totally concur with him, his comment could not be truer. At least, he has the courage to admit his fault. Though from the legal point of view, we still have different opinions.

Even the public are also very paradoxical, very hypocritical. On the one hand, they hope that the truth can be uncovered, saying that the Legislative Council has integrity and will protect its own impartial image. However, when we conduct the investigation, the public may very soon find that nothing can be uncovered. They may consider that it is merely a waste of resources, querying what we have done. They will make such comments very soon. Unlike a prediction by a feng shui master which can be verified only in 10 or eight years, they will consider that we have done something pointless very soon.

President, my speaking time is running out. I just wish to reiterate that if this is wrong, we have to stop it decisively. From a higher level, we should not activate this mechanism, or we simply consider that such a hearing is against the due process and should not be conducted. Or we can look at it merely from the perspective of benefits, a lower level. As there will not be any outcome after an investigation into this, it is pointless for us to waste our efforts and time or public money, making the public think that the Legislative Council is handling its business in such a muddled manner. We still have a little chance to avert this losing situation. I have not made any attempt to urge Members to vote for me today. I just hope that every colleague present here can vote with their conscience, regardless of the stance of their political parities. I simply hope that you can cast your vote to uphold justice.

Thank you, President.
DR MARGARET NG (in Cantonese): President, I just wish to make a brief clarification, that I am not the one who started it all and suggested conducting an investigation into Mr KAM Nai-wai. Rather, at that time, the House Committee wanted to conduct the investigation with a non-existent power. Therefore, I said at that time that if an investigation were to be conducted, we could only resort to an established mechanism. That is all I wish to say.

PRESIDENT (in Cantonese): Mr Paul CHAN, do you wish to explain any misunderstanding, too?

MR PAUL CHAN (in Cantonese): President, I wish to point out that my speech has been misunderstood. Mr TSE said that I had mentioned a calm discussion. In fact, I did not use such wordings in my entire speech.

MR PAUL TSE (in Cantonese): They were used in the transcript, stating that there was a calm discussion. This is what Mr Paul CHAN said at the previous meeting.

PRESIDENT (in Cantonese): He was not referring to the speech you made earlier. Rather, he is referring to the speech you made previously.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Mr Paul TSE, that no further action shall be taken on the censure motion be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr IP Kwok-him rose to claim a division.
PRESIDENT (in Cantonese): Mr IP Kwok-him 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 Abraham SHEK, Mr CHEUNG Kwok-che and Mr Paul TSE voted for the motion.

Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Ms Miriam LAU, Mr Tommy CHEUNG, Mr Vincent FANG, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Dr LAM Tai-fai, Mr Paul CHAN, Mr CHAN Kin-por, Mr IP Wai-ming and Dr Samson TAM voted against the motion.

Dr Raymond HO, Mr CHEUNG Man-kwong, Ms LI Fung-ying, Dr Joseph LEE, Mr CHIM Pui-chung, Prof Patrick LAU, Dr LEUNG Ka-lau, Mr IP Wai-ming and Dr PAN Pey-chyou abstained.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr LEUNG Yiu-chung, Mr Albert CHAN, Ms Audrey EU, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr Ronny TONG, Ms Cyd HO, Miss Tanya CHAN and Mr WONG Yuk-man voted for the motion.

Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr CHEUNG Hok-ming, Ms Starry LEE, Mr CHAN Hak-kan, Dr Priscilla LEUNG and Mrs Regina IP voted against the motion.
Mr Albert HO, Mr Fred LI, Mr James TO, Ms Emily LAU, Mr Andrew CHENG, Mr Frederick FUNG, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr WONG Sing-chi and Mr WONG Kwok-kin abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 28 were present, four were in favour of the motion, 15 against it and nine abstained; while among the Members returned by geographical constituencies through direct elections, 28 were present, 10 were in favour of the motion, seven against it and 10 abstained. 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): In accordance with Rule 49B(2A) of the Rules of Procedure, the debate on the censure motion moved by Ms Miriam LAU is now adjourned and the matter stated in the motion is referred to an investigation committee.

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: Reviewing afresh the use of land at the Kowloon waterfront.

Members who wish to speak in the debate on the motion will please press the " Request to speak " button.

I now call upon Dr Priscilla LEUNG to speak and move her motion.
REVIEWING AFRESH THE USE OF LAND AT THE KOWLOON WATERFRONT

DR PRISCILLA LEUNG (in Cantonese): President, I move that the motion, as printed on the Agenda, be passed.

Green buildings and harbourfront enhancement are important issues of concern to the community in recent years. More than 30 District Council Members in West Kowloon and I established the Kowloon West New Dynamic to promote the implementation of the Kowloon waterfront promenade project. We, together with planning professionals, took the lead to submit a proposal on the West Kowloon Cultural District in May last year. The proposal covers a green waterfront, waterborne taxis across the waterfront, and a boulevard connecting the inner district to the waterfront which allows residents in deprived areas to travel to the waterfront on foot, thereby creating a green city.

We also took the lead to propose that, if there is an area with buildings along the waterfront, the adoption of concepts such as a western pontoon bridge and an overpass to link up the whole waterfront may be considered. Taking the sites such as the China Hong Kong City owned by private developers as example, we are ready to join the Government in convincing these developers and making them understand that, if there is a round-the-coast waterfront promenade, the private areas they owned will become more prosperous tourist areas and people can enjoy an unobstructed waterfront. In fact, I have repeatedly discussed with my ally Mr Abraham SHEK about this issue and I have also directly discussed the matter with different developers. I really hope that they will believe and agree that there is no conflict between the development of the waterfront and their interests, and that there should be co-operation between the Government, the business sector and the public in developing the waterfront.

In his policy addresses, the Chief Executive has mentioned again and again the general policy directions of reducing development density and beautifying the waterfront promenade, but, the executive bureaux and departments have failed to take matching actions. As a result, even though the senior level has introduced a policy, those below it may act counter to it. Thus, asking the Government to strengthen the co-ordination and co-operation among different departments to ensure that subordinates follow the example of superiors is also the major objective of this motion.
Actually, we see a very good example today. Before this motion debate, I have written to other relevant Policy Bureaux including the Transport and Housing Bureau and the Home Affairs Bureau inviting officials from these bureaux to attend the debate. It is a pity that they have all declined the invitation. How can they give the Legislative Council and the public confidence that the bureaux will really co-operate to achieve the objective of harbourfront enhancement?

Regarding the disharmony among bureaux, we have a latest typical example, and that is, the development of Sham Shui Po. The Development Bureau praised the Sham Shui Po District Council earlier on for it agreed to the Government's proposal to build nine wall-effect buildings atop Nam Cheong Station in Sham Shui Po. Nevertheless, the Sham Shui Po District Council Members unanimously objected to the development at the nearby Site 6 at the waterfront because they did not want Site 6 at the waterfront to have the same fate as the development atop Nam Cheong Station.

Sham Shui Po residents have been living adjacent to wall-effect buildings for many years. There are more than 365 000 residents and 15 public housing estates in Sham Shui Po, and over 137 800 residents are living in public housing, accounting for 37.7% of the population in the district. Regardless of how new the style of public housing estates is, these estates are densely populated high-rise buildings to be sure. If such an important ventilation opening is blocked, can Sham Shui Po residents still "breathe"? Among these estates, the Fu Cheong Estate, Un Chau Estate and Shek Kip Mei Estate are under expansion. Sham Shui Po residents have complained to me again and again that they have absolutely no objection to the construction of public housing, but, they really want to ask the Government why the responsibilities of public housing construction are always fallen on Sham Shui Po. In this connection, I have carried out some fact-finding work. High-density development at Site 6 at the waterfront was approved, however, the incumbent Secretary Carrie LAM or Secretary Eva CHENG were not responsible for that. There was a town planning error in 1998, resulting the approval of the waterfront site originally intended for low-density development for high-density development. If my estimation is not erroneous, the matter should be associated with the hasty introduction of the "85 000" housing policy by the then Chief Executive years ago. At that time, because of the "85 000" housing policy, high-rise buildings were built everywhere and property prices plummeted. When Chief Executive TSANG took office in 2005, he called off the project as he considered that it was
unnecessary to implement the project for the moment. In fact, the hasty introduction of the "85 000" housing policy has given rise to similar planning which victimized many people. I hope the Government today would become aware of the mistakes in the past and rectify these mistakes made by its predecessor. It should not build any more wall-effect buildings there.

This morning, many Sham Shui Po residents gathered outside the Legislative Council Building and staged a blue ribbon protest. One of the families carrying a baby a year and a half of age objected to the unreasonable planning of Site 6 in Sham Shui Po. They have also brought with them more than 10 000 signatures. I am giving the Secretary a token of their regard today.

There is an earlier report that the Judiciary has a planned development on a 7 500 sq m site in Sham Shui Po just two blocks away from Site 6. It is an inland site and we will see a twin-tower West Kowloon Magistracy Building in the future. As proposed, the new Magistracy Building will have a basement to lower the height of the building, and there will also be enhanced ventilation, green energy saving, midair gardens and green roofs, with the aim of building some relatively lower buildings. Sarcastically, shorter buildings and environmentally-friendly buildings are built inland while there is high-density high-rise development at waterfront sites. Has the Government got it all wrong?

Can these plans made 10 years ago not be changed in any way? I also know that, when the industrial buildings in Sham Shui Po are developed, an international school will be built in the industrial area. Why can the Government not use its brains and build a magistracy building and an international school on the waterfront site? It may even follow the advice publicly given by Dr CHAN Yan-chong who hopes that the Government would consider changing the use of this waterfront site and using it for the development of low-density buildings with commercial values. Alternatively, can the Government meet the requests made by the Sham Shui Po District Council and residents throughout the years to develop cultural facilities there such as a town hall which can accommodate 1 000 people? Has the Government seriously considered these various proposals?

Concerning Site 6 just discussed at length, our assistants have made a model. The Nam Cheong Estate and Hoi Lai Estate just mentioned were on this Sham Shui Po layout plan. If the Site 6 development is added here, a wall will precisely be formed, completely blocking the most important ventilation opening
in Sham Shui Po. That is why Sham Shui Po residents have raised objections this time. They agreed to the development atop Nam Cheong Station last time, but, after a number of high-rise buildings have been built atop Nam Cheong Station one after another, the ventilation opening has become substantively smaller. Yet, the Government still insists on building high-rise buildings in their district. If this goes on, Sham Shui Po will exactly demonstrate to us what a wall-effect community is like. A wall-effect community in the world will be created around the area, extending from the Hoi Lai Estate to Site 6 and in the vicinity of Nam Cheong Station.

Furthermore, another district is worth discussing. The waterfront site near Hung Luen Road and the Whampoa Garden in Hung Hom has turned out to be included in the Application List for public tender, where high-density high-rise buildings with a height of 75 m can be built. Although the approach of stepped building height will be adopted, it will block a substantive part of the most important ventilation opening in the area. The gross floor area ratio of the site has really been reduced from 1:9 as initially proposed by the Government — a really high ratio — to 1:6 and then 1:4 at present. Actually, much compromise has been made between the public and the Government.

Nonetheless, since the release of the policy address this year, many people have indicated to me that they envy the development of the Central District very much and they ask for all sites at the waterfront in Hung Hom to be removed from the Application List. As the Member representing West Kowloon, I am obliged to speak for the residents. For this reason, as early as on 30 October, I jointly submitted a representation to the Town Planning Board with professional engineers and local District Council Members requesting for the most important site at the ventilation opening to be changed to an open space. This is a realistic and practical proposal and we hope that this will create some room for our continuous discussion with the Government.

I am most delighted and surprised that, since joining the Professional Forum, I run into Mr Abraham SHEK very often. Although he represents the developers, I frequently ask him to lobby them. I remember that an Honourable Member has said at a meeting of the Forum that it is a fresh idea for me to ask someone to lobby the developers. If the developers are willing to work on a green waterfront, it will really be effective. Perhaps our hard work over a long period of time pays off. On 2 December this year, as reported in major newspapers, the Real Estate Developers Association (REDA) gave us a big present, that is, it commissioned a survey by an independent researcher. Mr
Abraham SHEK has reminded me repeatedly just now that the survey will be conducted by an independent researcher but not the REDA. However, since it was so published in various major newspapers, that was how we interpreted it. The waterfront site in Hung Hom is particularly mentioned and it is proposed that three sites should be removed from the Application List in order that a large waterfront park would be constructed. In other words, it supports our views. Thus, I believe that the developers' response to our appeal this time will definitely not be criticized as collusion between businessmen and government officials.

Indeed, the residents have a very simple request. They do not want wall-effect buildings and they hope that building designs can be improved to lower further the gross floor area ratio and maintain ventilation. I would like to thank my ally Mr Abraham SHEK because this survey report is published at the right time just before the Town Planning Board is going to make a new plan.

The third example is the waterfront sites along the West Kowloon Highway, which is still used as loading/unloading areas now. We proposed to the Government long ago that we hoped that the loading/unloading areas could be relocated to further harbourfront enhancement and build a waterfront park. We hope that this will realize the long-cherished vision of West Kowloon residents that there will be an uninterrupted waterfront promenade, which will allow the residents in old and new inland districts to enjoy a green boulevard, and pass to the next generation the most beautiful green legacy.

In my opinion, so long as the Government uses the same ruler to measure the development in every district, it will not encounter so much obstruction. Actually, there are certainly other districts apart from those in Kowloon. Given limited time, I can just put it briefly that, about the amendments today, I agree to the respective amendments of Miss Tanya CHAN and Mr James TO. Mrs Sophie LEUNG proposes balancing the economic development of Hong Kong. In principle, I agree with her but I have to listen to her remarks before making a final voting decision. Thank you, President.

Dr Priscilla LEUNG moved the following motion: (Translation)

"That the Chief Executive has put forward the policy directions of reducing development density and beautifying the waterfront promenade in his past three years' policy addresses, yet many waterfront sites in Kowloon have still been wrongly planned for the construction of densely built high-rise
buildings in recent years, causing further damages to the beautiful
ridgelines of Kowloon and even blocking the ventilation openings and
aggravating the wall and heat island effects, hence exacerbating the
environmental problems in Kowloon; in this connection, this Council
urges the Government to honour its pledges made in the policy addresses
and, by adhering to the overriding principle of conforming to
environmental protection and low development density, strengthen the
coordination and cooperation among different departments as well as
review afresh the use of vacant waterfront sites in Kowloon, so as to
create favourable conditions for the implementation of the Kowloon
waterfront promenade project."

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

Dr LEUNG, your display model is blocking my sight, can you put it down?

PRESIDENT (in Cantonese): Three Members intend to move amendments to
this motion. This Council will now proceed to a joint debate on the motion and
the three amendments.

I will call upon Mrs Sophie LEUNG to speak first, to be followed by Miss
Tanya CHAN and Mr James TO; but no amendments are to be moved at this
stage.

MRS SOPHIE LEUNG (in Cantonese): President, I would like to thank
Dr Priscilla LEUNG for proposing this motion today. This motion arouses our
concern for harbourfront enhancement and residential land planning. However,
I think the motion should put greater emphasis on balancing and catering for the
needs of various parties.

President, frankly speaking, the only resources we have in Hong Kong are
the waterfront and not much land. How a piece of land should be used is the
concern of 7 million Hong Kong people. I have pointed out that balance should
be emphasized because we cannot particularly pinpoint certain districts or ethnic
groups and act according to their desires. In my opinion, in respect of the whole project for beautifying the Victoria Harbour, it is more important for the Government to cater for the needs on both sides of the Victoria Harbour and create favourable conditions for the waterfront beautification work in various districts.

As regards putting restrictions on development projects, the Government should stress the improvement of the public's living environment. Of course, if we discuss the issue at greater length, we may find that Dr Priscilla LEUNG describes in greater detail improving the living environment of the residents of a certain district, and that I have taken a wider perspective. Nevertheless, on the whole, I think that it is necessary and it will be better to approach the issue from a macroscopic angle. Reducing development density is definitely one of the options. Nonetheless, the Government also needs to cater for other social and economic needs. It can neither be all-powerful nor stop or prohibit all building and private development projects.

President, a substantial part of the whole waterfront promenade is private land, which should be developed by the Government through public-private partnership. We have discussed these issues at the meetings of various subcommittees, and we have also visited the above places, thus, we fully understand the difficulties involved.

President, in respect of residential development projects, we certainly hope that the Government would make the best use of land resources. I have remarked before that we have very often locked up land resources, which prevented the remobilization of land resources. Actually, we hope that we would hold targeted discussions on certain aspects in the future to consider how these resources could be released and remobilized. This is an issue of great concern to me. Moreover, taking into account the practical needs of economic and social development, the authorities should consider the development of various types of commercial and residential properties. Hence, as I have just said, the authorities cannot rule out private development of waterfront sites.

As recently announced by the Development Bureau, the commercial floor areas of the sites adjacent to the Central Piers in the New Central Harbourfront will be relocated to Wan Chai, which has my support. Actually, this is precisely a very good example of balancing social development and reducing development
density. There have been extensive public participation in and discussion on this issue. This example can serve as reference in respect of future land development, especially when we need to develop certain sites into quality areas or communal areas.

President, concerning harbourfront enhancement projects, at a meeting of the Subcommittee on Harbourfront Planning chaired by Prof Patrick LAU under the Panel on Development, we invited the Secretary for Development to brief us on its programme highlights in the coming year. We understand that the authorities are going to introduce more than 10 harbourfront enhancement projects in response to people's aspirations for harbourfront enhancement. Furthermore, as I have just said, the public-private partnership mode will add new elements to harbourfront enhancement.

Summing up, President, I have proposed this amendment in the hope that the Legislative Council would examine each and every issue from a more macroscopic angle. I am not saying that the motion proposed by Dr Priscilla LEUNG does not approach the issue from a macroscopic angle, but, I have proposed this amendment in a friendly way, hoping that she would understand that I have only widened the scope of viewpoint in her motion. Certainly, I agree that the Legislative Council should monitor the Government, and precisely because of the need to monitor the Government, we should explore various issues from a macroscopic perspective rather than focusing on individual districts, lest others should liken the Legislative Council to District Councils.

As a matter of fact, the policy addresses in the past few years have touched upon the concept of "Progressive Development", which reflects that the Government must concurrently cater for the diversified development of the local economy and the quality of life of people.

In proposing this amendment, I hope that the Secretary for Development would respond to the current and future measures in connection with land planning, especially waterfront sites. President, the waterfront promenade is at least brought up for our discussion today as a particular project. I strongly support that because we just casually worked on a small part of a certain project in the past, and when we were asked by a certain group of residents to do something else, we worked accordingly. Yet, as we now have a comprehensive project, we must deal with it in a cautious manner. For the protection of the
whole coastline and our quality life, it is highly satisfactory for this project to be proposed for discussion.

Thank you, President.

MISS TANYA CHAN (in Cantonese): President, we all know that the planning issue has not only aroused the Government's concern but also the concern of many people in recent years. We can learn from newspapers that a lot of people have staged protests and submitted objections in relation to some planning projects. Looking back, we can find that the Government actually provided guidelines on development parameters of the waterfront or ridgelines long ago. For example, in 1991, the Administration Wing formulated a development strategy known as the "Metroplan", and proposed designating an area where 20% to 30% of it would not be obstructed by buildings to protect the ridgelines. It was a project with very good intentions. Also, we actually have such guidelines as Hong Kong Planning Standards and Guidelines, and the Harbour Planning Guidelines of the Harbourfront Enhancement Committee. However, these guidelines are not legally enforceable. Therefore, up till today, we still see many people get together and raise objections to over-developed projects for the sake of protecting their homes, development density and parameters of buildings in their neighbourhood and the health of their family members.

First of all, I would like to talk about the protection of the Victoria Harbour or our harbour. Before the reunification, a former Legislative Council Member Ms Christine LOH introduced the Protection of the Harbour Ordinance. After enactment of the Ordinance, our beautiful Victoria Harbour is saved from development and reclamation lest it should become a narrow harbour similar to a port or channel. That is precisely how we can protect the harbour.

Next, I am going to talk about the development on both sides of the waterfront. If Honourable colleagues have noticed when taking a look far into Kowloon from the Hong Kong Island, when the old airport was relocated around 1997 and 1998, the building height restriction was lifted. As such, the development along the coast started to get out of control. Developers scrambled for the purchase of prime sites for the development of wall-effect high-density residential buildings, or tall and thin high-rise or "chopstick" buildings that looked just like fir poles, so that the buildings they developed could dominate the most beautiful Victoria Harbour view, only leaving a gap for the buildings at their
back. So long as there is a gap between two buildings, developers will carry out
development projects there, and arrangements will be made soon afterwards for
the buildings in front. The whole Victoria Harbour has become an "encircled"
harbour because it is encircled by buildings.

If I have to cite typical examples of damages done to the harbour, I must
cite the following examples. Harbourfront Landmark at the harbourfront in
Hung Hom comprises three 72-storey residential buildings, which is a typical
wall-effect estate. The well-known Two International Finance Centre (IFC II)
and International Commerce Centre (ICC) are also outstanding examples. The
88-storey IFC II in Central stands at a height of 420 m. Taking a look far into
IFC II from Tsim Sha Tsui, we find that it has pierced through the ridgelines.
The ICC at the Kowloon Station is even more terrific, it is a 118-storey building
standing at a height of almost 500 m. These two buildings are at nearly twice
the height of the adjacent buildings. Besides piercing through the ridgelines,
they basically do not blend with the surrounding environment, especially the
harbour view. Yet, developers have made these two buildings the "harbour
gateway", singling them out to create the effect of standing head and shoulders
above other buildings. In fact, in piercing through the ridgelines and making the
view an eyesore, have they successfully created such a preeminent effect? Is
that favourable or unfavourable?

Concerning the ridgelines, taking an overview of the seven vantage points
announced by the Planning Department in 2006, only the vantage point at the
Victoria Peak can really be regarded as a vantage point years ago because of its
geographical location at a high altitude, thus, the ridgeline view is not badly
affected. Nonetheless, we cannot guarantee that the view will not be obstructed
later on. For instance, when we take a look far into the Hong Kong Island from
the West Kowloon Cultural District and the Hong Kong Cultural Centre Piazza in
Tsim Sha Tsui, the Victoria Peak ridgelines have already been obstructed by IFC II
now. If we take a look far into the other side of the harbour from Sai Ying
Pun, we will see that a large part of the ridgelines from the Lion Rock to the
Kowloon Peak have been obstructed by the properties atop the Kowloon Station.
Taking a look far into Kowloon from Quarry Bay Park, we will see that the
ridgelines of the Kowloon Peninsula have been obstructed by APM in Kwun
Tong. The more impressive scenes of the Kowloon Peninsula ridgelines have
also been obstructed. The large-scale development of Kwun Tong in the future
will probably obstruct a larger part of the ridgelines. Years ago, though a
developer proposed to construct a 93-storey Mega Tower in Wan Chai, it
promised to build fewer storeys after people had raised objections. This prevented the Victoria Peak ridgelines from being obstructed by another building. Furthermore, in respect of the redevelopment projects of the Ocean Centre and New World Centre on Canton Road, approvals were given for the development of a 96-storey building and a 63-storey building respectively. I am really worried that we may not be able to see the buildings at the back of these two buildings when we take a look far into them from the Hong Kong Island.

As a matter of fact, the Victoria Harbour is an internationally renowned landmark and I do not understand why the Government approves some development projects when it is already aware that such a substantial part of the ridgelines have been damaged. This problem will most probably not be tackled by the Secretary who belongs to this generation, and we do not need the construction of more so-called landmark buildings on both sides of the harbour.

Regarding the harmful effect of an "encircled" harbour, on the surface, we may say that the view will be badly affected, that is, the ridgelines will be damaged as we have just said. But, careless planning will also destroy the view corridor between the waterfront areas and the inland. I think that the successive governors of Hong Kong (excluding Mr TUNG) and the incumbent Chief Executive may understand this very well. Having searched through stock photographs, I found that there was a Victoria Harbour view from the Government House before. However, quite a few buildings have been constructed in front of it, and these buildings have filled up the gaps. At present, only glass block screen walls may be seen from the Government House; there is no unmatched sea view and certain scenes can only be seen through tiny gaps.

Since the view has been obstructed by the buildings at the coast, there is an "unmatched building view" now. From a scientific angle, there are harmful wall and heat island effects and ventilation will be affected, causing an increase in inland temperatures, which will eventually lower the quality of life of people and even affect their health. As stated in the research report completed by the Environmental Protection Department in 2006, when the temperature increases by 1°C, Hong Kong will spend $1.7 billion more on electricity each year, resulting in economic and resource losses.

Insofar as resources are concerned, the Government substantially reduced the development density of the North Point Estate site last year but a developer expressly stated soon afterwards that it was a waste of natural resources. I could
hardly agree with him. Can constructing shorter buildings along the waterfront at least allow inland residents to appreciate the harbour scenery through a viewing corridor and enjoy the sea breeze? How will this be a waste of natural resources? Of course, I understand that developers always have the idea that, as they have bought the sites at high prices, they should dominate the whole beautiful scenery; otherwise, it will not be cost-effective. For developers, the costs and effectiveness of their new development projects may be quantified and counted on a pecuniary basis. Yet, social costs may not be directly measured on a pecuniary basis. The higher the development density, the higher the social costs. Taking Central as an example — Dr Priscilla LEUNG often envies the Central District very much — although commercial buildings reaching to the sky may bring considerable revenues, people also need to pay a price. For example, there will be traffic congestions or we have to put up with inferior air quality. The recent public opinion even opines that the competitiveness of Hong Kong will be impaired.

For the above reasons, we think that the Government should renew afresh the waterfront planning and land use in order to implement waterfront planning work of higher quality. I would like to say that, not only the Kowloon side but also the whole Hong Kong Island or some coastal areas in the New Territories can actually be developed for people's enjoyment.

I have checked a total of 13 policy addresses since the reunification and I have found that the Government made a proposal in 1999 on building a more beautiful Victoria Harbour, including making land available along the waterfront for promenades. It is too bad that, after the proposal was made for the first time, probably because of the financial turmoil, we only focused on rescuing our economy with real estates and nobody bothered about the harbour. In the two latest policy addresses, the Government proposed again beautifying the Victoria Harbour and improving the accessibility of the waterfront. Once again, there is an explicit direction for the development of the harbour.

I earnestly hope that the Government would really implement anew a harbourfront enhancement project this time. Besides creating a harbour with vitality, the Government should also enlarge the human scale and review afresh the overall planning of the waterfront. I hope that the accessibility of the harbour could be increased and the whole coastline could be protected.

It is stated in Mrs Sophie LEUNG's amendment "the overriding principle of balancing different needs for land between Hong Kong's economic
development and quality life", to which we do not agree. It is mainly because we believe that quality life already includes economic development, environmental protection and low density, and it does not mean that we do not need quality life when we have achieved economic development. Therefore, I do not think any balance is necessary in this respect.

I visited another Victoria Harbour a few months ago, which is in Melbourne. There is a place called Docklands, which is an environmentally-friendly place of low density. I hope that our harbour would gradually develop into a low-density scenic spot.

Thank you, President.

MR JAMES TO (in Cantonese): President, the public has always criticized in recent years about our excessively high development density, causing the wall and heat island effects and aggravating the environment problems, therefore, they have asked the Government to reduce the development density. In fact, the development of high-density buildings at the waterfront sites on both the Hong Kong and Kowloon sides should be avoided. President, according to the Hong Kong Planning Standards and Guidelines and the Harbour Planning Guidelines for the Victoria Harbour and its Harbourfront Areas, taller buildings should be constructed in inland areas and shorter buildings should be constructed at the doorstep of Victoria Harbour and the harbourfront so that high-rise buildings will not filled up the harbourfront. Thus, we think the Government should act according to these guidelines and put development and building height restrictions on all sites at the waterfront, including the waterfront sites on the Application List.

On the other hand, in light of the considerable reduction in land supply in recent years, the construction and supply of residential flats have continuously decreased, so, it is essential to maintain stable supplies of land and residential flats to stabilize the property market, thereby meeting the housing demands of the public. For this reason, the Government should strike an appropriate balance between land supply and avoiding excessively high development density.

In the course of reviewing afresh the use of land at the Kowloon waterfront, we should first consider the development in the past to find out more about the problems we are now facing. Let me start with the Kai Tak site of the old airport in East Kowloon. To Kwa Wan was an industrial area and Hung
Hom was dockyards in the past and there was a typhoon shelter in the area between Tai Kok Tsui and Yau Ma Tei. Evidently, most of the sites at the Kowloon waterfront were closely related to the industrial and freight transport development in Hong Kong at the time. For this reason, the problems faced in respect of Kowloon waterfront planning not only include development density; more importantly, there are such problems as ownership of waterfront sites, obstacles posed by the existing uses, and the engineering and transport networks, for example, how the accessibility of the waterfront will be affected.

Let us first discuss the accessibility of the Kowloon waterfront. It is actually inconvenient for residents to access the Kowloon waterfront mainly because the West Kowloon Highway separates the waterfront sites from other districts. Residents accessing the waterfront have to pass through the West Kowloon Highway. The West Kowloon Highway at a total length of 4.2 km stretches across Jordan, Tai Kok Tsui, Sham Shui Po, Cheung Sha Wan and Lai Chi Kok and the residents of all these districts heading for the waterfront will be affected by it.

For example, if the residents in Mei Foo, Lai Chi Kok or Nam Cheong are heading for the waterfront nearby, that is, the area around the Cheung Sha Wan Wholesale Food Market, they can only use two pedestrian links namely Hing Wah Street and Yen Chow Street West, and they will only reach the waterfront after passing under the West Kowloon Highway. For Nam Cheong Estate residents, it may not be too far away, but Mei Foo or Lai Chi Kok residents may have to take the MTR to Nam Cheong Station before walking to the waterfront. The Nam Cheong Station is next door to the Cheung Sha Wan Wholesale Food Market, and some of the adjacent sites have become cargo loading and unloading areas while some others have been used by oil companies for vessel fuel filling; this shows that there are actually bustling operations at the waterfront. If the Government wants to link up all waterfront promenades in Kowloon, it needs to deal with the issue of the existing waterfront working areas.

Certainly, reprovisioning these working areas is really the most straightforward solution, but, this will definitely arouse objections. Thus, I believe the Government should carefully consider each and every case and explore other feasible solutions. Nevertheless, it is a must to reprovision some waterfront working areas such as the Yau Ma Tei public cargo working area and Yau Ma Tei typhoon shelter. The 6.8 hectare Yau Ma Tei public cargo working area is the major fracture of the Kowloon waterfront. Now that there is a public
cargo working area, it is impossible to link up all the pedestrian links at the Kowloon waterfront, and as it is extremely close to the residential areas, the residents have been under the impacts of such problems as noise, air and light pollutions. In the Planning Study on the Harbour and its Waterfront Areas in 2003, the Government considered feasible proposals for improving the environment at the waterfront areas in Yau Ma Tei, and proposed additional tourist attractions and facilities in the area around the Yau Ma Tei public cargo working area and typhoon shelter. Thus, the Government should proactively put this development proposal into place.

Moreover, there are some sites under private ownership at the Kowloon waterfront, and the pier of the Green Island Cement Company Limited at the To Kwa Wan waterfront is an outstanding example. Since the ownership of the sites belongs to individuals, it can be very difficult for the Government's waterfront promenades to stretch across these private sites. We sometimes find it puzzling why the Government has taken so long to develop the site of the Green Island Cement Company Limited. Is more profound consideration required? Normally, the party concerned should reach an agreement with the Government by various means with a view to attaining a win-win situation. In any case, although the Government indicated in its reply to the Democratic Party in August this year that it might consider using wooden bridges bypassing these private sites to link up the whole waterfront promenade, it has not given a detailed account of the progress of the proposal so far. We hope the Government would give a response as quickly as possible to enable the public to keep abreast of the accessibility of the Kowloon waterfront and the progress of the linking-up project.

Next, I am going to talk about the situation that may be faced by some waterfront sites in the future. This is mainly because the Government will carry out various projects in the future and these projects may occupy some waterfront sites, thereby affecting the development of the Kowloon waterfront.

Perhaps I would talk about the Shatin to Central Link project first. The existing International Mail Centre near the Hung Hom waterfront will be relocated in line with the Shatin to Central Link project. In November this year, the Government briefed the Subcommittee on Harbourfront Planning of the Legislative Council on the waterfront promenade to be built, which would link up Tsim Sha Tsui East and the Hung Hom Ferry Pier. It is really strange for the MTR Corporation (MTRC) to indicate in the gazetted document on the Kwun
Tong Line Extension dated 20 November that temporary barge loading and unloading facilities will be installed at the MTR Hung Hom Station goods yard. In other words, the MTRC intends to install temporary barge loading and unloading facilities at the present site of the International Mail Centre at the waterfront. If the Government plans to construct a waterfront promenade in early 2010 whilst the MTRC plans to construct temporary barge loading and unloading facilities, we think that the two are evidently in conflict. I am not sure how the Government would resolve the conflicts. Are we going to walk along these barge loading and unloading facilities? The Democratic Party hopes that the Government would explain to us the relevant development.

Furthermore, since the Kwun Tong Line Extension, the Shatin to Central Link, the Kai Tak Development project, and the Central Kowloon Route may all involve land acquisition at the waterfront, the Government should carefully consider how these projects will affect the Kowloon waterfront development. I believe that the public does not want the construction of the waterfront promenade to be slowed down substantially because of the land acquisition needs of these projects.

As I have just said, the land use of the Kowloon waterfront is closely related to its development in the past. The Government may have to clarify first the crux of these problems before prescribing the right remedies, with a view to perfecting the planning and development of the whole Kowloon waterfront. We hope that the Government would expeditiously construct a waterfront promenade beginning from Kai Tak and linking up Hung Hom, Tsim Sha Tsui, the West Kowloon Cultural District, Tai Kok Tsui and Lai Chi Kok, to allow all residents on both the Kowloon and Hong Kong sides to have more open space for their enjoyment.

President, I am now going to express the views of the Democratic Party on the amendments. Mrs Sophie LEUNG has deleted the point in Dr Priscilla LEUNG's original motion about "reducing development density", which is unacceptable to us. Though reducing development density and low-density development at the waterfront may be two different things, now that even the Government has agreed to reduce development density, I find it totally unacceptable for Mrs Sophie LEUNG to propose the deletion.

President, Mrs Sophie LEUNG's amendment proposes adhering to the overriding principle of low development density for balancing different needs for land between Hong Kong's economic development and quality life, the Democratic Party does not agree with her because we think that, the overriding
principle of low-density development at the waterfront and relatively higher-density inland development already balanced the conflict between economic development and quality life. President, in this connection, if we even object to the principles of low-density development or planning at the waterfront, we would have already given up — it can be said that we would have fully given up — the pursuit of this overriding principle of quality life.

President, therefore, we will object to Mrs Sophie LEUNG's amendment and support Miss Tanya CHAN's amendment and the original motion.

SECRETARY FOR DEVELOPMENT (in Cantonese): President, the topic of this motion debate proposed by Dr Priscilla LEUNG today covers two priority tasks of the Development Bureau since its establishment in 2007 and that is, the review of the development density in various districts and waterfront enhancement. I am very glad to have this opportunity today to report to Members of this Council our overall work during the past two years or so, the initial results that we have achieved and the challenges that we are going to face. These two areas of work are territory-wide and in this connection, the amendments proposed by Mrs Sophie LEUNG and Miss Tanya CHAN can extend the scope of this motion debate to districts outside Kowloon, making our discussion more comprehensive and more in line with the Government's objectives in taking forward urban planning and district beautification on a territory-wide basis.

The original motion and all the amendments started by mentioning the Chief Executive's policy address. In fact, our work in reviewing the development density in various districts, imposing restrictions on building height, beautifying the Victoria Harbour and creating a vibrant and accessible waterfront is precisely aiming to realize the concept of "Progressive Development" stressed by the Chief Executive in this term of the Government and to fulfil the Chief Executive's undertaking to develop Hong Kong as a quality city, thereby providing a quality living environment for the public.

To ensure accurate interpretation in order not to take anything out of context in the discussion, please allow me to make some citations and explain the relationship between these two aspects of work of the Development Bureau and the philosophy of the Chief Executive.

The concept of "Progressive Development" means that while pursuing economic development, we must have regard to a well-balanced environment to
enable the public to enjoy quality city life. Development must be sustainable, balanced and diversified. It follows that urban planning under the concept of "Progressive Development" does not mean giving up development, and a slight reduction in the development density of land does not mean that all lands must be used for low density development only. Rather, just as Mrs Sophie LEUNG proposed in her amendment, we must, by adhering to the overriding principle of balancing different needs of land between Hong Kong's economic development and quality life, create a better living environment through an appropriate review of the development density and the implementation of waterfront enhancement initiatives. I believe that Mrs Sophie LEUNG, in proposing her amendment, actually shares with the Chief Executive's view of reducing the development density in suitable places. So, Mr TO's arguments against Mrs LEUNG's proposal may be due to the different understanding and interpretation of the two Members.

In fact, given a shortage of land in the urban area, if we completely give up the development of these urban sites, that would be tantamount to neglecting our housing, economic and social needs as well as the need to create jobs, which is not in the interest of the public. It is the duty of the Development Bureau to ensure suitable and sustainable development. Our work in recent years may, as Miss Tanya CHAN said, have room for improvement, but if our work is described to be "wrongly-planned" and "exacerbating the environmental problems" as in Dr Priscilla LEUNG's original motion, I must say that my colleagues and I myself do feel a bit depressed. Moreover, the comment that the bureaux and departments, despite the governing philosophy of the Chief Executive, have not properly implemented the policy directions proposed by the Chief Executive, is all the more puzzling to us.

In line with the practice of motion debates in this Council, I will first give a brief introduction on the relevant policies of and results achieved by the Development Bureau and respond to the views of individual Members later.

In his 2007-2008 policy address the Chief Executive expressly stated that "we believe that a slight reduction of development density can increase the distance between buildings and upgrade building design. This will enhance the vista of the buildings and improve ventilation". We subsequently embarked on a review of the outline zoning plans (OZPs) of various districts in 2007 and decided to accord priority to the OZPs of districts along the Victoria Harbour. Where there are strong justifications, amendments will be made to the development
parameters in the OZP, such as imposing a cap on building height and other restrictions on development, in order to suitably reduce the development density of lands at the harbourfront.

The Planning Department has so far reviewed 17 OZPs, three of which are reviewed only partially. Of these 17 OZPs being reviewed, six OZPs and one partially-reviewed OZP lie within the statutory boundary of the harbour. Four of these OZPs involve districts in Kowloon, including Ma Tau Kok, Hung Hom, Tsim Sha Tsui and also Cha Kwo Ling, Yau Tong and Lei Yue Mun. Districts on the Hong Kong Island include North Point, Quarry Bay and Shau Kei Wan. In the next few years, we will gradually review the rest of the OZPs within the boundary of the Victoria Harbour, and there is actually just one such OZP involving Kowloon and that is, the South West Kowloon OZP.

In reviewing the building height restrictions on lands of different use in various districts, we will consider a number of factors, including the topography, site formation level, existing land use zonings, the waterfront environment, existing building height profile, and the building height restrictions as set out in OZPs of districts in the vicinity. In this process, we fully make reference to the various guidelines cited just now by Miss Tanya CHAN, including the "Vision and Goals for the Harbour" of the Town Planning Board (TPB), the Harbour Planning Guidelines of the Harbour-front Enhancement Committee (HEC) and our Hong Kong Planning Standards and Guidelines (HKPSG) and in particular, the Urban Design Guidelines in the HKPSG, and we also appropriately consider the recommendations of air ventilation assessments.

The Urban Design Guidelines in the HKPSG that I have just mentioned include the design guidelines for waterfront sites. With respect to building height, the relevant guidelines actually cover three aspects. First, taller buildings should be located inland, with lower developments on the waterfront; second, diversity in building mass should be encouraged to avoid a monotonous harbour image; and third, a varying building height profile should be created along the coast.

Moreover, the HEC has drawn up the Harbour Planning Guidelines to give specific suggestions to individuals, organizations and project proponents on the planning, preservation, development and management of the Victoria Harbour.
and the harbourfront sites. The guidelines cover such aspects as the development density, building height, visual permeability and air ventilation.

In fact, since the formulation of the Urban Design Guidelines in the HKPSG, the Planning Department has made overall consideration in processing planning applications and given advice to the TPB on the relevant principles and factors to facilitate comprehensive consideration by the TPB.

We believe these guidelines, coupled with a process of public engagement advocated in recent years, will enable the planning of waterfront sites to better meet the demand of the public, particularly in respect of buildings. Let me corroborate what I have just said with the review of the two OZPs of Hung Hom and Kai Tak, both are located in Kowloon and involving waterfront sites.

Prior to the review of the Hung Hom OZP, the Planning Department had conducted the Hung Hom District Study which spanned one year to review the planning of land use at the Hung Hom waterfront. The review included two stages of public engagement, on-site visits, brainstorming sessions, questionnaire surveys, public forums and consultation with District Councils. Suggestions were also collected from members of the public on the vision of the development of the Hung Hom waterfront and improvement of the district. The TPB subsequently amended the Hung Hom OZP in February 2008 and imposed stepped height profile on various land use zonings having regard to the environs of the district and the wind environment in the surroundings. Reference was also made to the recommendations of the Hung Hom District Study in reducing the development parameters for two government sites. The development density of the Comprehensive Development Area on Hung Luen Road was reduced by one third with the plot ratio being reduced from the original 6.0 to 4.0, while the building height was adjusted downward to 75 mPD to 15 mPD (Appendix 1).

In the meantime, the TPB also reduced by half the plot ratio of another residential site not directly located at the waterfront on Hung Luen Road from the original 6.0 (Appendix 1) to 4.5. During the plan exhibition period, the Planning Department consulted the HEC, the Kowloon City District Council, and so on, and participated in forums organized by the residents to collect views. In fact, the views expressed at that time, as Dr Priscilla LEUNG said earlier, generally considered the proposals acceptable, until the development of Central was revealed, just as Dr LEUNG mentioned earlier. Having considered public views, the TPB accepted the amendments to the OZP in accordance with the
Town Planning Ordinance in August 2008. The Chief Executive in Council approved the OZP in May 2009. It took more than two years to complete the entire review.

On the drawing up of the Kai Tak OZP, the Kai Tak Planning Study which commenced as early as in July 2004 already adopted "no reclamation" as a starting point. Technical assessments were conducted in various aspects and a large-scale public engagement exercise was conducted in three stages during the period from September 2004 to August 2006. The Government organized and participated in 29 public forums and 60 briefing sessions and received 630 submissions. The public generally accepted the planning proposed in the Kai Tak OZP. Compared with the adjacent developed areas, the Kai Tak development plan adopted a lower density of development to provide quality living environment and improve the city appearance, with a view to meeting public expectations. On building height, apart from landmark buildings, the height of blocks was generally capped at a level not taller than buildings in the developed areas adjacent to the Kai Tak area. Besides, about 30% of lands in the OZP (measuring about 98 hectares in total) were designated as open space, including the waterfront promenade, for public enjoyment. The TPB accepted the amendments to the OZP on Kai Tai Development in September 2007. The Chief Executive in Council approved this OZP in November 2007. It took over three years to complete the entire review.

I spent some time briefing Members on the process of the review of the Hung Hom and Kai Tak OZPs in the hope that Members can understand that when reviewing the planning of land use in recent years, we have conducted comprehensive studies with the support of extensive public consultation. Views from various stakeholders have been sought and we have endeavoured to honour the Chief Executive's undertaking to the public with the greatest sincerity. A great deal of time and resources have been spent on this area of work in order to come up with a development proposal that is widely recognized by members of the community. Therefore, we cannot casually propose to "review afresh" these approved plans, because this would not only mean neglecting and wasting the efforts made by the people who participated in the process of planning but also inducing the public to harbour unrealistic expectations. Furthermore, to "review afresh" these proposals would definitely slow down the development plans which have already been formulated or even implemented. Take the Kai Tak Development as an example. Many design or construction projects relating to the Kai Tak Development have sought funding from this Council, and some
projects have already been implemented according to the OZP, including public housing projects which are already under construction, the site formation works of the cruise terminal and the relevant advance infrastructure projects. Take the development of Hung Hom as an example. The government sites with development density being suitably reduced that I mentioned earlier will be included in the Application List this year, so that these sites can be made available to the market to meet the demand of development. If delays are caused as a result of having to review afresh these developments, this would bring about certain losses to the economy and society, and this would not be helpful to the SAR Government in creating jobs.

As regards the beautification of the harbourfront, apart from reducing the development density of the harbourfront sites and imposing building height restrictions to facilitate our initiatives to beautify the Victoria Harbour, the Development Bureau has been pressing ahead with the harbourfront enhancement works in full steam over the past couple of years. The objective is to improve the accessibility and connectivity of the harbourfront, provide more sites for use as open space and facilitate the development on both sides of the harbour, with the ultimate goal of creating a continuous waterfront promenade.

Like Members, our objective is to provide a vibrant, green, accessible and sustainable waterfront. In the planning and development of waterfront sites, disregarding whether they are located on Hong Kong Island or in Kowloon, if there are public facilities which are incompatible with a vibrant waterfront or do not need to be located at the waterfront, we will actively explore the possibility of relocating or setting back such facilities from the waterfront. For instance, after the relocation of the temporary abandoned vehicle surrender centre of the Transport Department on Hoi Fai Road in Tai Kok Tsui earlier this year, we have been actively making arrangements to change the use of the site from "Government, institution or community" to "open space", and we are exploring with the relevant departments the feasibility of developing the site as an open space. On the other hand, regarding the To Kwa Wan vehicle examination centre at the waterfront in Kowloon City, after consultation with the District Council, the Transport Department agreed that part of the facilities could be set back from the waterfront, so that the proposed waterfront promenade can provide an unobstructed walkway along the waterfront.

If immediate relocation or setting back of public facilities may not be possible at this stage, we will explore the feasibility of introducing a facade or
landscape treatment to improve their visual impact. An example is the beautification works of Tai Wan Shan Park (promenade) in Hung Hom completed earlier this year. However, as regards the public cargo working area mentioned by two Members, I am afraid that its relocation is not an easy task, for some economic activities and some job opportunities are involved. In early 2008 when I tried to explore the feasibility of relocating the public cargo working area in Kwun Tong, there was great objection from some Members who considered that its relocation would affect employment opportunities. We, therefore, finally adopted a compromise proposal under which 200 m of the site would be vacated first for the first-phase development of the waterfront promenade in Kwun Tong, and Members have also paid a visit there. The works should be completed by the end of this year for opening in early 2010. It is hoped that we can proceed to develop the second phase of the promenade upon the expiry of the current licence of the public cargo working area a few years later.

As I have reported to the Subcommittee on Harbourfront Planning of the Panel on Development recently, after making reference to the recommendations of the HEC, we will continuously explore and progressively implement various waterfront enhancement initiatives in the short, medium and long terms in the 22 action areas on both sides of the harbour.

In respect of short-term initiatives, we will, among other things, continuously identify and launch various quick-wins or temporary projects to enhance the harbourfront. Medium-term initiatives include other possible harbourfront enhancement work on both government and private lands. Regarding waterfront enhancement work involving ownership of private land, we will, as suggested in Mr James TO's amendment, seriously look into feasible measures with a view to creating favourable conditions for building the continuous waterfront promenade. For example, concerning the development of the Quarry Bay waterfront promenade that Members have visited recently, we must obtain the support from two land owners in order to complete this project.

Long-term initiatives include stepping up efforts to explore the possibility of enhancing the connectivity and accessibility of the waterfront in various types of planning studies and design concepts. Ongoing efforts are necessary in this respect. For instance, the Planning Department is currently conducting the Hong Kong Island East Harbourfront Study and in spite of the constraint in the district — Members all know that there is the constraint posed by the Island Eastern Corridor — we will examine possible ways to improve the connectivity
and accessibility of the waterfront. Regarding Mr TO's concern that the commencement of some infrastructure projects may have to take up some portions of the waterfront as temporary works areas, we will do our utmost to come up with a compromise proposal which can meet the needs of necessary infrastructure projects while enabling members of the public to continuously enjoy the waterfront.

I do believe that these systematic arrangements can create favourable conditions for developing on both sides of the Victoria Harbour waterfront promenades and leisure facilities for enjoyment by all members of the public. The motion and the three amendments all mentioned the need to step up the work of the Government and to this, we totally agree. However, in order to meet the objectives relating to the policy on planning and land, it is necessary not only to ensure co-ordination among government departments but also attach importance to our communication and co-operation with various sectors.

The Development Bureau set up in April this year a Harbour Unit responsible for co-ordinating inter-departmental efforts in planning the use of the waterfront. The Unit has constantly maintained close contacts with the relevant departments, including colleagues of departments both inside and outside the Development Bureau. So, in response to Dr Priscilla LEUNG who seemed to be a bit unhappy about not seeing the other two Directors of Bureaux attending this motion debate today, I must say that this is purely because our Bureau is taking the lead and we are responsible for fully co-ordinating work relating to both sides of the harbour and so, it is not necessary for other Directors of Bureaux to come here to respond to Members' views on harbourfront work. Our Harbour Unit, when identifying and launching harbourfront enhancement measures, will strengthen participation from such advisory bodies as the District Councils and the HEC.

I would certainly be glad to see property developers sincerely co-operating with us in our harbourfront initiatives. But please allow me to make a point in response to Dr LEUNG's remarks about the results of a consultancy study recently published by the Real Estate Developers Association (REDA). She has pointed out that the developers are willing to take out some harbourfront sites and that this is commendable. I am afraid that firstly, the REDA has clarified that this is not their view, but the view of the consultant they hire; and secondly, even though this is the view of the REDA, the REDA would only be acting generously
at the expense of others because the lands belong to the Government. So, I hope that Dr LEUNG can sing these praises of the developers at the next opportunity. I think it is only when the developers take the initiative to reduce the density or make setting-back arrangements to vacate their lands at the waterfront that they are worthy of Dr LEUNG's commendations.

All in all, the Development Bureau has endeavoured to carry out work in various aspects having regard to town planning, economic development, quality living, as well as the different demands for land planning. All these are closely related to employment and the people's livelihood. Just as the Chief Executive stressed in the concept of "Progressive Development", development requires the striking of a pragmatic balance.

Just as what we have been doing, we will continue to absorb public views on quality living and town planning with an open mind while seriously listening to the views given to us by Members, in order to continuously refine the relevant policies and take forward various measures for beautifying both sides of the Victoria Harbour, with a view to developing a more vibrant and creative waterfront for public enjoyment.

Thank you, Deputy President.

MR TOMMY CHEUNG (in Cantonese): Deputy President, many academics and organizations have pointed out in recent years that such construction materials as concrete and tarmac absorb a huge amount of heat energy during daytime and as there is no plant or vegetation to absorb the heat energy that they release at night, the urban temperature has therefore surged and created the heat island effect. The wall effect resulted from excessive building density will even block air ventilation, causing the heat and pollutants to accumulate and preventing their dispersion. This will further aggravate the impact of the heat island effect and damage the health of the residents.

For example, according to the results of a study conducted by the Department of Land Surveying and Geo-Informatics of The Hong Kong Polytechnic University in May last year, the building density in downtown Kowloon has not only blocked the passage of fresh air but also prevented the emission of heat and pollutants trapped in the districts, pushing up the
temperature of Mong Kok to be 12°C higher than the rural area and making Mong Kok the hottest district in the territory.

A survey conducted by the School of Public Health and Primary Care of The Chinese University of Hong Kong has even found that the lung function of children living in highly-polluted districts is about 10% lower than that of children living in low-polluted districts. It is worth noting that the damages caused by these pollutants to the lung are accumulative which will, in the long run, greatly increase the risk of these children of contracting chronic respiratory diseases when they grow up. So, for the benefit of our next generation, the Liberal Party considers it imperative to prevent the wall and heat island effects.

We also wish to point out that preventing these two problems is necessary not just in Kowloon or West Kowloon, as suggested by Dr LEUNG, but a task that needs to be carried out on a territory-wide basis. For example, the authorities first planned to allow developers to carry out a development project with a maximum plot ratio of 15 and a building height of 165 m on the site at King Wah Road, North Point. In this connection, the Liberal Party and residents in North Point organized a rally in November last year in opposition to the development of wall buildings at King Wah Road.

We hope that the Government can treat the views of the residents as well as those of all Hong Kong people seriously and make appropriate planning for waterfront sites in various districts in Hong Kong, in order to fulfil the undertaking made in the policy address of improving ventilation in the community by reducing the development density of buildings.

The original motion proposes to review afresh the use of waterfront sites by rigidly adhering to the principle of low density development. The Liberal Party has great reservations about this.

Take the West Kowloon Cultural District (WKCD) as an example. The authorities have already capped the plot ratio at 1.81, which is already a very low level, but if this has to be reviewed on the low density principle as proposed in the original motion, does it mean that the plot ratio has to be further lowered? Would that be tantamount to imposing a death sentence on the entire WKCD project, making Hong Kong give up the opportunity for development by not proceeding with this project?
Furthermore, despite a substantial demand for urban sites in the market, there are currently not many sites that can be made available for development in the urban area. Coupled with the fact that vacant sites of a larger size are mostly located at the waterfront in Kowloon, such as West Kowloon and Kai Tak Development Area, if the principle of low density development must apply across the board as suggested in the original motion, how can this be able to meet the demands for development in society? This will only aggravate the shortage of urban sites which are already inadequate and add fuel to the property market where there is already heated speculation. If such being the case, members of the general public would ultimately become the victims.

For this reason, we consider that the authorities should carefully plan the use of various sites at the waterfront and impose suitable restrictions on their development density on the premise of striking a balance between urban development and environmental conservation. If a review is to be conducted afresh across the board, I have no idea for how long the development of Hong Kong would be delayed.

On the beautification of the harbourfront, we notice it is pointed out in the policy address that the authorities will gradually take forward harbourfront beautification measures on the basis of the proposal made by the Harbourfront Enhancement Committee. However, the measures are grossly fragmented. Whether the projects of building waterfront promenades in various districts or the grand project of conserving Central which aims to reduce the development density at the Central harbourfront all give people the impression that these are only separate and independent projects which lack comprehensive planning. In this connection, we hope that the Government can explain to the public its harbourfront beautification initiatives with greater clarity and in a more comprehensive manner, while actively stepping up publicity and encouraging public participation, so that the public can share the fruits of the beautification of both sides of the Victoria Harbour.

Regarding the original motion and the amendments proposed by Miss Tanya CHAN and Mr James TO, as they all involve the rigid low density restriction, we, therefore, find it difficult to support them, particularly as Mr James TO's amendment may touch on private ownership, which must be handled with care. Mrs Sophie LEUNG's amendment mentions striking a balance
between economic development and quality life, which, we think, is a more reasonable amendment that we can support.

Deputy President, I so submit.

MR CHEUNG HOK-MING (in Cantonese): Deputy President, our Victoria Harbour is renowned as among the world's top five harbours, with scenery and landscape comparable to those of San Francisco, Sydney and Vancouver and much lauded by tourists. This is why in the opening ceremony of the East Asian Games 2009 just held, this world famous harbour was chosen to be a performing stage on water which won great applause.

Pedestrian walkways are already provided for use by the public and tourists in districts such as Tsim Sha Tsui, Central and Wan Chai, on both sides of the harbour. There is no denying that as a result of planning blunders in the past, some waterfront sites have been blocked by massive buildings and motorways. Particularly, some public facilities, such as water pumping stations or sewage treatment plants, have been wrongly located at the waterfront, and some portions of the waterfront are occupied by private sites. All these factors have explained why lands at the waterfront available for public enjoyment have become less. Some waterfront promenades are bereft of continuity, which has impeded development at the waterfront.

We understand that the authorities have been actively looking into various waterfront enhancement measures. As the Secretary said earlier, steps are taken to gradually relocate the two cargo working areas in Kowloon East, reduce the development density of the Central harbourfront, reprovision some public facilities away from the harbourfront, and so on. All these measures are praiseworthy. However, we in the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) have heard a lot of different voices in the districts recently, criticizing that the Government, in planning the use of lands at the waterfront, has failed to think in the way the people think and sense the urgency of the people.

As Dr Priscilla LEUNG said in her speech earlier, the two Comprehensive Development Areas at the waterfront on Hung Luen Road, Hung Hom, are included in the Application List and intended for hotel/commercial use. The DAB considers that since there have been many high-density hotel and residential
developments in the district before, it is understandable that further development of hotels and commercial buildings will meet opposition from the residents. And, on Site 6 at the Cheung Sha Wan waterfront, the Government will carry out four public housing projects. As there is a large public housing estate to the left of the district and to its right there is above-station development at Nam Cheong Station, there is only Site 6 left for the purposes of air ventilation and viewing platform. If public housing projects are further developed on Site 6, the heat island and wall effects will definitely take their toll on the living environment in West Kowloon.

Deputy President, as a Member of the Legislative Council representing New Territories West, I must mention the development projects on the sites of TW5 and TW6 of the West Rail Tsuen Wan Station. In order to exploit the best sea view, the developers adopted the design of constructing a straight line of 50- to 60-storeys building blocks. This has affected the landscape at the waterfront and aroused strong opposition from the residents. I hope that the authorities will reduce the development density and building height and redesign the facade and disposition of the buildings, just as what they did in respect of the West Rail Nam Cheong Station and Yuen Long Station, in order to ensure the provision of sufficient breezeways for the residents living in the buildings at the back to have breathing space.

Deputy President, in fact, the Harbour Planning Principles and Guidelines drawn up by the Harbourfront Enhancement Committee have clearly pointed out the need to protect the Victoria Harbour. We must enable the public to enjoy as much as possible the harbour and the undeveloped lands at the harbourfront, which are a special kind of public, natural and cultural resource for the common enjoyment of Hong Kong people and tourists. If the planned development density and land use for these sites are incompatible with the Harbour Planning Principles, we should from time to time conduct reviews and discussions with the public in accordance with the relevant principles.

Moreover, the two biggest sites at the harbourfront, namely, the former site of the Kai Tak Airport and the West Kowloon Cultural District, are still pending development. Apart from urging the Government to speed up the pace of development, we also hope that the authorities can listen to the views expressed by the DAB in the districts. These include strengthening the connectivity between the tip of the runway and Kwun Tong, handling the silt in the Kai Tak Nullah carefully and making proper planning on open space sites in West
Kowloon to ensure that they are more in line with the principle of sustainable development while at the same time balancing and meeting economic, social and environmental needs.

Here, I wish to cite two examples. They are the first Wine and Dine Festival held at the waterfront promenade in West Kowloon and the Hongkong Winter Carnival that used to be held in Admiralty. These two activities, as Members all agree, have achieved very good results and attracted participation from many members of the public. One would find it very attractive by just thinking about holding these spectacular events at the waterfront with first-class scenery, Deputy President. So, we suggest that the Government should put to good use the waterfront sites where practicable and come up with more ideas to inject greater leisure, arts and tourism elements into these prime sites at the waterfront, with a view to attracting visits by the public and tourists and creating a vibrant and diversified harbourfront.

Deputy President, when our living space in the urban area is getting smaller and smaller and air quality is poorer and poorer but the tempo of life is quicker and quicker, all we have to do is to step out of the office and go to a place nearby where we can come close to the harbour, take in fresh sea breeze and enjoy the beautiful scenery of the city. The lands on both sides of the harbour are a valuable resource owned by all Hong Kong people, and we must cherish them.

Deputy President, I so submit.

PROF PATRICK LAU (in Cantonese): Deputy President, I was the Vice Chairman of the Town Planning Board (TPB) before. I thank Dr Priscilla LEUNG for her motion which shows her concern about and commitment for the development in West Kowloon. In fact, as the District Councils have first-hand contacts with and knowledge of the actual conditions and needs of their own district, I think their functions and powers in the district should be enhanced so that they can have substantive powers to work on the planning of their district in collaboration with the Planning Department, while public involvement should also be encouraged to assist in the formulation of district planning effectively. Dr LEUNG is certainly concerned about the development of Hung Hom, and I agree to her various considerations in respect of the waterfront in the district. However, insofar as planning is concerned, I think it is most important to ensure suitable uses in line with the needs of the city, such as providing adequate public
housing flats, private commercial and residential premises, green belts, parks, various types of community facilities, and so on. More importantly, more green building practices and design for urban beautification should be adopted in the district.

I am the Chairman of the Subcommittee on Harbourfront Planning of the Legislative Council. Members of the Subcommittee and I myself, as well as the four Members who propose the motion and amendments today, all support the Government's policy on the enhancement and development of waterfront promenades in all districts of Hong Kong. I wish to emphasize that the Government must improve the connectivity of waterfront promenades in all districts and provide greater convenience for the public to go to the waterfront for leisure through the construction of footbridges, pedestrian walkways, and so on. Deputy President, I have recently seen the opening ceremony of the East Asian Games and I have come up with an idea. If, as the Secretary said earlier, there are places where connectivity is out of the question, can we make reference to the East Asian Games and consider connecting all the waterfronts in the territory by floating platforms, thereby achieving the objective of accessibility of the waterfront (which is a point raised by Mr James TO)? It is also necessary to take forward beautification works to create a good environment and encourage the public to enjoy the scenery of the Victoria Harbour.

To achieve the ideal expressed in the original motion and to make the necessary changes in the district accordingly, I think Dr LEUNG can file an application for change of land use zoning to the TPB anytime by virtue of the powers conferred on any person under section 12A of the Town Planning Ordinance (Cap. 131) in accordance with the established procedures.

This shows that the TPB actually has in place a set of established procedures that is legal and reasonable, and it can draw up outline zoning plans (OZPs) after conducting consultation and certainly, the participation and support from the public and members of the TPB are also required in the process. The thrust of the question lies in how the system of consultation can be improved to enable members of the public to take part in the discussion more conveniently and actively.

Deputy President, in accordance with the Hong Kong Planning Standards and Guidelines (HKPSG) and also the Urban Design Guidelines in Section 11 of
the HKPSG, the Government has determined the scale or criteria of various types of land, which are actually very important to the development of Hong Kong. But the biggest problem is that the Government's planning generally lacks the vision of correlating urban design with the public's needs in daily living by creating a beautiful and comfortable green city well-equipped with support facilities, especially in respect of green building practices, transport, ventilation design, protection of ridgelines, and development of effective transport and pedestrian networks. This is where the problem lies.

Besides, the authorities only release the horizontal plan drawings for public consultation. However, these plans, which are complicated and wordy, are comprehensible only to the professionals, and members of the general public simply cannot understand them. Second, the public often do not pay attention to the consultation period, or ways to obtain the draft plans. In that case, how can they put forward their views? This is why I have time and again suggested that the TPB should set up in various districts planning galleries where three-dimensional models and computer animation relating to district-based or territory-wide development are exhibited, so that the public can clearly understand the topographical features of various districts and the planning details of the plans before they can put forward views which really meet their needs. This can improve the entire planning procedures and consultative mechanism and reduce the disputes between the public and the authorities over planning in various districts.

Moreover, I think it is now time to review the structure of the TPB. Given that not all members of the TPB are professionals, they may not be able to make professional judgment on planning matters and so, they often require the support of a secretariat. However, the TPB does not have an independent secretariat and all the work is handled by staff of the Planning Department. As the Planning Department at the same time puts forward many OZPs, its creditability is inevitably open to question. Such being the case, should the Government consider proposing the establishment of an independent secretariat by the TPB, for this can enhance its creditability and reduce public disputes, which will in turn ensure the smooth process of town planning? Coupled with the fact that the Chairman of the TPB is a government official, is this not also a reason why its creditability is open to question?

Furthermore, while I think it gives no cause for criticism for the Government to reduce the development density on its own sites, reducing the development potentials of private sites may be contrary to the principles in the
Basic Law. I think if replanning is necessary for all districts in Hong Kong in respect of the current OZPs, the Government can, as a first step, gradually make amendments to the OZPs of various districts, but it must ensure compliance with the existing standards and principles, in order to have the involvement and support of the public in the planning of various districts, thereby reducing public disputes.

I so submit. Thank you, Deputy President.

MR LEE WING-TAT (in Cantonese): Deputy President, last year I visited Danshui in Taiwan, and there is an island called Bali on the opposite shore of Danshui. Why do I remember it? Because that was the first time in my life that I rented a bicycle and rode on it for about 30 minutes along the seashore, travelling a distance of some 10 miles, and I had never ever felt so good before. I came to realize that it could be just this simple, as it cost me just a small sum of tens to one hundred new Taiwan dollars to enjoy a very relaxing and joyful afternoon without having to care about politics in Hong Kong, and what was more, I had a good sweat on that day.

Sometimes I wonder why it is so difficult to do these things in Hong Kong. Certainly, the Secretary will tell us that it is not true that we cannot find these places, as there will be a cycling track from Tsuen Wan to Tuen Mun in future. I understand that the Secretary has been working very hard, and I could see just now that the Secretary seemed to feel aggrieved and upset when being chided by Dr Priscilla LEUNG. But I know that the Secretary is hard-working.

However, the Secretary must understand why Hong Kong people would sometimes be so agitated on certain issues. I have discussed this with friends. The middle class in Hong Kong has not changed at all over the past decade. An example is that there is no improvement in the conditions enjoyed by us. First of all, the living area. I first joined the Legislative Council 18 years ago (there was a period of four years when I was not a Member of this Council), and I remember that in the Panel on Housing, it was said back then that the size of a private flat in which Hong Kong people lived was about 400 to 500 sq ft. Secretary, 18 years later, we have not seen any improvement in this respect for Hong Kong people. I always ask why people in the middle class in Hong Kong are so miserable. They cannot even provide their children with a room of their own, and it is also so difficult to increase their own living space. There has been
no improvement over the past decade or so. There may be an increase in the living area but I believe the increase is negligible.

The authorities have shifted the public's dissatisfaction with the living area to the development of the harbourfront or open space for public enjoyment. In all fairness, improvement has been made at a faster pace over the past few years. This is a fact, but this is all because the pace of improvement was too slow in the past; Secretary, it was as slow as a snail's pace. I remember that it was during the 1990s when the cycling track from Tsuen Wan to Tuen Mun was discussed in the Legislative Council. Now that 19 years have lapsed, and great efforts must be made in order to address some problems. I think some basic conflicts can be resolved only when the Secretary and her boss make fundamental changes to the strategy.

First, with regard to building density and strategy of development, if the Government does not hold this view but simply passes the buck to the private market, I believe after my retirement when I read the newspaper and see that in 2019, the living area of Hong Kong people remains at 500 sq ft on an average, Secretary, I am sorry to say that it would be a failure on the part of the Government. I cannot see why society can tolerate the situation that the private flats where the middle-class people live have, for several decades, remained to be 500 sq ft for a four-member or three-member family. In fact, even if I do not describe this as "shameful", the situation can hardly be accepted and tolerated.

Second, it is often said that Hong Kong has a shortage of land. True enough, Hong Kong is a very small place and what makes it compare less favourably with Singapore is that Hong Kong has a lot of mountains. But if the country parks and the developed sites are excluded, and if I do not remember wrong, we still have 40% to 50% of land which has not yet been developed and so, the shortage of land is not that acute. Certainly, the plot ratio of some of the sites is low and this is why I have said to the Secretary time and again that there is a need to review the strategy of development. What I mean by review is not a review of individual outline zoning plans. It is, of course, possible to do so, but this cannot address the main problem, for this cannot make available a vast area of land.

I have once boldly made a point to the Secretary but it seemed that she was not quite happy with that. I said that the development density of Hong Kong was very much polarized. For example, the plot ratio in the urban area is 5 to 6,
and that in Yuen Long town area may be 5 to 6 or 6 to 7, but that of the rural land beside the road just across the Yuen Long highway is 0.5 or 1. I think if this problem can be addressed properly, many new sites can be released. The Secretary has always complained about the Democratic Party's criticism of the Government for not carrying out more developments in the urban area and asked how possibly there could be so many sites available. I would suggest the Government to carry out developments in the New Territories. It is now unnecessary to have too many developments in the urban area because the density is already very high. I no longer support the idea of carrying out more developments in the urban area.

The second point to which I disagree is that if development will continue in the urban area …… in respect of the development of the express rail link, I have pointed out that the Government's commitment to society is too lopsided. People living on Hong Kong Island and in Kowloon are actually more taken care of by the Government. This is not deliberately intended by the Government, for this is the result of its strategy. Most of the good developments in Hong Kong are located in the urban area. For example, the Cultural Centre, the Central Library, the Government Secretariat, and all kinds of facilities for the convenience of the people are located on this part of the territory, while those not-too-good developments are found first in Tsing Yi, and thank God that the developments are now completed in Tsing Yi as no more space is available. The Government constructed in Tsing Yi a power station and an oil depot two decades ago and now, they no longer discuss with us the developments in Tsing Yi because the place is already developed and no site can be made available at the waterfront. What we discuss now is the developments in Tuen Mun and then, Tseung Kwan O and in future, may be Tai Po or places elsewhere. I think in order to strike a balance in society, good developments should be evenly distributed. So, I think the overall strategy of the Government is more important than the approach adopted for individual districts.

Certainly, I agree with the Secretary that the development in individual districts is far better than before. I appreciate the Secretary's involvement in the process of the development of the Kai Tak site, and most participants also agree to this strategy of development. I agree that we should not come to a halt and we should not conduct another round of consultation, because it will take a few years more to conduct consultation afresh. I think if we do not make drastic changes on this issue, many problems will arise in any of the circumstances.
Deputy President, let me come to my last point. I have recently learned from newspaper that the Government has thought about constructing a tunnel in the Kai Tak Development with a view to improving the accessibility and I very much appreciate this. We have discussed this for many times, and I think the development plan of West Kowloon has problems and so, I think Dr Priscilla LEUNG has a point in making her criticisms.

I have time and again cited the example that it takes a 25-minute walk to go from Mong Kok to the Olympian City to watch a movie. This is like the movie, High and Low (Tengoku to Jigoku, which literally means heaven to hell), directed by Akira KUROSAWA. On this side there are new buildings and on the other side there are old buildings, but there is no communication between them. The developments are entirely separate and independent, and the new buildings are not compatible with the old districts, and I have this same concern with regard to the future West Kowloon Cultural District. So, I hope that the Secretary will do more in this respect with the same vigour and courage that she displayed in the development of Kai Tak, with a view to achieving good results in accessibility.

Thank you, Deputy President.

MS STARRY LEE (in Cantonese): Deputy President, first of all, I thank Dr Priscilla LEUNG for proposing this motion topic for debate today. I am currently a member of the Town Planning Board (TPB).

As time and the pursuits in life have changed, there have been constant changes in public aspirations for town planning, and we have to look up the history in order to understand the current disposition of and changes to the harbour. In the 1980s, in order to cope with a drastic population growth, emphasis was put on the development of new towns in town planning by the Government. So, the emphasis should be new towns at the time. Certainly, the harbour is a functional harbour, and I think reclamation as a means to create more land was thus the major infrastructure works at that time.

After the reunification, bubbles were created in the property market as property prices spiralled frantically to a level beyond public affordability. The calls for government intervention were loud and clear. To ease this tremendous pressure in society, the executive authorities kept on increasing the supply of housing flats. I think it was due to this supply-and-demand relationship that
many wall buildings subsequently emerged. During this period of time, the developers would, by hook or by crook, exploit the plot ratio to the full in the plans submitted for approval. As a result, a large number of wall buildings with many storeys and a high density were developed. One of the districts hardest hit by wall buildings is the new reclamation area along the Kowloon waterfront.

Owing to historical factors, buildings in Kowloon City, Yau Tsim Mong, and Sham Shui Po are mostly old buildings with 10-odd to 20 storeys and so, they are encircled by the high-rise buildings in the new reclamation area. They are affected not only because the vista is blocked by these high-rise blocks. Worse still, these high-rise buildings have created the wall effect which blocks ventilation and air flow in the old buildings. This has indeed aroused great discontent among residents of the old buildings.

Following changes in social awareness, the public now understand this problem and strongly call for the return of the harbour to the people. I have indeed seen the Secretary doing a lot in this respect, and as the Secretary said earlier in response to Members, the Planning Department and the TPB have, over a period of time in the past, changed their past practices and style of work — I have indeed witnessed it personally — and especially in respect of the Kai Tak Development, there is a very high degree of public involvement. In this connection, I think we have to be fair. With regard to the past efforts made by members of the TPB or the efforts of colleagues of the Planning Department, I think we must give them our support and encouragement.

As far as I can see, the Development Bureau has set up a Harbour Unit specifically responsible for the planning of the Victoria Harbour. The authorities have also reviewed the outline zoning plans (OZPs) of districts on both sides of the harbour and introduced a building height restriction for newly-completed buildings. However, it is worth the attention of the Secretary that uneven distribution has aroused public discontent. In fact, I have pointed out repeatedly that the planned development of the new Central harbourfront, new Wan Chai harbourfront and North Point harbourfront has long attracted public attention and thorough discussion, but insofar as Kowloon is concerned, other than Tsim Sha Tsui and the West Kowloon Cultural District that Members may think of, the planning of the waterfronts in other districts have started only recently. The proposal to develop the waterfront promenade in Hung Hom is submitted to the District Council only recently. I remember that I already
brought this up in the first meeting of the Harbourfront Enhancement Committee some two years ago but still, nothing is done to implement a proposal made more than two years ago, and this is indeed a major disappointment to the public.

In this connection, I hope that the Secretary will not just focus on reviewing the development of the waterfront promenade in Central, Wan Chai or North Point, for residents in Kowloon and even many districts in the New Territories actually have the same aspiration, hoping that a continuous waterfront promenade can be developed for their enjoyment.

The topic of our motion debate today is about the new Kowloon waterfront, and let me now turn to the new Kowloon waterfront. I actually have in hand the paper submitted by the Secretary to the Legislative Council on the pedestrian connectivity of the harbourfront areas on the Kowloon side. It is mentioned that — facts do speak for themselves, as they testify to the comment that I made just now about the Bureau, the Planning Department and the Secretary not attaching adequate importance to the development of the new Kowloon waterfront. Let me just do some simple counting. There are seven sewage treatment works and pumping stations located in the harbourfront areas, and there are still many government premises there, including (22) Electrical and Mechanical Services Department Workshop; (27) Kowloon City Vehicular Ferry Pier which has ceased operation (it has not yet been converted for other uses and the public cannot walk through it); and there are (32) Sewage Treatment Works; (29) Vehicle Examination Centre; (40) International Mail Centre, and as many as 13 waterfront sites which are either vacant or put to temporary uses.

In fact, since the Bureau is willing to submit this paper to us, we hope that the Bureau can give higher priority to the work relating to the development of the Kowloon waterfront and draw up a specific timetable for it, so that the public will know when they can expect to see a new waterfront in Kowloon.

In relation to the direction of future development, I would like to make some proposals and I hope that the Secretary will respond to these proposals later. I hope that the Government can set priorities for the development of the new Kowloon waterfront. The first thing to do is that with regard to places under the Government's control, including government premises or structures, such as those which I have just referred to, the Government is actually in a position to handle
them and it can also work out a specific timetable for relocating these government premises or structures. I hope that the Secretary can undertake to set out a clear timetable for relocating these government premises or structures for public information.

Second, I think priority should be given to the development of the open space sites at the waterfront, including the open space site beside Hoi Sum Park that we visited together with the Secretary some time ago — the Metro Park. Indeed, these are sites of very good quality and yet, they have been left idle there for more than a decade.

Lastly, I think with regard to the proposal of reviewing afresh the use of land at the waterfront, I appreciate that conducting a review afresh will indeed cause great contentions in society and slow down the progress of some projects. However, there are indeed different voices in the districts and so, I hope that the Secretary can look into ways to meet public aspirations in respect of some controversial projects, so that the people's common aspiration for developing a new, continuous waterfront promenade in Kowloon can be realized ultimately.

To conclude, apart from the development of the waterfront promenade, our colleagues working in the districts have made proposals on the planning vision for West Kowloon. It is proposed that the Kowloon waterfront and the waterfront promenade on Hong Kong Island be put together to become a Victoria Harbour waterfront corridor, which can be a tourist attraction in Hong Kong. Meanwhile, we have also made other proposals on conservation, and I am giving this to the Secretary today for her to consider when she goes back …… (The buzzer sounded)

**DEPUTY PRESIDENT** (in Cantonese): Time is up.

**MR WONG KWOK-HING** (in Cantonese): Deputy President, the waterfront is a valuable natural resource of Hong Kong. Beautiful waterfront can be found along the coast of the Hong Kong Island and the Kowloon peninsula, but the land planning and designs adopted by the Government for waterfront sites in the past overlooked this aspect and failed to bring the beauty of the waterfront to full play.
Why do I say so? I would like to tell a true story here. I have been a District Council Member for many years. Since I was a Member of the Eastern District Council at the time, I was much concerned about the development of the waterfront in the Eastern district of the Hong Kong Island. As I was living in North Point during that time, I was all the more concerned about the issue and hoped that the Government would develop the waterfront. Later, I learnt the good news from the Planning Department that they were equally concerned about the issue put forth by me. At that time, a competition was held between the Hong Kong District Planning Office and the Kowloon District Planning Office, where participants were required to submit designs enhancing the waterfront of Hong Kong Island and Kowloon, and would examine the implementation of such designs. But regrettably, after all these years, I heard nothing about the result of the competition and the implementation of relevant measures. Why did the story not have an ending? The reason is simple. The Government did not have the determination to carry out waterfront development at the time. No Policy Bureau at a high level was appointed to co-ordinate the plan. Hence, despite the competition held between the two planning offices, there was no guarantee that the result of the competition would be implemented.

Moreover, colleagues from the Planning Department told me that they encountered many difficulties, for in the 1950s to 1960s and 1960s to 1970s, to cope with the industrialization and urbanization in Hong Kong, some brine and fresh water pumping facilities were built along the waterfront for industrial and commercial buildings. For this reason, it would be very difficult to further develop many of these waterfront sites. Since permanent facilities have been built, how can different waterfront sites be connected? These were the difficulties they encountered. No consideration was given to these factors in the earlier years, nor was there any planning in this respect. Even if there were plans, they could hardly be implemented. We cannot help heaving a sigh at the very sight of the waterfront.

In recent years, after Secretary Carrie LAM assumed office, I think things have taken a turn for the better. I have to shine the Secretary's shoes here. She gives us the impression that the Government is determined to make some changes. It seems hopeful that the enhancement, beautification and greening of waterfront sites in Hong Kong will be promoted and that the advantage of the waterfront will be brought to full play, turning it into a new growth point for the economy of Hong Kong. In the previous year, I invited Secretary Carrie LAM
to pay a site visit to the waterfront in Tsuen Wan to inspect the cycling track from Tsuen Wan to Tuen Mun. We took the opportunity of the site visit to demonstrate the importance of beautifying the waterfront in the promotion of economic development, improving city environment and enhancing the standard of living of the public. We have to point out that holistic and matching town planning must be put in place. For instance, the approach of stepped building height can be adopted to minimize the obstruction to ridgelines, and excessive development of wall-effect buildings in town centres should be avoided to maintain free airflow. Moreover, matching transport planning must be implemented. No matter how beautiful the waterfront is, if it is not provided with good matching transport planning, the public can only lay their eyes on it but get no access to it. Take the existing waterfront in Tuen Wan as an example. If you set off from the MTR station, you may not get there despite going on a long walk round and round. That is to say, without official co-ordination at a high level of the efforts of various departments, which means no co-ordination is carried out on upstream work at the design stage, the various inconsistencies arising during implementation at the downstream stage can hardly be resolved.

On the other hand, there is the historic problem. As I mentioned earlier, certain waterfront sites have already been occupied. Without the co-ordination at a high level, departments managing waterfront sites with pump rooms or other facilities will not be willing to vacate the sites. If such is the case, how can the development of waterfront be carried out? That means waterfront sites cannot be linked up, and matching measures have to be introduced in this respect. Moreover, matching efforts have to be made to improve the water quality of the harbour. Otherwise, the harbour will only be a pool of polluted water giving off an awful smell. In that case, it cannot serve the purpose of greening, beautifying and enhancing the waterfront. Hence, I very much hope that the Policy Bureau concerned will co-ordinate various departments from a high level, so that the waterfront development of Hong Kong can be carried out in a holistic manner.

I hope Secretary Carrie LAM can bring her "fighting spirit" to full play. She has to be a real "good fighter"; otherwise, other Policy Bureaux may hinder the measures introduced by the Secretary. Regarding the motion and amendments proposed today, we support the original motion and Mrs Sophie LEUNG's amendment. Mrs Sophie LEUNG's amendment does not only show concern to the development of Kowloon, but to Hong Kong as a whole. I think
we should have a holistic planning and vision, rather than focusing only on
certain waterfront sites in Hong Kong. All waterfront sites along Hong Kong
waters should be fully utilized. I am looking forward to the response from
Secretary Carrie LAM who is full of "fighting spirit".

MR WONG KWOK-KIN (in Cantonese): Deputy President, the subject brought
up by Dr Priscilla LEUNG today concerns both the districts and the territory as a
whole. It is about the use of waterfront sites, urging the Government to comply
with the planning and environmental protection principles in the development of
these sites for public enjoyment. I believe Dr LEUNG and I are facing similar
problems, for significant changes will be made to the waterfront sites in our
constituencies, that is, Kowloon West and Kowloon East.

Deputy President, since the relocation of the Kai Tak Airport some 10
years ago, the height restriction on the development in Kowloon was lifted. A
lot of property developers carried out redevelopment and reconstruction work in
the community, and regarded Kowloon East as a "treasure zone" for property
development. I remember that To Kwa Wan, where the headquarters of the
Hong Kong Federation of Trade Union (FTU) locates, has been a kaifong-style
district with industrialized features over the past few decades, and the community
is bustling with local colours while being pluralistic. However, once the airport
was relocated, wall-effect buildings mushroomed in the neighbouring area, with
taller buildings built closer to Kai Tak and the waterfront. Not only are these
newly-completed buildings an eyesore, they do not blend in with the style of the
original community. Worse still, these buildings block the ventilation of the
district, and residents of the district have to endure the deteriorated air quality.

Deputy President, if we stroll eastward down Prince Edward Road from To
Kwa Wan, we will soon reach the area around San Po Kong and Wong Tai Sin.
These districts will also be affected by the future development of Kai Tak.
Many high-rises, even "toothpick" buildings, have already been built in the
district. The Government should pay attention to the situation, for any failure in
the planning of waterfront sites may easily affect the situation inland. I
remember that this summer, a record high temperature of 37°C was recorded on a
certain day in Wong Tai Sin. Residents found the boiling heat unbearable, and it
was like having saunas when one went out for shopping. Actually, among the
18 districts, Wong Tai Sin is one of the districts surrounded by land, and the ventilation of the district relies heavily on the breezeway along the coast. Once the coastal area of Kowloon East is completely blocked out by newly-completed wall-effect buildings, sea breeze will be blocked out and the temperature of the entire Wong Tai Sin district can hardly be lowered. For this reason, the FTU has proposed in recent years the enhancement of the Kai Tak River, following the example of the Cheonggyecheon in Seoul, so that sea breeze will blow along the River to the community, while the temperature of the district can be lowered by the river water. According to the experience of the Cheonggyecheon in Seoul, the opening of a waterway in the urban area will help lowering the temperature of both banks by 10% to 13%. I believe this will help alleviating the heat island effect affecting the district.

Deputy President, if the authorities fail to fulfil its gatekeeper's role properly in planning, and allow a lot of high density buildings to be built along the waterfront, blocking the ventilation opening, the environment of Kowloon will only deteriorate and the temperature will rise. We know that many government departments have followed strictly the sustainable approach in planning. For instance, we notice that the Planning Department has adopted the stepped building height approach for the new development zone at Kai Tak, and low density buildings are planned for areas closer to the waterfront to preserve the ridgelines. Earlier on, we discussed with the Housing Department (HD) the redevelopment of Block 23 of Tung Tau Estate, and the Transport and Housing Bureau and the HD were willing to take matching measures to lower the height of the block to preserve the landscape showing the "lion head" of the Lion Rock. The HD even agreed to vacate two floors for the construction of a public corridor to provide a wider view at ground level and cope with the revitalization of the Kai Tak River. It is evident that government departments have shown improvement and they deserve commendation.

Deputy President, government departments may be willing to make matching efforts to formulate planning with the mindset of maintaining sustainable development. But the development of Kowloon East is not carried out by the Government alone. A lot of development involves private developers, particularly the development in conventional industrial zones, such as Kwun Tong and Kowloon Bay. Due to economic restructuring and the revitalizing of factory buildings, these zones will become new hubs in Kowloon
in future. But at the same time, the planning and land use of these waterfront sites are of greater importance. Earlier on, Professor Edward NG of the Department of Architecture of The Chinese University of Hong Kong assisted the Government to conduct a study on the urban climate map. He said that Kwun Tong district would be one of the high-risk communities to become an enclosed and block-out zone in future. It is not groundless to say so because many factory buildings and warehouses are built along the waterfront of Kowloon Bay and Kwun Tong, and in recent years, reconstruction works are carried out by developers in succession to convert factory buildings into Grade A commercial buildings, hotels and even luxurious flats. Take the Kowloon Godown at Kai Hing Road, Kowloon Bay as an example. Developers have repeatedly applied to the Town Planning Board (TPB) for converting the use of the site to residential use for the construction of six 28 to 34-storey residential buildings. Actually, we are not trying to oppose those developers or individual development projects, but we think that the Government is duty-bound to consider the application from the perspective of overall planning, so that unbalanced development along the waterfront affecting the community as a whole can be avoided. Hence, the Development Bureau and the TPB should start restricting the height and density of buildings built along the waterfront, and address the problem of "inflated saleable area" of development projects.

Deputy President, lastly, I would like to talk about the beautification of the waterfront, for upon the removal of the cargo working area in Kwun Tong, a waterfront promenade will be built in the district. I surely support this proposal, for this is a year-long wish of the residents. But I have to emphasize at the same time that the authorities are duty-bound to relocate the cargo working area properly. It is particularly important for the cargo working area in Kwun Tong, for it is one of the bases of the recovery trade in the environmental industry, which is one of the six key industries to be promoted. The authorities should listen to the views of users and make proper relocation arrangements.

Deputy President, with these remarks, I support Dr LEUNG's original motion and Mrs Sophie LEUNG's amendment.
MR TAM YIU-CHUNG (in Cantonese): Deputy President, though the focus of today's motion is on the planning of land use and development density of waterfront sites in West Kowloon and along the harbourfront of the Victoria Harbour, I would like to take this opportunity to express the concern of the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) on similar problems faced by New Territories West.

According to the present planning, we can foresee that New Territories West will be the next area hardest hit by wall-effect buildings. The development projects of a number of stations of the West Rail will involve the construction of densely built large-scale residential development projects, including 22 blocks at Tsuen Wan Stations, seven blocks at Yuen Long Station and 12 blocks at Tin Shui Wai Station. Among them, the development project in Tsuen Wan will be built along the coastline, and the buildings are so densely built that it will inevitably form a massive wall blocking Tsuen Wan town centre off the Tsuen Wan waterfront. The town centre will thus be turned into an enclosed city. Tsuen Wan will definitely be adversely affected by such planning, and the situation is worrying.

Most of these property development projects were approved by the Town Planning Board (TPB) before 2005 according to the planning requirements adopted at the time. However, a lot of inadequacies are found in the overall layout of these development projects and the environmental impact assessments on the area in the vicinity. If no changes are made, the wall effect created by these buildings upon their completion will be serious, damaging the living environment currently enjoyed by residents.

In the middle of this year, I accompanied in succession various groups of Tsuen Wan residents affected by wall-effect buildings to meet with government departments concerned to express their views, striving for a reduction of the density of newly-developed buildings and the addition of breezeways and green belts, and so on. However, the Development Bureau stuck to the response that the approved planning of the projects concerned had been granted approval many years ago and the Government could hardly impose new restrictions. We think this response does not reflect the truth.

The Master Layout Plans of the development projects on top of Nam Cheong Station and Yuen Long Station of the West Rail had been approved by the TPB back in 2004 and 2005 respectively, but due to strong opposition from
residents, the Government agreed to conduct a review at the end of 2007. Eventually, amendments were made by the end of last year, under which two blocks were cut from each project and the height of buildings was lowered. Obviously, the key lies in whether the Government is determined to address the problem

(THE PRESIDENT resumed the Chair)

At present, for certain controversial construction projects, air ventilation assessments are required. This approach is surely an advancement, but many loopholes are still there. For instance, the impact on air ventilation of individual development projects may be insignificant and approvals are granted respectively, but the overall impact accumulated by various projects may seriously affect air ventilation. The four development projects in Area 5, Area 6, Area 7 and Lot 393 in Tsuen Wan are a case in point. When these projects are assessed separately, the impact of individual projects may be limited, but no assessment has been conducted on the overall impact these projects may exert if they are implemented at the same time. This reflects that such planning lacks foresight and commitment to the public.

It is learnt that the Community Building, Planning and Development Committee of the Tsuen Wan District Council has commissioned a neutral academic organization to conduct an in-depth assessment on the ventilation impact on the town centre exerted by all the new development projects under planning in the Tsuen Wan district. However, before the findings and specific proposals of the study are announced, the MTR Corporation Limited (MTRCL) has submitted the building plan of the development project of Tsuen Wan Area 6 on top of the Tsuen Wan Station of the West Rail to the Buildings Department, and the application has been approved. Such a practice makes people query the intention of the MTRCL, thinking that the MTRCL aims only to make money but neglects its commitment to community planning. Moreover, it shows that the Government has failed to fulfil its gatekeeper's role properly in handling controversial development projects.

Insofar as private development projects already approved by the TPB are concerned, the Planning Department and the Buildings Department of the Government must fulfil the role of a gatekeeper. Detailed guidelines on the
density, layout, design and air ventilation of buildings have been laid down in the Hong Kong Planning Standards and Guidelines at present, hoping that by means of vetting and approval of plans, the adverse impact of new buildings on surrounding areas may be minimized.

I hereby urge the Government to refocus its attention to the development density in New Territories West. I particularly request the lowering of the development density along Tsuen Wan waterfront to ensure balanced development in the community. Thank you, President.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): Dr Priscilla LEUNG, you may now speak on the three amendments. You may speak for up to five minutes.

DR PRISCILLA LEUNG (in Cantonese): First of all, I have to thank the three Members for proposing amendments to my motion. I would like to make some points on the amendment proposed by Mrs Sophie LEUNG earlier. I, personally, do not oppose the objective of balancing the interest of all parties in developing the waterfront, but regarding the part Mrs LEUNG proposes to delete, a large part of it was indeed proposed by the Government back then. The ridgeline of Kowloon is a case in point, for it is mentioned in the Urban Design Guidelines. With regard to the reduction of development density, it is not my own expression either, for I quote it direct from the policy address. We very much hope that the Government will follow the direction stated in the policy address, ensuring that bureaux and departments at the front line will follow the same guidelines in implementing the planning work.

In this connection, why do I think that one of the focuses of today's motion is on the co-ordination among various departments? By the way, I hope that Secretary LAM will not be too frustrated. Actually, I have commended the Bureau for its hard work and decisive actions on a number of public occasions. However, as mentioned in Mrs Sophie LEUNG's amendment, if the waterfront is
to be developed, the overall development of the economy of Hong Kong must be balanced. Actually I have also cited the example in my speech. Four blocks of high-rise buildings will be built at waterfront sites, which is extremely controversial, while a court building will be built at an inner site in the district. If the two projects swap, everything will be perfect. This is a problem handed down from the past. Actually, I have no idea, perhaps the Secretary may inform us whether the co-ordination of various Policy Bureaux can be put into practice? Will this be achieved by her bureau alone?

Basicallly, when we take stock of the situation, we know that it is related to the population issue — the ever-increasing population, the housing issue, the home affairs issue and the economic viability issue. I have actually kept pondering one question whenever I bring up this issue: If we cut the sale of land, the revenue will drop, then where will the money of Hong Kong come from? The issue does not involve one Policy Bureau alone. Hence, I have always kept in mind the balanced economic development mentioned by Mrs Sophie LEUNG. However, in this connection, I think the most important point is that when the Government makes the decision, all bureaux will work towards a common goal. In fact, insofar as front-line planning is concerned, I do not see that the Government has the determination to drive the Development Bureau and the many Policy Bureaux to work towards a common goal. Surely, I heard earlier that the Bureau has indeed considered using a wooden bridge to …… In considering the development of the Green Island Cement Plant and other existing buildings, I think the authorities have heeded many views and public opinions.

I also agree with the views of the other two Members. If we set the important goal we mentioned earlier, it may violate a very important original intention. I fully understand that Sophie means well, so I will abstain from voting on her amendment. Miss Tanya CHAN asked if we were jealous of the development in Central. I believe it is envy rather than jealousy. Basically, I think that different districts are facing their own problems. Even on the problem raised by Mr James TO, I think that it is a common problem faced by every district. Actually, I live in the New Territories but not Kowloon West. I am glad that Mr TAM Yiu-chung has brought up the development in the New Territories. Will Honourable Members pardon me, for given the time constraint, I can hardly cover all districts, but can only leave the discussion to other Members.
Lastly, regarding the issue on developers, I agree with Secretary Carrie Lam that if the report of the press is misleading, it is the obligation of the developers to make clarification, which will stop putting us under considerable public pressure. If the developers consider that the three sites should be removed, we must reflect the public opinion. Hence, if it is the view of a third party, I hope the newspaper concerned or the Real Estate Developers' Association would explain the incident to the public through a proper channel. Honestly, we, as Members, have to represent the views of the public, and we wish to co-operate with the Government to promote better development of the waterfront.

Besides, Mr Tommy Cheung suggested that I probably wanted to dwarf the West Kowloon Cultural District (WKCD) further. I would like to respond to this remark. Actually, I have never mentioned the WKCD. I only talked about other inland districts, particularly districts stricken by poverty, in West Kowloon. I agree more with Mr Lee Wing-tat that the urban area should not be packed with buildings. Thank you, President.

SECRETARY FOR DEVELOPMENT (in Cantonese): President, I have to thank all the Members who have spoken, for Members have given recognition and support to the Development Bureau for the efforts it made in the past two years or so in handling the work relating to the Victoria Harbour waterfront. As I said in my first speech, the Development Bureau will continue doing its level best in the beautification work of the Victoria Harbour and the waterfront planning. Whether I am a "good fighter" has nothing to do with it. (Laughter) Indeed, though I may be a "good fighter" in general, today I have no strength, for I misjudge the time of the previous round of discussion and have no lunch yet. (Laughter)

When issues about planning and land use are discussed on different occasions in this Council, my mind keeps thinking of these two sayings: First, "Even a clever housewife cannot cook without rice"; second, "heeding the views of the brother may offend the sister-in-law". As a result, some Members may say to me, as Mr Lee Wing-tat who has just spoken, and Mr Alan Leong did in the past: "Why do you have to take those remarks seriously and feel aggrieved?"

The saying "even a clever housewife cannot cook without rice" is an apt description of the land-related work of the Development Bureau. We are
actually a resource handling bureau responsible for providing limited land resources in Hong Kong to satisfy the various needs of society, including economic and development needs, social and livelihood needs, particularly housing needs. On the one hand, we have to ensure that the policy of allocating public housing flats within three years can be fulfilled. On the other hand, in respect of private housing, we have to supply land to stabilize the market. Moreover, revenues generated from land have to be used to fund various public services provided by the Government, including welfare, education and health care services which are matters of grave concern to the public. Hence, it is inevitable that we have to strike a balance, as Mrs Sophie LEUNG says, in carrying out our work. I think the balance mentioned by Mrs Sophie LEUNG is not a balance of the interest of various sectors. In her amendment, she does not refer to the balance of interest of the sectors concerned, but a balance of the interest of society as a whole, for only this will be to the best of interest of the public. Hence, during the review of the Outline Zoning Plans concerned or the lowering of development density of certain sites, we have to consider the factors I mentioned earlier, that is, to provide land resources for the overall development of Hong Kong and the revenue generated from land. Some achievements have been made in the actual work done. As I mentioned earlier, we have reviewed in succession 17 Outline Zoning Plans. Take Hung Hom and Kai Tak as examples. The authorities have reduced the development density by a considerable extent. Regarding the land supply of the Government, that is, the sites on the Application List, take the Application List of this year as an example, the development density of a total of 15 sites has been suitably reduced. Members may not always remember this figure though I have mentioned it before. President, regarding these 15 sites, the development density reduced ranged from 8% to 50%, which cost the Government tens of billions of dollars. This precisely demonstrates our great sincerity to create a better living environment for the public by suitably reducing the development density.

Take Site 6 in Sham Shui Po, which is a cause of concern to Dr LEUNG and another Member or two, as an example. Despite knowing that the site is an important source of public housing land supply, the Housing Bureau, the Housing Department and the Planning Department have made every effort to respond to the aspiration of the public. Hence, the plot ratio of Site 6 has been reduced from the original 8 to 6. As a result, the number of public rental housing flats supplied will reduce from the original 3 500 to 2 400. But I am afraid that if the plan to use the site for public rental housing development is given up completely,
it will, to a certain extent, adversely affect the fulfilment of the policy target of allocating public rental housing flats within three years.

Why do I say that our work will sometimes put us in the dilemma of "heeding the views of the brother may offend the sister-in-law"? In planning work, we cannot, as Dr Priscilla LEUNG expects, apply the same yardstick to all the 18 districts in the territory, for the historical background and pace of development of the 18 districts, as well as considerations for their surrounding environment, vary. Take Central as an example. If residents of Hung Hom represented by Dr LEUNG envy the environment in Central, I will in return ask them whether they envy the roadside air pollution in Central, which often tops the chart. Indeed, it is found recently that the pollution there is even more serious than that in Causeway Bay. So, when the Government responds properly in terms of land planning, it must take the reality into consideration.

Regarding the development density of a number of sites in Tsuen Wan as mentioned by Mr TAM Yiu-chung, we fully understand the worries of the Tsuen Wan District Council and Members representing Tsuen Wan. For this reason, we have removed one of the four sites mentioned by Mr TAM earlier from the Application List this year, that is, Site 393, of which the Government has full right to determine its use. By doing so, we will have the opportunity to consider with the Tsuen Wan District Council the overall accumulated effect brought about by the several sites, and then decide afresh the use of Site 393 which has originally been designated for hotel development purpose. However, since Site 5, Site 6 and Site 7 in Tsuen Wan are part of the overall superstructure development of the West Rail, as per the understanding of Mr TAM, as well as an important source of housing supply, we hope that the development can have the support of local residents and the District Council, so that the MTR Corporation Limited may take the plan forward.

I have to thank Mr WONG Kwok-hing for bringing up the historical factors. Actually, the complexity and difficulty involved in the handling of waterfront sites are different from those of other development areas, for the harbourfront sites along the Victoria Harbour are not a blank sheet of paper. Ms Starry LEE perhaps thinks that our planning is in favour of the Hong Kong Island, for many designed waterfront sites are found on the Hong Kong Island but not in Kowloon. However, this should be attributed to the lots of reclamation works carried out on the Hong Kong Island, making available to us new sites and space. Apart from satisfying the need for transport infrastructure, most of the
new lands are in general reserved for public use. However, perhaps plans to be carried out in Kowloon have been stopped promptly, many of the reclamation projects originally scheduled to be carried out in Kowloon have been shelved. Now, we must handle some historical problems relating to waterfront sites in Kowloon. For instance, some Members have pointed out that many sites are now occupied by public facilities, and certain sites are even privately owned. As a result, we have to deal with each case step by step through examination and consultation before a solution can be found. Nevertheless, this offers the best opportunity to carry out systematic beautification work along the Victoria Harbour. With the commencement of the Central-Wan Chai Bypass project and the closing reclamation work in Central and Wan Chai, we can see the final and ultimate coastline on both sides of the Victoria Harbour. In future, our work should focus on adopting good designs, good planning and good public participation, so that the public can really enjoy a continuous and lively waterfront promenade.

Insofar as the design of waterfront promenades is concerned, Prof Patrick LAU and Mr WONG Kwok-hing both attach great importance to town planning, and I totally agree with them. Hence, I would like to take this opportunity to thank Members for supporting the establishment of the new Greening, Landscape and Tree Management Section in the Development Bureau at the meeting of the Establishment Subcommittee held this morning. One of the duties of the new Section is to put emphasis on and consolidate our town planning work, facilitating the Town Planning Board to examine projects involving a large degree of design element in future, so that a better job can be done. We also propose the establishment of an urban design panel, which includes external professionals, to render assistance in the urban design process. However, to introduce liveliness to waterfront promenades, it is not enough to solely rely on good greening work and landscape and urban design, a good mode of management must be put in place. Hence, during my site visit with Members, I mentioned that at suitable waterfront sites, we might consider the public-private partnership mode, so as to bring in more liveliness and vitality to the waterfront through the optimization of land use. Relevant facilities, such as catering or retail services, may also be introduced to the waterfront. With the mode of good management, more festive functions can be held at waterfront sites.

Mr LEE Wing-tat asked whether land was available in Hong Kong. This question has always been troubling me. And I have kept examining it with my colleagues engaging in planning work. Actually, as at today, among the
1 100 sq km area of land in Hong Kong, around a quarter, that is, 24%, of it has been developed, 46% has been declared as country parks and around 15% is wetland and conservation area. Land actually available for development is really limited. When it comes to the development of these lands, as Members discussed heatedly recently, it often involves land resumption and demolition, which are extremely controversial. Nevertheless, regarding our future work in the planning of the new development area, we will follow the suggestion of Mr LEE Wing-tat to strike a better balance by lowering as far as possible the development density of the urban area, so that a more balanced planning in the urban area can be achieved.

President, in conclusion, the discussion today is extremely constructive. It is very useful to the Development Bureau in carrying out future waterfront development and proper review of the Outline Zoning Plan, so as to suitably reduce the development density. I must make a note about the term suitably. Again, I would like to thank all the Members who have spoken. Thank you, President.

PRESIDENT (in Cantonese): I now call upon Mrs Sophie LEUNG to move her amendment to the motion.

MRS SOPHIE LEUNG (in Cantonese): President, I move that Dr Priscilla LEUNG's motion be amended.

Mrs Sophie LEUNG moved the following amendment: (Translation)

"To add ", in his past three years' policy addresses," after "That"; to delete "put forward the policy directions of reducing development density and beautifying the waterfront promenade in his past three years' policy addresses, yet many waterfront sites in Kowloon have still been wrongly planned for the construction of densely built high-rise buildings in recent years, causing further damages to the beautiful ridgelines of Kowloon and even blocking the ventilation openings and aggravating the wall and heat island effects, hence exacerbating the environmental problems in Kowloon" after "the Chief Executive has" and substitute with "proposed to beautify the harbourfront, implement harbourfront enhancement work
and create a better living environment through a proper review of development density"; to delete "honour its pledges made in the policy addresses and, by adhering to the overriding principle of conforming to environmental protection and low development density" after "this Council urges the Government to" and substitute with ", by adhering to the overriding principle of balancing different needs for land between Hong Kong's economic development and quality life"; to delete "as well as review afresh the use of vacant waterfront sites in Kowloon" after "different departments"; and to delete "the Kowloon waterfront promenade project" immediately before the full stop and substitute with "harbourfront beautifying work in various districts"."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mrs Sophie LEUNG to Dr Priscilla LEUNG's motion, be passed.

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

(Members raised their hands)

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

(Members raised their hands)

Dr Priscilla LEUNG rose to claim a division.

**PRESIDENT** (in Cantonese): Dr Priscilla LEUNG 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 Raymond HO, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Ms Miriam LAU, Ms LI Fung-ying, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Prof Patrick LAU, Mr CHAN Kin-por, Mr IP Wai-ming, Mr IP Kwok-him, Dr PAN Pey-chyous and Mr Paul TSE voted for the amendment.

Dr Margaret NG, Mr CHEUNG Man-kwong and Mr CHEUNG Kwok-che voted against the amendment.

Geographical Constituencies:

Mr CHAN Kam-lam, Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr WONG Kwok-hing, Ms Cyd HO, Ms Starry LEE, Mr CHAN Hak-kan, Mr WONG Kwok-kin and Mrs Regina IP voted for the amendment.

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Ms Emily LAU, Mr Andrew CHENG, Mr Frederick FUNG, Mr LEE Wing-tat, Mr Ronny TONG, Mr KAM Nai-wai, Miss Tanya CHAN and Mr WONG Sing-chi voted against the amendment.

Dr Priscilla LEUNG abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 18 were present, 15 were in favour of the amendment and three against it; while among the Members returned by geographical constituencies through direct elections, 24 were present, nine were in favour of the amendment,
13 against it and one abstained. 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.

MS MIRIAM LAU (in Cantonese): President, I move that in the event of further divisions being claimed in respect of the motion on "Reviewing afresh the use of land at the Kowloon waterfront" or any amendments thereto, this Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion passed.

I order that in the event of further divisions being claimed in respect of the motion on "Reviewing afresh the use of land at the Kowloon waterfront" or any
amendments thereto, this Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.

PRESIDENT (in Cantonese): Miss Tanya CHAN, you may move your amendment.

MISS TANYA CHAN (in Cantonese): President, I move that Dr Priscilla LEUNG's motion be amended.

Miss Tanya CHAN moved the following amendment: (Translation)

"To add "as well as constructing" after "reducing development density"; to add "there is still much room for improvement in the planning of" after "policy addresses, yet"; to add "and other districts, the Government should as far as practicable enable as many members of the public as possible to use these waterfront sites; at the same time, these sites" after "many waterfront sites in Kowloon"; to add "and other districts" after "beautiful ridgelines of Kowloon"; to delete "in Kowloon" after "environmental problems"; to delete "vacant" after "review afresh the use of"; and to add "and other districts" before ", so as to"."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment moved by Miss Tanya CHAN to Dr Priscilla LEUNG's motion be passed.

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

(Members raised their hands)

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

(Members raised their hands)
Mrs Sophie LEUNG rose to claim a division.

PRESIDENT (in Cantonese): Mrs Sophie LEUNG has claimed a division. The division bell will ring for one minute.

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 stop and the results be displayed.

Functional Constituencies:

Dr Raymond HO, Dr Margaret NG, Mr CHEUNG Man-kwong, Dr Joseph LEE, Mr CHAN Kin-por, Mr CHEUNG Kwok-che, Mr IP Wai-ming, Mr IP Kwok-him and Dr PAN Pey-chyou voted for the amendment.

Mrs Sophie LEUNG, Dr Philip WONG, Ms Miriam LAU, Mr Jeffrey LAM and Mr Andrew LEUNG voted against the amendment.

Ms LI Fung-ying and Mr Paul TSE abstained.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Mr CHAN Kam-lam, Mr LEUNG Yiu-chung, Mr LAU Kong-wah, Ms Emily LAU, Mr Andrew CHENG, Mr TAM Yiu-chung, Mr Frederick FUNG, Ms Audrey EU, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr Alan LEONG, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Ms Starry LEE, Mr CHAN Hak-kan, Miss Tanya CHAN, Dr Priscilla LEUNG, Mr WONG Sing-chi, Mr WONG Kwok-kin and Mrs Regina IP voted for the amendment.

THE PRESIDENT, Mr Jasper TSANG, did not cast any vote.
THE PRESIDENT announced that among the Members returned by functional constituencies, 16 were present, nine were in favour of the amendment, five against it and two abstained; while among the Members returned by geographical constituencies through direct elections, 26 were present and 25 were in favour of the amendment. Since the question was agreed by a majority of each of the two groups of Members present, he therefore declared that the amendment was passed.

PRESIDENT (in Cantonese): Mr James TO, as the amendment moved by Miss Tanya CHAN has been passed, you may now move your further amendment.

MR JAMES TO (in Cantonese): President, I move that Dr Priscilla LEUNG's motion as amended by Miss Tanya CHAN be further amended in accordance with my amendment.

Mr James TO moved the following further amendment to the motion as amended by Miss Tanya CHAN: (Translation)

"To add "including improving the accessibility of the waterfront and studying measures to address issues relating to ownership of private lands at the waterfront, present use of waterfront sites as well as impact of various future projects on lands at the waterfront," before "so as to"."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment moved by Mr James TO to Dr Priscilla LEUNG's motion as amended by 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.

(Members raised their hands)
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 Priscilla LEUNG, you may now speak in reply. You have one minute 35 seconds.

DR PRISCILLA LEUNG (in Cantonese): First of all, I wish to thank the three Honourable colleagues who have proposed amendments to my original motion. I wish to say to Mrs Sophie LEUNG that I think her amendment is a good one, but after much consideration, I would think that the amendments moved respectively by Miss Tanya CHAN and Mr James TO would be more in tune with the intention of my original motion.

I wish to tell the Secretary once again that I hope she would not feel frustrated because the amendments to the original motion are passed and that applies especially to the amendment made by Miss Tanya CHAN. It is not our intention to make the Government feel frustrated, we really hope that the Development Bureau can initiate co-operation among departments and that with the leadership provided by the Secretary, there can be work done in economic, demographic and housing areas as we have pointed out earlier, so that the kind of development along the waterfront which the people would like to see can become a reality.

I wish to thank Members for their support in the motion debate today and I hope that apart from Kowloon …… I do admit that there are inadequacies with the original motion and the topic should be changed to cover the entire waterfront in Hong Kong. I hope Members can forgive me for failing to include all the related problems in Hong Kong into the motion owing to time constraints.

I hope Members can lend their support to my original motion. Thank you.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Dr Priscilla LEUNG as amended by Miss Tanya CHAN and Mr James TO, 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.

I think the Secretary is not feeling frustrated, she is only hungry. I hope she would have time for supper. (*Laughter*)

PRESIDENT (in Cantonese): Second Motion: Resignation *en masse* of Members returned from five geographical constituencies as a referendum.

Members who wish to speak in this motion debate would please press the "Request to speak" button.

I will now call upon Mr WONG Yuk-man to speak and move his motion.

RESIGNATION EN MASSE OF MEMBERS RETURNED FROM FIVE GEOGRAPHICAL CONSTITUENCIES AS A REFERENDUM

MR WONG YUK-MAN (in Cantonese): President, in the middle of September this year, the League of Social Democrats (LSD) issued a political explanatory statement calling for "resignation *en masse* of Members returned from five geographical constituencies as a referendum" on the fight for dual universal suffrage in 2012. In the past two months, the democratic camp expressed divergent views and engaged in continuing disputes. Today, in this Chamber, I propose the motion on the "Resignation *en masse* of Members returned from five geographical constituencies as a referendum" on the fight for dual universal
suffrage in 2012, hoping that allies in the democratic camp will attach importance to the overall democratic development in Hong Kong. It is hoped that through systematic analyses of the relevant topic and intense debate, the truth of the matter will be more evident. The LSD has pledged to strive for dual universal suffrage during the election, and we treat this with great solemnity. We practise what we preach at all costs. As such, all Members of the Legislative Council from the LSD will resign to trigger a by-election. By way of proposing a single topic in the by-election, a de facto referendum can be carried out, thus returning the right of decision on constitutional development to the people. This arrangement will bring direct democracy to the people of Hong Kong where a referendum law is in the absence.

The people of Hong Kong have been fighting for democracy for more than two decades, which is quite a long road. In the middle of the 1980s of the last century, the Joint Committee on the Promotion of Democratic Government was set up in October 1986 in the community to strive for the implementation of direct election in 1988. The 190-proposal was issued to support the election of the Chief Executive by universal suffrage and the direct election of at least half of the Members of the Legislative Council in 1997. The year after that, the dictatorial British Hong Kong Government published the outcome of the Green Paper on Constitutional Development and blatantly distorted the public opinion. The approach bore a marked resemblance to that adopted by the existing authoritarian SAR Government. Later, Chris PATTEN revealed honestly that this was the result of the joint effort made by the British Government and Chinese Government to stifle the implementation of direct election in 1988. Reflecting the present in the light of the past, it is evident that requesting a ruler without the mandate from the people to initiate a reform to grant democracy to the people of Hong Kong is undoubtedly asking the tiger for its hide.

After the 4 June tragedy in 1989, the democratic camp started to participate actively in elections of political assemblies, which catalyzed the founding of the predecessor of the Democratic Party, that is, the United Democrats of Hong Kong, and they secured glorious victory at different levels of elections. In 1994, a heated debate on the 1995 constitutional reform was held by the former Legislative Council. In the end, the nine New Functional Constituencies proposal put forth by Chris PATTEN was passed, while the private Member's Bill on full direct election proposed by Emily LAU was negativied. Since three Members from the Meeting Point returned by direct election — Fred LI, Zachary WONG and TIK Chi-yuen abstained from voting, the Bill was negativied with 21
Members against it and 20 Members in favour of it. Today, Emily LAU and Fred LI are comrades in the same Party. At this stage of development, one cannot help heaving a deep sigh.

Since then, the Chinese side set up "another stove" and destroyed the "through train", forcing a full withdrawal of all Members from the democratic camp at the outset of the reunification. In the election in 1998, the democratic camp returned to the legislature through election to continue to monitor the Government and prevent regression in democracy on the one hand, and actively strove for dual universal suffrage in 2007 and 2008 on the other. However, restricted by the curse of the functional constituency and the separate voting system, there was no way to stop the authoritarian SAR Government from acting perversely. By 2003, the SAR Government acted irrationally on the implementation of the legislation on Article 23 of the Basic Law. The people of Hong Kong demonstrated the power of the people at the 1 July March. This was the first time that the will of the officials was overturned, where core values like human rights, freedom and the rule of law were successfully upheld.

All along, the democratic camp has been striving incessantly for democracy and doing their level best to safeguard freedom and justice. The contribution they made is undeniable and obvious to all. Nonetheless, the political framework in Hong Kong is manipulated by the totalitarian communist authorities and the conservative interest groups in the business and industrial sector under their wings. The business and industrial sector pledges their political loyalty to the authorities in Beijing in exchange for political privilege and economic interests, and the SAR Government cannot but draw close to these interest groups in its governance. If the situation runs its course, the fall of Hong Kong can only be prevented with the presence of an unwavering opposition camp in society, for only they will make extra efforts to monitor the authoritarian Government. However, to strive for further democracy, they must confront the unjust political framework. So, if the democratic camp continues adopting the British gentleman-style of political deliberation in the colonial legislature, it can in no way help to break the deadlock. For this reason, the LSD resorts to peaceful means of opposition to confront the authoritarian politics.

The LSD does not only stage confrontation in the legislature, it insists on staging civil disobedience outside the legislature, and challenging the Government's authority through judicial reviews. Despite repeated failures, we adhere to the same principle. Now, the SAR employs a double-faced tactics,
trying to use the empty promise of implementing dual universal suffrage in 2017 and 2020 to deceive the kind-hearted public who are eager to see at least small progress in the constitutional system. If it succeeds with this plot, it will again lay the blame of bringing constitutional reform to a standstill on the democratic camp. In addition, the pro-establishment camp has blatantly put forth a disguised displacement on the meaning of universal suffrage. By force of circumstance, we must mobilize the people of Hong Kong to support the new democratic movement on "no confrontation, no change", for only this will enable the democratic camp and its supporters to achieve steady progress and rise to the challenges.

The Civic Party and the LSD fly the flag of the new democratic movement to promote a de facto referendum, and with all the people of Hong Kong, we make possible an unprecedented event that allows the public to experience direct democracy the first time in the history of Hong Kong. To put it simply, democracy can be classified into two categories. First, it is the so-called indirect democracy that we are pursuing through representative politics. Second, it is the direct democracy advocated by Jean-Jacque Rousseau, a philosopher in the Age of Enlightenment in France. Rousseau opposed all kinds of parliamentary politics and party politics, for he considered that sovereignty could not be transferred and public opinion could not be represented. Sovereignty should be totally in the hands of the people and the power to enact legislation belong to the people as a whole, so that justice could be embodied in laws. Surely, in reality, his beliefs can only be realized to some extent at best.

Certain democratic countries have put in place referendum laws to allow their people to hold referendums on matters of enormous import. In the vicinity of Hong Kong, only the region, the Republic of China (Taiwan), has put in place the Referendum Act. In Taiwan, a number of territory-wide and region-wide referendums were held in the past, but so far, none of the issue dealt with in the referendum was passed. But take the referendum held recently in Penghu County on the establishment of a casino as an example. In the course, focused discussions were held on the decision of an issue extremely controversial to society, both sides, for and against, were provided with equal access to the platform to present their arguments. Eventually, the issue was put to vote, and all the people were held responsible for their own decision. Since the dispute was settled according to a publicly-recognized standard, division in society can be avoided.
The Father of the Republic of China, Dr SUN Yat-sen, advocated that "people have the power and the government has the ability" all those years ago. People have the political power and the government has the governing power. Political power includes the right to elect and dismiss officials, the rights of initiative and referendum in laws. These are direct human rights. Ironically, in Hong Kong, a place where Dr SUN Yat-sen called it the origin of the rule of law, civil rights have not been implemented even through indirect means over the past century. Representatives with a popular mandate have no way to enact legislation. Bills proposed by Members of the Legislative Council are not only subject to the restriction stipulated in Article 74 of the Basic Law, but also the separate voting system. Among places adopting representative politics with indirect democracy around the world, there is no legislature similar to that of Hong Kong. When Members of the legislature cannot enact legislation direct, the chance that the wellbeing of the majority will be decided by the people but not subject to the so-called universal and fair standard decided by the ruler will be remote.

When a society reaches a stage where reform is inevitable and when the force demanding for reform is countered or even stifled by the intractable force of the past, it will usually experience a stage of extreme leftism. In the Chinese society before the Communist Party took power, an intractable conservative force opposed and suppressed the reform. As a result, the force demanding for reform grew radical and took over the power. In Hong Kong, people advocating full direct election have to the utmost provoked the storm and public discussion. Unlike the remarks made by LENIN, they have not launched any reform movement involving the use of rifles or bayonets, or other powerful tools, to force other people to bend to their will.

Hong Kong has the objective conditions to implement universal and free elections, but some people measure it according to the development in Mainland China. They insist on saying that it is kind of extreme and radical political beliefs to strive for full direct election in Hong Kong, and that it will create instability in Hong Kong. Do they ever realize that the invention of the concept of "one country, two systems" means to acknowledge that Hong Kong is in a better position than Mainland China to implement universal and free elections? The social environment of Hong Kong at the present stage is different from the objective circumstances when the Communist Party seized power from the Kuomintang in the past. Hong Kong is a pluralistic, open, prosperous and
advanced society with the middle class as the backbone. Allowing the people of Hong Kong to elect Members of the Legislative Council by "one man, one vote" will not result in mob rule, nor will it cause fundamental change to the social structure. The remarks given above are some of the arguments quoted from an article I wrote 14 years ago, but they are still applicable to the discussion on democracy we have today. I do not take delight in having this foresight, on the contrary, I feel sad about the stagnant state of democracy in Hong Kong.

CHEN Yun, a cultural commentator, wrote a long article in *Ming Pao* on 22 November under the title "Striving for democracy in a stalemate" ("困局之內爭民主"). One of the paragraphs in the article has really struck a chord with me. He said, "In view of the present circumstances, if Hong Kong people want democracy, it can only strive for it with the remaining resources found in the system, that is, the democratic political parties, freedom of expression and cultural imagination. The course will be difficult, but Hong Kong must grow through this course. To achieve progress in democracy, Hong Kong cannot always look to the assistance rendered by the United Kingdom and the United States, nor rely on the Chinese Communist Party to confer power in a manner to spare the rat for the sake of the dish. Hong Kong should leave the shelter of privilege. Like people who eventually gain democracy in this world, they have to make the effort and pay the cost. They should be able to stand the threat from Beijing, the insults fired by the pro-communist lackeys and the nuisance from some of the police and secret agents of Hong Kong who have become lackeys. They should regard Hong Kong as their home and adopt a calm and flexible attitude in the course of confrontation. Sometimes, they have to make sacrifice, and sometimes, they have to support others' sacrifice to the confrontation. The toiling masses are fortunate that some radicals are willing to come forward to bear the cost of the sacrifice. They should not turn their back on or tease these righteous people who come forward for the confrontation. The poor in Hong Kong who sincerely believe in a harmonious society are just moving into a byre and becoming slaves, for their homes in Hong Kong have been confiscated by the rich. The cases of Choi Yuen Village in Shek Kong and shopping arcades ruled by the Link, as well as the numerous cases on the redevelopment of old districts reflect the course of confiscation of the homes of the poor. I am not urging all righteous people in Hong Kong to start a riot on the streets. On the contrary, under the domineering and high-handed approach adopted by the Chinese Communist Party, righteous people should pursue wisdom and knowledge; they should remain calm and thoughtful; they should be familiar with the international
situation; they should learn the truth that oppression exists in Hong Kong society and understand that we are in the helpless stalemate of isolation, while continuing with the confrontation in a determined yet flexible attitude. Sacrifice is not the end but the means to gain success. Without favourable condition for gaining success, they should not lightly make the sacrifice but should muster the force to strive for justice."

The LSD hopes to use sacrifice as a means to gain success. We know that given the state of affairs at present, all Members of the Legislative Council from the LSD must resign collectively in order to achieve the goal of "resignation en masse of Members returned from five geographical constituencies as a referendum". For a newly-established political organization like the LSD, the loss of all seats on the platform of the Legislative Council may possibly push the Party to the brink of winding up. However, in order to achieve the goal of "resignation en masse of Members returned from five geographical constituencies as a referendum", we try to keep the topic all-inclusive. On the one hand, we insist on striving for dual universal suffrage in 2012, and on the other hand, we do not rule out the request for a roadmap. We try to seek common ground while reserving differences, for we want to fight hand in glove with our allies.

If anyone says that advocating "resignation en masse of Members returned from five geographical constituencies as a referendum" is dividing the democratic camp, they have really failed to see the forest for the trees. Today, we are united for we share a common goal, we do not share this common goal for the sake of unity. Some people even say that the referendum will make the "grandfather" in Beijing angry. Should the democratic camp give up its perseverance for democracy and freedom to win the trust of the Central Government and the people of Hong Kong? If this is the case, can it still call itself the democratic camp? The drafter of the Declaration of Independence of the United States, Thomas JEFFERSON — the third President of the United States — once gave a very brilliant remark: What country can preserve its liberties if its rulers are not warned from time to time that their people preserve the spirit of resistance?

In early February this year, a famous Japanese author Haruki MURAKAMI received the Jerusalem Prize awarded by the Israel Government. He gave some brilliant remarks in his speech. He said, "Between a high, solid wall and an egg that breaks against it, I will always stand on the side of the egg. No matter how right the wall may be and how wrong the egg, I will always stand with the egg.
Someone else will have to decide what is right and what is wrong." If, for any reason, a novelist reflects the view of standing on the side of the wall in his or her work, that piece of work will be worthless.

Here, to those who are still doubtful of the effectiveness of "resignation en masse of Members returned from five geographical constituencies as a referendum", particularly those academics who claim to be educated, I implore them to always stand on the side of the egg in the face of the high wall of the Communist regime, even though they think we will encounter great difficulty. We see that in our home country, human rights activists and dissidents expressing their views or acting to defend their conscience and fight for justice are under threats of violence from the State machine. However, Chinese people in Hong Kong who are subject to no threat of violence remain complacent and conservative, they should feel ashamed in the face of this group of kind and upright people. The founder of the European Union, KUDENHOFF-KARESKI, said: "All great historic events are utopia at the outset, but they turn into reality in the end." Today, what we are striving for is not a utopia but an ideal that can be realized. Thank you, President.

Mr WONG Yuk-man moved the following motion: (Translation)

"That, this Council appeals to all people in Hong Kong to fully support the campaign of 'Resignation en masse of Members returned from five geographical constituencies as a referendum on the fight for dual universal suffrage in 2012', so as to, by way of direct democracy, return the right of decision on constitutional development to the people, and strongly requests the Special Administrative Region Government to take the opportunity of the constitutional reform consultation to relay to the Beijing Government the aspiration of Hong Kong people, with a view to fighting for the implementation of dual universal suffrage in 2012."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr WONG Yuk-man be passed.

It is now 8.15 pm, and I think this Council will complete all the items on the Agenda before midnight, so I will not adjourn the meeting at 10 o'clock.
PRESIDENT (in Cantonese): Two Members intend to 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 Mr LEUNG Yiu-chung to speak first, to be followed by Mr Alan LEONG; but no amendments are to be moved at this stage.

MR LEUNG YIU-CHUNG (in Cantonese): President, I propose to urge the Government to allow the people in Hong Kong to decide, through a referendum, the constitutional arrangement of Hong Kong for 2012 and beyond, for this is the most democratic and final solution to the issue on constitutional reform. In other words, my proposal is genuinely "people-based", which on the other hand, corresponds with the promise made by Chief Executive Donald TSANG that he will "do something big". If a referendum is conducted, the present arrangement will be the best way to reflect this. Hence, if the Government does not intend to go back on its words, it has no reason to oppose allowing all the people of Hong Kong to decide the future constitutional package through a referendum.

Insofar as referendums are concerned, Members all know that it is a demonstration of direct democracy, a democratic means to decide public affairs affecting the general public, and the basic and political rights each and every citizen should be entitled.

President, tomorrow is 10 December, Thursday, the International Human Rights Day, which aims to commemorate the ratification of the Universal Declaration of Human Rights by the United Nations 61 years ago. It is stipulated in Article 21(1) of the Declaration of Human Rights that: "Everyone has the right to take part in the government of his country, directly or through freely chosen representatives", while referendum is the basic right to directly take part in the government of a country. Requirements on the relevant political rights are also set out in Article 25 of the International Covenant on Civil and Political Rights, which is applicable to Hong Kong.

President, "politics is everyone's business". The pace of development of the constitutional reform and the arrangement of the election system will affect the interests and rights of every citizen in Hong Kong. Members all know that the issue on constitutional reform has all along aroused great controversy in
For this reason exactly, it is all the more essential that the Government will incorporate public opinions through a referendum, so as to reach a clear decision reflecting the preference of the majority of the public on constitutional reform.

President, I recall that four years ago, Mr LEUNG Kwok-hung also proposed a motion debate urging the Government to conduct a referendum on the implementation of "elections by universal suffrage in 2007 and 2008". At that time, Secretary LAM said that in Hong Kong, representatives from various districts and functional constituencies were taking part in government affairs in Hong Kong by such means as Legislative Council elections, and the requirement stipulated in Article 25 of the International Covenant on Civil and Political Rights had thus been complied with. President, I think that the remark of the Secretary has indeed highlighted the importance and necessity for the people of Hong Kong to decide the development of constitutional reform through a referendum. For in the present Legislative Council, only half of its seats are elected by the people of Hong Kong, and the other half are returned by functional constituencies, which are in the hands of social strata with vested interests. They absolutely cannot represent the views of the people of Hong Kong as a whole, and may even distort such views. Hence, at present, particularly under this undemocratic representative system, I think it is definitely necessary and a must to decide the arrangement for the democratic development of Hong Kong through a referendum.

President, the reasons Secretary LAM cited in the past to oppose the conducting of a referendum to decide the arrangement for constitutional reform include this: "Hong Kong is not a sovereign entity, therefore, on issues relating to the constitutional system, the only channel and procedure that are constitutional and legal for dealing with such issues is to do so according to the stipulations in Annex I and Annex II to the Basic Law". President, I must point out that Secretary LAM's argument on opposing a referendum is mere sophistry, calling black as white, which is improper and unreasonable.

First, even if relevant requirements are set out in Annex I and Annex II to the Basic Law, this will not prevent the Legislative Council and the Chief Executive from acting in accordance with public opinion in deciding the amendment to the constitutional arrangement. Indeed, if the mainstream public
opinion can be confirmed through a referendum, the Legislative Council and the Chief Executive may reach a consensus more effectively, which will provide a more favourable condition for the promotion of the constitutional reform proposal. Actually, following the Secretary's logic, nothing beyond the coverage of the stipulations of Annex I and Annex II to the Basic Law can be done, and I find such a scenario very peculiar. If the Secretary holds on to this rationale, will he later answer the following question: If only an approach in compliance with all the stipulations in Annex I and Annex II is considered as constitutional, while all others approaches are incorrect, is the consultation now conducted by the Government on constitutional reform constitutional? Is it in compliance with the stipulated procedure in Annex I and Annex II to the Basic law? If not, why can the Government carry out the consultation exercise?

President, having opinions expressed through a referendum is indeed the same as obtaining opinions through the existing consultation procedure, but the former one is a more practical approach that can reflect the preference of the community. It is not kind of fake consultation, where, after listening to the views collected, the Government will do nothing, nor will it come up with a specific solution, which will instead be achieved by means of a referendum.

In other words, we in the democratic camp are not the first to propose conducting a referendum to decide the development of the constitutional reform. At the time the Basic Law was drafted, the drafting committee once put forth the constitutional reform proposed in the draft Basic Law for soliciting public opinions, which was called the "Louis CHA's proposal" at the time. It proposed that a referendum should be conducted at a suitable timing so that the issue could be decided according to rule by consensus, and the decision would be submitted to the Standing Committee of the National People's Congress. Actually, the approach is not only put forth by us today, for sometime in the past when the draft Basic Law was drawn up, someone had already brought up this proposal. But, surely, this was not put into practice. Nonetheless, it does not mean that this cannot be done only because this was not done before. In this connection, I hope Secretary LAM will reconsider this issue.

President, the concept was actually introduced in the past. Since Beijing also thought in the past that the people of Hong Kong could decide the timetable for implementing dual elections by universal suffrage by means of voting, a
referendum definitely is not a "scourge" as many people described it. In the past, many people criticized that referendums were "scourges" and should not be conducted. I just do not comprehend this attitude, nor do I understand.

When we look around the world, more than half of the countries and regions with constitutions in place have the experience of conducting referendums to decide important political issues. Not only national affairs can be decided through referendums, decisions on many regional affairs are indeed made by means of referendums. Mr WONG Yuk-man mentioned Taiwan earlier, a place close to Hong Kong, and we all know that the Referendum Act has been put in place in Taiwan. Apart from referendums involving the whole Taiwan, recently, a referendum on the "opening of gambling establishments" was conducted in Penghu County to make a decision. In the various states of the United States, referendum topics of all scales are put forward nearly every year. It is evident that referendums are not only the basic political rights of a citizen, but also a means increasingly adopted by the international community in handling controversial issues.

To put it straight, the Government opposes conducting a referendum to decide the constitutional reform for only one reason: It is "afraid of public opinions". The pace of democratic development of seven million people of Hong Kong is now decided by a Chief Executive returned by undemocratic means and a Legislative Council with half of its seats returned by functional constituencies. This is not only an insult to the people of Hong Kong, but also the greatest irony to the right to democracy.

President, I have to reiterate that I have to insist on striving for the implementation of "dual elections by universal suffrage in 2012" and hope that "the power will be returned to the people" as soon as possible. President, some people may ask why today I propose out of thin air conducting a referendum instead of talking about the resignation en masse of Members returned from five geographical constituencies. Actually, I have already responded to this in the speech I have just delivered. I think that it is a proper approach to settle the constitutional reform issue by means of a referendum, for it is the best way to allow the public to express their opinions, which allows each and every citizen to express their different views officially and precisely by means of voting. Hence, I believe this approach will have the support of all the people of Hong Kong, and I hope that the HKSAR Government will support this approach and stop procrastinating. If the Government keeps giving its own comments after the
completion of every consultation exercise, stating that the public support this and that, these are only empty talks. If a referendum is conducted, it can tell the public, as well as the Government in Beijing, exactly how many people support the constitutional reform proposal. Therefore, I hope that the Government will hear our voices.

President, I so submit.

MR ALAN LEONG (in Cantonese): President, in the first year following the reunification, the Government of the Special Administrative Region (SAR) insisted on setting up the Provisional Legislative Council, thus causing all pan-democratic Members to "alight from the train" in protest. Subsequently, in the 1998 Legislative Council Election, members of the public expressed their positions through the ballot box, showing their support for pan-democratic Members' return to the Legislative Council on the one hand and voicing their discontent with the Provisional Legislative Council on the other.

In 2003 and 2004, the SAR Government made hasty attempts to enact legislation to implement Article 23 of the Basic Law and to rule out the introduction of dual universal suffrage in 2007 and 2008. Later, in the 2004 Legislative Council Election, members of the public once again expressed their positions through the ballot box. On the one hand, they supported pan-democratic candidates advocating the implementation of dual universal suffrage in 2007 and 2008 as their election platforms, thus enabling us to get 25 seats in the Legislative Council. On the other hand, they also voiced their insistence on the expeditious implementation of a democratic political system.

Although the Standing Committee of the National People's Congress (NPCSC) once again made a decision in 2007 to rule out the implementation of dual universal suffrage in 2012, members of the public still expressed their positions through the ballot box in the 2008 Legislative Council Election. This time, pan-democratic candidates obtained 19 out of the 30 geographical constituency seats returned by direct elections. This could fully reflect people's discontent with the Central Government's decision to rule out the implementation of dual universal suffrage in 2012.

President, history has been repeating itself, but Hong Kong people are very discerning. Besides electing pan-democratic candidates to the legislature to
manifest the people's power, members of the public also make use of every Legislative Council Election to show their aspiration to democracy, thus in effect turning each election into a \textit{de facto} referendum.

Faced with all the privileges enjoyed by the ruling regime and the syndicates with vested interests in the legislature, the pro-democracy movement in Hong Kong has managed to make progress and maximize its impacts by combining the forces both inside and outside the legislative assembly. While the pan-democratic camp struggle with the "royalists" in the legislature, members of the public have been voicing their aspiration to democracy outside the establishment by participating in various processions, assemblies and protests. With the pan-democratic camp and the public supporting each other and echoing each other's demands in this way, the pro-democracy movement has managed to grow in strength. This two-pronged approach of relying on forces both inside and outside the legislature to struggle for universal suffrage is also the conviction of the Civic Party.

President, 19 March 2006 was the founding day of the Civic Party. On that day, the Civic Party issued a manifesto, and the first paragraph reads, "The Reunification with China has opened a new era for Hong Kong, entrusting to it a new historic mission: to build a system whereby Hong Kong people genuinely govern Hong Kong with a high degree of autonomy according to the principle of 'one country, two systems', under Chinese sovereignty. The Basic Law states that this system is to be one of universal suffrage for the election of the Chief Executive and the Legislative Council, respect for the rule of law, and protection for the rights and freedoms of every Hong Kong resident as enshrined in international instruments. This historic mission is the responsibility of everyone in Hong Kong." The Civic Party's conviction is that in order to accomplish this historic mission, there must be the joint efforts of all Hong Kong people, in addition to the forces inside the legislature.

President, the pro-democracy movement has reached the most critical moment. The people's only aim is to get to the destination of genuine universal suffrage. However, the Central Government has ruthlessly plunged the people into a river of no return — the acceptance of farcical universal suffrage. As the pan-democratic camp fails to attain the goal of genuine universal suffrage through the established system of representative government, it is necessary for us to adopt the tactic of "resignation \textit{en masse} of Members returned from five geographical constituencies as a referendum", a tactic that involves the strategic departure of some of us as a means of opening the Legislative Council's door to the masses, so that the people's opinions can reach the establishment directly and
everyone who supports genuine universal suffrage can be turned into a member of the pan-democratic camp in the Legislative Council.

President, the Civic Party's position of supporting "resignation en masse of Members returned from five geographical constituencies as a referendum" is based on our realization that Hong Kong people all look to the pan-democratic camp for leadership in the struggle for greater room for compromise, in the hope that the political system of Hong Kong can thus take a step forward along the path leading to genuine universal suffrage. President, we know very well that without the support of the people, all will be in vain, and that any compromise not guided by principles will only plunge us into degradation and darkness.

What we need is a mass movement involving all people, a movement that can provide a platform for the public to participate and make their decisions directly. The topic we have formulated is the "implementation of genuine universal suffrage and abolition of functional constituencies". This topic is sensible, reasonable and in accordance with the public aspiration. And, the by-election following resignation en masse will be constitutional, lawful and democratic in spirit. Our proposal is not radical and extreme. Rather, it is peaceful and rational, able to stand all tests. We hereby sincerely recommend this proposal to all Hong Kong people and our democratic allies. President, I can assure on behalf of the Civic Party that although our Party has a very short history and a very small size, we will still do our utmost to return the vote to Hong Kong people and bring the topic to the public for discussions. This should be the common aspiration of all of us.

President, as we see how Donald TSANG has broken his election promise, how some pro-Beijing personalities have claimed that functional constituencies and universal suffrage can co-exist, how some Deputies to the National People's Congress have argued that universal suffrage is only about universality and has nothing to do with equality, and how the Government has shamelessly rehashed the 2005 constitutional reform package in the recently published consultation document on constitutional reform, we are all outraged and saddened. President, the retention or otherwise of functional constituencies is the key to differentiating genuine universal suffrage from farcical universal suffrage. "Resignation en masse of Members returned from five geographical constituencies as a referendum" can provide all Hong Kong people with the precise opportunity of voicing their positions through the ballot box on whether there should be genuine or farcical universal suffrage in Hong Kong. In this way, all the people of Hong Kong can declare their positions. The Civic Party knows only too well that
"resignation en masse of Members returned from five geographical constituencies as a referendum" is going to be a very tough battle. But since we are elected to the legislature by the masses, we should trust and respect the choices of the people.

President, like many Hong Kong people, the Civic Party hopes that dual universal suffrage can be implemented expeditiously in 2012. We also accept the conduct of a referendum as a means of enabling the people to participate directly in the struggle for democracy. We therefore agree to the underlying spirit of Mr WONG Yuk-man's original motion. However, we at the same time understand that since many people realize the difficulties of implementing dual universal suffrage in 2012 in the face of the decision made by the NPCSC, they are prepared to accept a timetable with deadlines, that is, the implementation of genuine universal suffrage in the elections of the Chief Executive and the Legislative Council in 2017 and 2020 respectively at the latest. No matter when genuine universal suffrage can eventually be implemented, the implementation of genuine universal suffrage, not farcical universal suffrage, is always the greatest concern of the Civic Party.

President, in order to rally the support of more people for the new pro-democracy movement, that is, "resignation en masse of Members returned from five geographical constituencies as a referendum", the Civic Party wishes to adopt the topic of "implementing genuine universal suffrage and abolishing functional constituencies" as a means of broadening the pro-democracy spectrum. It is also our intention to adopt a tolerant attitude, so that we can create the opportunity for more supporters of the democratic camp to voice their positions in this movement.

The Civic Party and the League of Social Democrats have reached a consensus on the topic of "resignation en masse of Members returned from five geographical constituencies as a referendum". At the same time, we sincerely call upon all in the pan-democratic camp to unite and participate in this new and all-people pro-democracy movement. It is hoped that they can mobilize the greatest possible number of people to voice their position clearly and directly to the Central Government, the SAR Government and those syndicates with vested interests: The implementation of genuine universal suffrage and the abolition of functional constituencies.

President, I so submit.
SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, the original motion and amendments put forward respectively by the three Members today all touch upon the conduct of a referendum and request the Government of the Special Administrative Region (SAR) to reflect Hong Kong people's aspiration to Beijing. Their individual requests pertaining to the motion topic are however not entirely the same. Mr WONG Yuk-man asks for the implementation of dual universal suffrage in 2012. Mr Alan LEONG advocates the introduction of genuine universal suffrage and the abolition of functional constituencies. And, Mr LEUNG Yiu-chung proposes to determine the constitutional development in 2012 and afterwards by holding a referendum.

On the views expressed by the three Members in the original motion and amendments, I wish to give a five-point reply.

First, regarding the fact that some Legislative Council Members still cherish the hope of succeeding in fighting for the implementation of dual universal suffrage in 2012, I have repeatedly explained that their hope is not in compliance with the decision on the timetable for implementing universal suffrage adopted by the Standing Committee of the National People's Congress (NPCSC) in 2007 — 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).

In 2007, when the NPCSC made the Decision on the timetable for implementing universal suffrage, full consideration was given to the social and public aspiration to universal suffrage in Hong Kong. And, in July 2007, the SAR Government published the Green Paper on Constitutional Development and launched a public consultation exercise on universal suffrage.

Subsequently, the Chief Executive fully reflected the views expressed by Hong Kong people to the Central Authorities. Any fresh attempts to make the NPCSC alter the constitutional decision it adopted in 2007 are therefore unrealistic. The Decision of the NPCSC on the universal suffrage timetable is a very firm one and cannot be altered in any way. The most pragmatic approach today should be the achievement of democratic progress in 2012, not marking time.
Second, I wish to point out that there are indeed many divergent views on how functional constituencies should be dealt with in the long run. The Government can fully understand all these views. We can hear pan-democratic Members’ hope of abolishing functional constituencies very clearly, but at the same time we also know that other political parties and groupings, as well as individuals would like to see their retention. This issue will continue to be discussed and debated both inside and outside the legislature in the run-up to 2020. We must discuss this issue thoroughly in the run-up to 2020.

However, in the meantime, we must not ignore one political reality either — at present, half of the 60 Legislative Council Members are returned by functional constituency elections, and the other half by direct elections held in geographical constituencies. If we are to secure the passage of a package of proposals by a two-third majority in this legislature, we must first strive to forge a consensus between functional constituency Members and directly elected Members and ensure their support for a common direction.

For this reason, the direction presently put forward by the Government is the most realistic. We hope that in 2012, there can be a legislature comprising 70 seats, with as high as 60% of the 70 seats returned by direct elections in geographical constituencies or by indirect elections. From now on, we must make every attempt to achieve democratic progress for the Legislative Councils to be formed in 2012, 2016 and 2020. And, we must also strive to form the Legislative Council under the principle of universality and equality in 2020.

The third point I wish to discuss is that the report submitted by the Chief Executive and considered by the NPCSC in December 2007 already reflected the fact that in the opinion polls conducted in 2007, more than half of the respondents supported the implementation of dual universal suffrage in 2012. The Chief Executive also explained very clearly to the Central Authorities that these views should be taken seriously and duly considered.

But it must be noted at the same time that roughly 60% of the respondents at that time also expressed support for the election of the Chief Executive by universal suffrage in 2017 if such an arrangement could not be implemented in 2012.
It can thus be concluded that the NPCSC had indeed fully considered the social and public opinions in Hong Kong before specifying the implementation of universal suffrage for the election of the Chief Executive in 2017 and the Legislative Council in 2020.

The third-term SAR Government is only tasked to deal with the two sets of electoral arrangements for 2012, but if any political parties and groupings, Members, organizations and members of the public put forward any proposals on implementing universal suffrage for the elections of the Chief Executive and the Legislative Council during the three-month public consultation period, we will still collate and summarize all these views, and hand them over to the fourth-term SAR Government to be formed in 2012 and the fifth-term SAR Government to be formed in 2017, so that they make reference to these views when working on the models of universal suffrage for the elections of the Chief Executive and the Legislative Council.

The fourth point I wish to mention is that Mr LEUNG Yiu-chung has once again requested the conduct of a referendum for making a decision. In this connection, the Basic Law Categorically states that any consensus on constitutional development must satisfy three prerequisites: the support of a two-thirds majority of all Members of the Legislative Council, the consent of the Chief Executive and the submission of the reform package to the NPCSC for approval, or for the record. The position of the SAR Government is very clear: Our constitutional development must be in full compliance with the Basic Law, which does not provide for the conduct of any referendum. Mr LEUNG Yiu-chung made it a point to say that during the Basic Law consultation period years ago, it was mentioned in a draft Basic Law for solicitation of opinions that a referendum could be considered. But I must point out that in the Basic Law finally promulgated in April 1990, the tripartite consensus mentioned above is specified in its Annex 1 and Annex 2. It is therefore clear that in the process of formulating the Basic Law years ago, the option of conducting a referendum was already ruled out. In other words, there is never any such option.

The fifth point I wish to discuss is about Mr WONG Yuk-man's and Mr Alan LEONG's appeal to the public for supporting the campaign of "resignation en masse of Members returned from five geographical constituencies". Mr WONG reiterated the pan-democratic camp's insistence on promoting democracy,
saying that this was a conviction cutting across all pro-democratic political parties and groupings. Well, as a matter of fact, all the political parties and groupings in this Council do have different views on how universal suffrage can be achieved, and all hold fast to their own convictions in varying degrees. If we want to serve Hong Kong people and take Hong Kong forward in the direction of democracy, we must really seek common ground and tolerate differences.

My reply to Mr WONG Yuk-man and Members today is actually very straightforward. On the one hand, we will seek to forge a consensus on introducing new democratic elements to the two electoral methods for 2012. On the other hand, we also think that the various political parties and groupings can continue to advocate the models which they think should be adopted for the election of the Chief Executive in 2017 and the Legislative Council in 2020. Supporting democratic progress in 2012 and continuing to fight for suitable universal suffrage models for 2017 and 2020 are not mutually exclusive. By now, no political parties and groupings should say no to the making of democratic progress in 2012. Our constitutional development must not mark time.

President, my reply for the time being only covers these points. I shall give a further reply at a later time. Thank you, President.

MR CHEUNG KWOK-CHE (in Cantonese): President, another critical moment in the course of constitutional reform has arrived. I believe that both inside and outside the legislature, "resignation en masse" must be the main topic of discussions besides the content of the consultation document.

I support the idea of conducting a referendum to decide whether universal suffrage is to be adopted for electing the Chief Executive and all Members of the Legislative Council because this is a major issue that affects the future of Hong Kong. In regard to making a decision on this issue, Chief Executive Donald TSANG cannot possibly determine the future development of democracy in Hong Kong simply by saying, "My views are the views of Hong Kong people."

A referendum is the embodiment of direct democracy that can enable the citizens of a place to participate directly in public affairs. Since representatives in a political assembly returned through the electoral system are only an indirect manifestation of the people's mandate, these representatives cannot fully and
directly reflect the views of their electorates on some major issues. This explains the emergence of the concept of referendum in society. A referendum law is already in force in many democratic countries and regions to resolve major political disputes and even constitutional problems. We have heard from Mr WONG Yuk-man that in Taiwan, even a livelihood issue may form the topic of a referendum.

Unfortunately, since there is no referendum law in Hong Kong, members of the public do not enjoy such a right of directly expressing their views. What is more, since half of the Members of the existing Legislative Council are returned by functional constituency elections, the legislature is totally unable to fully reflect the people's views. I believe that in the absence of any viable alternatives, "resignation en masse of Members returned from five geographical constituencies" can enable the people to express support for the causes they prefer in the by-elections. This can serve as a de facto referendum. In the absence of a referendum law, this is undeniably a compromise.

I wish to point out that despite "resignation en masse of Members returned from five geographical constituencies as a referendum" is indeed different in form from a genuine referendum, the purpose is just the same in both cases — giving all the electors a chance to vote on a topic. As long as the pan-democratic candidates can designate a clear and precise topic in the by-elections in the five constituencies that can let the public understand clearly the purpose of the by-elections, the effect of a referendum can be achieved. As for how we are going to treat the results of the de facto referendum, it is only a minor issue because if we can make reference to the practices of referendums of other regions and countries, we will be able to reach a conclusion. And, society will also be able to reach its conclusion.

Besides, I believe that "resignation en masse of Members returned from five geographical constituencies" will produce impacts on Hong Kong's political culture, in the sense that it can arouse a political awareness in more people and, more importantly, serve to educate the young generation. From a broader perspective, we can even see that this de facto referendum will not only attract international attention but will also set an example on how our country should accord equality to its people.
I am convinced that "resignation \textit{en masse} of Members returned from five geographical constituencies" can manifest the people's preferences, enabling the Special Administrative Region Government as well as the Central Government to realize the real aspiration of the people and also disprove the Government's misleading portrayal of public opinions with the false claim that there is "no majority support" among the people.

Frankly speaking, the consultation on constitutional reform this time around is nothing but an exercise conducted inside a bird cage. It only discusses the electoral methods for 2012 without saying even a single word on when the very undemocratic functional constituency seats and separate voting mechanism are to be abolished. The aim is to curb the democratic progress in Hong Kong and even lead it to a political ecology of farcical democracy. I therefore fail to see any progressive aspects in the proposed package. If the Government wants to know the people's aspiration and whether its proposal really has their majority support, why does it refuse to take the direct action of conducting a referendum? Just now, the Secretary remarked that the Basic Law did not mention the conduct of a referendum. But does this thus mean that a referendum cannot be conducted? Does this mean that we cannot set up such a mechanism? Does this mean that we cannot decide to have it conducted in Hong Kong? If the result of the referendum shows that Hong Kong people do not want to implement dual universal suffrage in 2012, we will willingly accept the outcome. We will not be such a bad loser.

President, I so submit.

**MR ALBERT HO** (in Cantonese): President, at its meeting on 13 December, the Democratic Party will vote on the motion put forward by Mr WONG Yuk-man today, that is, the issue of "resignation \textit{en masse} of Members returned from five geographical constituencies as a referendum". All Legislative Council Members belonging to the Democratic Party shall then abide by the resolution made by the party meeting. Therefore, all the remarks delivered by Members belonging to the Democratic Party today are only our views at this moment.

As a pro-democracy activist in Hong Kong for some two to three decades, I will first present my analysis of the argumentation relating to "resignation \textit{en masse} of Members returned from five geographical constituencies as a
referendum”. As far as my understanding goes, there are two points in the argumentation. First, it is hoped that the action of resignation en masse can lead to a *de facto* referendum. A topic will be specified, in the hope that the people can state their positions on the basis of "one person, one vote". Second, whatever the outcome of this *de facto* referendum may be, the advocates will still think that victory is on their side because they have returned the decision-making power to the people. But Members must realize that what the people really get in practice is just the right to make their voices heard or to state their positions. It cannot be denied that since the aim of this action is to enlarge the room for social discussions and public participation, it is appealing and desirable to a certain extent. However, I cannot agree that the consequences and impacts of the success or failure of such a *de facto* referendum should be ignored or completely ignored.

In the explanatory statement issued by the League of Social Democrats in September, there is a very clear point, quoted as follows, "We are of the view that if the people decide to accept the Government's proposal at this point in time and voice their position of not fighting for full direct election for the time being, the pan-democratic camp has no alternative but to respect their opinion." In other words, in case the outcome of this voting shows that the topic the advocates propose fails to get support, the participants must still abide by the outcome. The impact is therefore very serious and far-reaching. Precisely for this reason, the Government is likewise very concerned about how success and failure are defined in this campaign. It has even asked the advocates what definitions will be adopted.

I despise the Government's actions because they are a clear indication of its bad-loser mentality. This explains why it looks at a referendum with such an attitude. In a word, it is scheming and ill-intentioned. Therefore, we must tackle the situation squarely, because the advocates must themselves realize that they must abide by their undertaking. They must not be flippant in attitude and must handle the matter very seriously. I must therefore emphasize once again that we must not ignore the risk of failure in this campaign. The reason is that if we fail, we will not only lose our seats in the Legislative Council but will also lose our grounds of advocating the topic. We will also lose our power of veto in the Legislative Council. Worse still, the participants may even be forced to support a regressive constitutional reform package which we think should not be supported. From an objective point of view, we also think that the rules for the
so-called de facto referendum are not fair enough, in the sense that if the participants lose, they are forced to abide by the outcome, but if they win, the Government can simply turn a blind eye to their victory. Therefore, I must point out that a fear of failure is not the reason for our refusal to take part. Rather, all is because we refuse to accept any unfairness.

The Democratic Party has held 10 internal seminars open to all party members, and it has also conducted three to four opinion polls. In addition, all District Council members belonging to the Democratic Party and all party members working in the community have each paid at least 30 to 50 household visits to gauge the people's opinions. In some cases, more than 100 visits have been conducted. Following all this, we have found that people's understanding of the advocacy of this campaign …… After explaining the case clearly to them, we have found that their views are divided. I must point out that even inside the democratic camp, the rates of support and opposition are just roughly the same. I dare not say that those who oppose the campaign must outnumber the supporters. Therefore, the launching of the campaign under such circumstances will indeed involve very high risks.

I think what the democratic camp should now do is to defend the power of veto possessed by its 23 Legislative Council Members. Then, it should continue to fight for dialogues with the Government and Beijing, mobilize public support for mass movements, help the people voice their opinions and fight for democracy. It is true that we have been staging open protests such as processions, assemblies and hunger strikes for more than two decades. But Members must not think that all these protests have been useless. If our civil society, basic liberties and other rights had not been safeguarded by all such movements in the past, I am afraid Hong Kong would have been turned into another Macao or Shenzhen. Worse still, a second power centre would have emerged. And, legislation enacted to implement Article 23 of the Basic Law would have resulted in wanton oppression. Therefore, we must not belittle the efforts we made in the past.

Let us now look at the situation we are faced with. Living in a haven of peace threatened however by the presence of the People's Liberation Army, we cannot ignore all the objective limitations in our fight for democracy. We must not be urged by any romantic impulses to take any uncalculated risks and put all our eggs in one basket, nor should we allow a lack of will power and
determination to make us give up altogether and resign *en masse*. Rather, we must show patience and perseverance, all the time prepared for protracted struggles. We must also hold fast to our posts and fight for every inch of progress, so as to continuously expand the room for democracy and eventually create a new paradise of democracy. We are convinced that justice is on our side and victory will surely go to democracy.

Thank you, Honourable Members.

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

**DR PRISCILLA LEUNG** (in Cantonese): President, the motion and amendments today are all the consequence of pan-democratic Members' discontent with the constitutional reform package recently put forward by the Government. Such discontent has led to the present proposal of "resignation *en masse* of Members returned from five geographical constituencies".

As a Member of the Legislative Council, when other Members who are dissatisfied with certain government policies eventually choose to resign in protest, I will certainly respect their decisions. I think that we should all respect such decisions. However, I cannot quite agree to the saying that the by-election held after the proposed resignation *en masse* is a *de facto* referendum.

First, very honestly, the conduct of a referendum is nowhere mentioned in the Basic Law. These days, the mass media have been playing up the significance of the by-election outcome, using simplistic computations to argue that it is equivalent to the voting outcome of a referendum on a certain topic, which can pinpoint, for example, the percentage of those who support the implementation of dual universal suffrage in 2012. I do not think that there is any legal basis for such a viewpoint.

It may be all right to advance this argument in political propaganda, and the mass media may also argue this way. But I think that in order to have a correct interpretation of the by-election, we must clarify one point today. A by-election may involve many factors and considerations. Even if a certain candidate puts forward only one single topic, some electors may still prefer him. One example
is Mr LEUNG Kwok-hung. Electors may prefer him not so much because of the 2012 issue. Rather, they may prefer him because of his radicalism. Or, in the case of another candidate, since some electors may not want him to lose his seat in the Legislative Council for various reasons, they may be very eager to vote for him, in the hope that he can regain his seat in the Council. Therefore, the whole thing is different from a typical referendum on one single topic. The reason is that the so-called referendum being proposed is bundled with a Legislative Council Member who has lost his or her seat. I do not think that such a bundling approach is fair to electors.

Second, I do respect the Legislative Council as part of the establishment. I am of the view that the four-year term of the Legislative Council is no arbitrary arrangement. Members must realize that many topics are often put aside in times of general elections in society. Even in my own case, my focus during the past election was very sharp, in the sense that everything I did was meant to serve the purpose of electioneering. Many significant social and economic topics will not be treated as major concerns in election years. Therefore, the holding of an election once every four years will in fact demand huge input of manpower and resources. And, such an election will also attract the attention of the public and the mass media, because an election has been turned into some kind of competition. All will just concentrate on uncovering the faults of their rivals and then engage in mutual attacks.

There will be an election once every four years, but we also note that under the existing mechanism, under the Legislative Council Ordinance, a Member can resign at any time without giving any reasons. And, there is no regulation to forbid the same Member to run in the by-election after his resignation. Therefore, in theory, Members can indeed choose to resign for reasons of any topics. That being the case, when I look at the proposal of "resignation *en masse* of Members returned from five geographical constituencies" again, I will consider whether such a precedent will encourage other Members or the same group of Members to stage their protest in the same way in the future. It may even be possible that within certain political parties or grouping, some who could not become well-known as a Member may choose to run in a by-election, thus making it necessary for the entire camp to mobilize its resources. Such a scenario could be seen in the by-election involving Regina IP and Anson CHAN in 2007.

Other Members should not behave simply like on-lookers, saying that they can do nothing, and all of them are bound to be involved. For this reason, the
schedules of all other Members will be affected by the by-election. Well, this may precisely be the scenario desired by those Members advocating "resignation en masse of Members returned from five geographical constituencies". But since all of us will be forced to get involved under the by-election mechanism, I must voice our opposition.

Under the existing Legislative Council Ordinance, a vacancy in membership must be declared within 21 days after it is known. And a by-election will then be held. According to the convention in the past, when a certain Member passed away or when a certain Member was convicted, a by-election was held very quickly within three months. However, in cases where a Member resigns for other reasons or certain topics, is there any specific timeframe drawn up by the Legislative Council for the conduct of a by-election? Honestly, what I saw in the past was only a convention, not an obligation.

I wish to say to those Members who intend to or will participate in the campaign of resignation en masse — I have also received a copy, and I think I am just a third party because I am not going to take part — that the public do not support spending any public money on resignation en masse. I have received many views and asked many people whether they will support resignation en masse or the allocation of funding for the purpose. It seems that no one has expressed support for resignation en masse, not to mention the spending of public money on a by-election. This time around, five Members want to resign. Next time, will there be more, and will more money have to be spent?

There is also the argument that each Member who resigns will only spend $50,000. But this is not the case in reality. I think the most costly thing will be the publicity efforts to ask the public to cast their votes. Regarding the public money spent in this regard, I shall leave the detailed explanation to the Secretary. For all these reasons, I have reservations about the proposal. I do not think that any Members should resign simply because of their dissatisfaction with the Government's policies on one single issue, so I will not encourage and support the present proposal of resignation en masse and any similar actions in the future that may involve even more Members.

PRESIDENT (in Cantonese): Does any other Member wish to speak?
DR MARGARET NG (in Cantonese): President, first of all, I wish to point out that the amendment proposed by Mr Alan LEONG from the Civic Party today is about fighting for the implementation of genuine universal suffrage and the abolition of functional constituencies.

On a number of past occasions, we already explained why the Civic Party did not express any support when the League of Social Democrats (LSD) first put forward the idea of "resignation en masse of Members returned from five geographical constituencies as a referendum". The reason was that the topic put forward by the LSD at that time was the implementation of dual universal suffrage in 2012. The Civic Party thought that our election to the Legislative Council by electors was sufficient proof of the public support for the implementation of dual universal suffrage in 2012, so it was no longer necessary to carry out any further tests. However, the Government has recently put forward to the public an even more deceiving package, one which mixes functional constituencies with what it calls universal suffrage. We therefore think that it is necessary to change the topic to "fighting for the implementation of genuine universal suffrage and the abolition of functional constituencies". We are very pleased that the Civic Party and the LSD can now agree on a common topic which can take us a step forward in the conduct of a referendum on universal suffrage.

Just now, the Democratic Party mentioned the importance of the power of veto we possess. But we are of the view that the power of veto alone is not enough because it can only enable us to vote down undesirable packages. To promote the cause of democracy, we must be prepared to make stronger efforts.

Why do we advocate resignation and the conduct of a by-election? We have always maintained that the pro-democracy movement in Hong Kong has already reached a point where it must take a new form. The staging of protests and the submission of petitions are all tactics of petition politics. At this stage, our civil society should ascend to the level of a pro-democracy movement of a different nature — a participatory political movement, whereby all can voice their aspirations through their votes, not only in ordinary elections but also on major topics. Because of various hindrances, Hong Kong people have been unable to voice their views directly in any referendums. The conduct of a by-election is precisely one of the means that can enable the people to voice their views by casting the votes they have. By doing so, they can voice their inclinations, and
decisions can also be made on the basis of their inclinations. This is a transformation from petition politics to participatory politics. I am of the view that Hong Kong is already mature enough to make such progress.

President, in the process, many of our friends have been advising us not to take such a risk. They wonder what will happen to the power of veto possessed by the 23 pan-democratic Members in case the Civic Party loses two Legislative Council Members or Mr Alan LEONG fails to out-compete those highly popular candidates from other political parties or groupings. They doubt whether such a move can do the Civic Party any good.

President, I am very proud to say that the question asked by most Civic Party members is not about the benefits that the party can gain. Rather, their question is all about the principle that the Civic Party should adhere to when faced with such an unfair system. Our principle is that we must eliminate social injustices and fight for a fair system. We are of the view that the constitutional reform package recently put forward is very unfair. And, unfairness is not the only thing. There is something else that outrages us even more. It knows that the package is unfair. It has also admitted this fact, agreeing that functional constituencies are not in accordance with the principle of universality and equality. But still, it refuses to do anything and simply seeks to protect such privileges. I maintain that the Civic Party cannot turn a blind eye to such an attitude. Therefore, we are of the view that we must do our utmost to promote the implementation of a fair system.

To sum up, I must state that the abolition of functional constituencies is a very important topic to us. We must do our utmost to work for this cause. I am also very pleased to see that Civic Party members are prepared to uphold the principle of fairness and take democracy a step forward. Thank you, President.

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

MR LEUNG KWOK-HUNG (in Cantonese): President, having listened to Dr Priscilla LEUNG's speech, I must say that she is not a sensible person. Honestly, why has the issue of conducting a de facto referendum emerged? The answer is that it has something to do with other morbidities. The main reason is
that we have a morbid legislature, a morbid Government and a morbid Chief Executive. What do I mean? What I mean is that our Government and the Legislative Council are not returned by elections based on a sound principle, the principle of universality and equality. We have been caught in such a morbid state for 12 years. Under the Basic Law, "all the cards will be shuffled" in 2047, and we will have to start all over again. But we have already spent nearly 12 years, that is, one quarter of 50 years, on fighting for three quarters of universal and equal voting rights, if we are able to do so.

I must ask all those who oppose the campaign of "resignation en masse of Members returned from five geographical constituencies as a referendum" to consider one point. They do not agree with us, but if they think that we are not supported by public opinions, why are they so terrified by this campaign? They should count on the opinion support they have as a means of defeating the so-called opposition camp who has been accused by them of hijacking public opinions. They are Lord YE, the Lord YE who loved dragons. Morally, they are decadent. Politically, they are irresponsible.

And, I must even say that the resignation en masse of Members from five geographical constituencies as a referendum is basically a compromise. I myself once drafted a "Referendum Law" and handed it to the Government. But the Government did not pay any heed to it. Many people criticize us for not seeking to obtain public support through a formal referendum, for not expressing our views through this direct mechanism based on universality and equality, but has it ever occurred to them that we too tried to fight for such a right in the past? The law was drafted, but the Government simply ignored it.

The League of Social Democrats (LSD) is totally dedicated to this cause. We know that our power comes from the people. Our primary duty is to hold ourselves accountable to the people. We know that for 12 years, Hong Kong people have been denied any opportunity of voicing their views on constitutional reform under a straightforward and direct mechanism based on universality and equality. What kind of excuse has the Government of the Special Administrative Region (SAR) been using to deny the fact that the pan-democratic camp has persistently obtained 60% of votes in all elections? Its excuse is that there are just too many issues, so public opinions cannot be accurately reflected. Our plan to resign and bring forth a de facto referendum is meant basically as a response to such an excuse. We want to ask electors to cast their votes on one
single topic. If Dr Priscilla LEUNG is really correct in saying that many factors and considerations are involved in an election, I suppose it will be impossible to hold any elections in this world. Will you place another ballot box outside a polling station and ask electors, "Why do you vote for Priscilla LEUNG? Is that because she can catch rats, ants and bugs?" No one will do anything like this. What she talked about is a necessary evil. One must discard the electoral system if one does not accept it.

Honourable Members, personally, I have some profound feelings about this issue. I can remember that before I became a Legislative Council Member, I once suggested to my friends in the democratic camp that they might resign as a means of bringing forth a de facto referendum. I was cold-shouldered. One of them said, "Since you are not a Legislative Council Member, you can of course say such things and ask me to resign." Today, I am lucky enough to be a Legislative Council Member, so I can make sacrifice for my conviction and materialize our goal. I now have the honour to say that I do not need to rely on others to materialize my personal conviction. For this reason, I shall have no regret. I look forward to the upcoming referendum with immense delight. And, I must make an appeal to all those who support the pan-democrats.

Many people have rung me up and sent me emails, saying, "Long Hair, you must not resign. I elected you to the Legislative Council. I do not want you to lose the power of monitoring the Government, criticizing the Government, spurring the Government on and hurling bananas." I invariably advise these people that if they really want to have some Legislative Council Members who can truly monitor the Government, serve the people, speak for the people and enact legislation for the people, then in the upcoming de facto referendum, they must unequivocally vote for those Members who have resigned en masse. In this battle, we are going to fight for our dignity and the well-being of Hong Kong people in the several decades to come. A government returned by a handful of people and a legislature manipulated by Members returned by coterie elections will never understand the people's opinions and hold themselves accountable to the people.

Lastly, I wish to read aloud a passage written by anarchist PROUDHON in prison to share with all of you, "The movement is no doubt irregular and crooked, but the tendency is constant. What every government does in turn in favor of revolution becomes inviolable; what is attempted against it passes over like a
cloud: I enjoy watching this spectacle, in which I understand every single picture; I observe these changes in the life of the world as if I had received their explanation from above; what oppresses others, elevates me more and more, ……

PRESIDENT (in Cantonese): Time is up.

MR LEUNG KWOK-HUNG (in Cantonese): …… inspires and fortifies me; ……

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, your speaking time is up.

(Mr LEUNG Kwok-hung ignored the President and went on speaking)

MR LEUNG KWOK-HUNG (in Cantonese): …… how can you want me then to accuse destiny, ……

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung ……

MR LEUNG KWOK-HUNG (in Cantonese): to complain about people and curse them? Destiny — I laugh at it; ……

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, please stop speaking.

MR LEUNG KWOK-HUNG (in Cantonese): …… and as for men, they are too ignorant, too enslaved for me to feel annoyed at them.”¹

¹ From translation of Trotsky’s "My Life" (Trotsky Internet Archive) (http://www.marxists.org/archive/trotsky/1930/mylife/index.htm)
PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, please stop speaking immediately.

MR LEUNG KWOK-HUNG (in Cantonese): Thank you, President, for your indulgence.

MR CHIM PUI-CHUNG (in Cantonese): President, I must first denounce you. When you were running for the Presidency of the Legislative Council, I told you that you must uphold fairness and reasonableness for Members. I am not trying to pick on Mr LEUNG, but I must ask you to admit your mistake, in very much the same way as you ordered me to withdraw that particular remark earlier today. I never fail to take revenge.

PRESIDENT (in Cantonese): Mr CHIM Pui-chung, I have heard your opinions. Please be seated first.

MR CHIM PUI-CHUNG (in Cantonese): Okay, please give your explanation.

PRESIDENT (in Cantonese): In accordance with the Rules of Procedure, if a Member speaks in excess of the time limit, I must order him to stop speaking. As Honourable Members could hear just now, when Mr LEUNG Kwok-hung spoke in excess of the time limit, I did follow the Rules of Procedure and order him to stop speaking.

MR CHIM PUI-CHUNG (in Cantonese): President, your were not authoritative enough because he did not listen to your order. What could you do?

PRESIDENT (in Cantonese): Please carry on with your speech.
MR CHIM PUI-CHUNG (in Cantonese): Okay, earlier today, I admitted my mistake to you. Now, you have admitted your mistake to Members. We are even.

President, there is something wrong with today's motion debate on the proposal of resignation *en masse* of Members returned from five geographical constituencies. Why? A total of 19 pan-democratic Members are from the five geographical constituencies. Therefore, should they be talking about the resignation *en masse* of these 19 Members? As reported by the mass media, this is not the case in reality. Instead, they are talking about the resignation of one Member in each geographical constituency, or the collective resignation of one Member in each geographical constituency. Therefore, the President should be held responsible to a certain extent for approving this motion. There is presently no legal basis for the conduct of a referendum in Hong Kong. Therefore, President, you must explain to us why you approve their motion. Anyway, I will still abide by your ruling.

President, in the 2008 Legislative Council Election, pan-democratic candidates obtained 19 seats (I must congratulate them on this), that is, two seats more than my prediction of 17 seats. This can prove that at the time, Hong Kong people, especially young people, recognized and approved of pan-democratic Members' political conviction and advocacy. This is an undeniable fact. This can also prove their victory. Mr Ronny TONG was one of them. He had to pay a price for running in a direct election for he must sacrifice his career as a barrister. But he obtained electors' support. This was superb. However, President, at present, five pan-democratic Members may take part in the campaign of resignation *en masse*. How can they still face their constituents? They advocated the implementation of dual universal suffrage in 2007 and 2008, but they failed to make it happen. So, they now fight desperately for the implementation of dual universal suffrage in 2012. We do not know whether their desperate struggle will succeed, but I think they should really resign. Why? Since they fail to fulfil their election undertaking, they should resign. Well, they can always resign if they want to, but how can they think that they are qualified to drag others in? The five Members intending to resign *en masse* may …… I only learn this from newspapers and the mass media, so I am not sure whether this is true. But if it is true, then they may well be "coerced", and they may have never said that they are willing to resign. Why? The reason is that many of them are not yet able to serve their constituents and
fulfil the promises they made to their constituents. They still owe their constituents a lot, so how can they be qualified to talk about resignation? There were indeed cases of forced marriages in the past, but how can anyone be forced to resign? Something like this has still happened in our society, President. I think there must be some problems with the electoral systems in Hong Kong.

For this reason, all these unreasonable resignations are betrayals of constituents. Constituents are treated like idiots. Why? The reason is that candidates all put forward very grand election platforms, and this was especially the case with professionals. Thus, they gained the support of constituents. But now, after their election, they want to resign for reasons of opposing this electoral system. Did they at that time promise their constituents that if they could not succeed in fighting for the implementation of dual universal suffrage in 2012, they would definitely resign? If yes, their resignation is very reasonable. If no, we must say that they have lied to their constituents. But this does not matter because in this world, people all lie to one another. Some people just want to believe others' lies. It is all right as long as a lie works. This is the case between husbands and wives, among people in society and between election candidates and electors. Can there be any difference?

Let me return to the motion topic today. President, they may always resign if they cannot do their jobs well. But the problem is that they are trying to shift the responsibility to electors. They decide to resign, but they want electors to bear the responsibility, the responsibility of electing them again in the by-election. Do they really think that all Hong Kong people are imbeciles? I believe that people watching the live broadcast of this meeting on television or listening to it on the radio must find my remarks very cool. It may be a bit vulgar to use this word, so I should say "interesting". The reason is that CHIM Pui-chung is making all these remarks here like a fool. But I am just being honest, President.

Legislative Council Members must attach importance to keeping their undertakings and promises. If a political party does not do so, how can it obtain any donation of funds? I can assure Members that if a political party passes the hat around for donations but then deceives its constituents, it will not obtain any support in the end. President, I actually do not want to express my views in such a way. The success of Hong Kong owes itself to opportunities and harmony. Hong Kong cannot become independent, so what will happen if it chooses to
confront the Central Government? I believe that our clever Hong Kong people and electors will be able to make their choices.

President, I once undertook and assured that I would be the sixth Member to resign. I will not break my promise. This means that if five Members returned from five geographical constituencies really resign en masse — perhaps not en masse but all at the same time — I assure I will be the sixth Member to resign. The outcome of this sixth resignation is that I have not adequately fulfilled my undertaking to the constituents in the functional constituency I belong to. Fortunately, I was automatically elected in the election last year, so I did not make any undertaking to my constituents. It is purely my personal decision to resign and run in the direct election in geographical constituencies. I only want to remind pan-democratic Members that they must respect their constituents and their election undertakings.

MISS TANYA CHAN (in Cantonese): The development of the pro-democracy movement must be based on the people's rights. In the face of the formidable power of conservative forces, people who strive for democracy must learn how to be flexible and how to promote their cause with a combination of different strategies. Political parties, society as a whole and Members should co-operate with each other in their individual capacities and work for the common goal of promoting democracy.

The most important impetus for the pro-democracy movement should not come from the seats occupied by any political parties in the legislature or from any individual leaders. Rather, the people should provide the most important impetus.

The march on 1 July in 2003 was a testimony to the greatness of the people's power. This event is closely related to the founding of the Civic Party because the Civic Party was founded following the 1 July march in 2003 with the ideals of promoting the cause of democracy, fighting for the truth and upholding social justice. All efforts we have made and will make in the course of political debates and discussions are closely entwined with the people's life, concrete rather than abstract.

The word "civic" in "Civic Party" denotes that the Civic Party is a political party based on the furtherance of civic rights and aimed at realizing the goal of
"returning power to the people". Undeniably, our analytical and expository power may be stronger than our mobilization power. Our party members may be more at home with writing essays than with surmounting police cordons. However, our commitment to the pro-democracy movement is no less than that of our pro-democracy allies. While fighting alongside one another on the avenue of democracy, all of us must hold ourselves accountable to the future generations and also our predecessors.

The Hong Kong people nowadays may find that given all the promises on "one country, two systems", "Hong Kong people ruling Hong Kong", "a high degree of autonomy" and "the maintenance of the status quo for 50 years", democracy as an ideal seems so tangible yet elusive. But it is a fact that the quality of governance has all the time been deteriorating. We are truly standing at a crossroads, having to decide what to do at this critical moment in the fight for universal suffrage.

The Standing Committee of the National People's Congress (NPCSC) has told us that 20 years after the reunification, Hong Kong may elect the Chief Executive by universal suffrage, and that universal suffrage may also be implemented to elect all Legislative Council Members 23 years after the reunion. However, the Central Authorities are reluctant to, or do not dare to, specify a roadmap for the implementation of genuine universal suffrage. What we have to do are all very clear — to ensure the right to vote and be elected in accordance with the principle of universality and equality, Chief Executive and Legislative Council elections marked by genuine competition, and an electoral method that can ensure political accountability.

The fact before us is that Donald TSANG has broken his promise of presenting an ultimate solution; Secretary Stephan LAM has not changed a bit; and, even Chief Secretary for Administration Henry TANG has flippantly put forward a ridiculous "2012 package" which completely ignores the aspiration to universal suffrage.

The Civic Party advocates negotiations first. It is ready to hold negotiations on any interim arrangements as long as the Central Authorities' interpretation of universal suffrage can conform to internationally recognized standards. But our words have simply fallen on deaf ears, so how can we talk about any sincerity and mutual trust? Quite the contrary, an avalanche of psychological warfare and propaganda efforts has already started. Capitalizing
on many people's desperation and helplessness, those in power have sought to wear down their will power and attempt to split and sap the pro-democracy movement. As people turn increasingly fearful of marking time, of missing the so-called "universal suffrage express" steered by Chief Secretary for Administration Henry TANG, of the futility of continued struggle, and of their own lack of determination, they will somehow fall into the trap of sham universal suffrage.

To free ourselves from this dilemma, to overcome our own fear and to rid ourselves of all such psychological constraints, we must take actions and mobilize the masses to voice the passion for democracy unanimously.

The strategy of "resignation en masse of Members returned from five constituencies" is both lawful and sensible. It can enable the people to make use of the concrete, precious and solemn votes in their own hands as a powerful means of directly participating in the new pro-democracy movement aimed at implementing genuine universal suffrage and abolishing functional constituencies. What is wrong with this? Our only aim is to say to all those who support democracy and our allies, "Now, you are in control."

My dear friends and allies, we must be extremely discerning; we must distinguish between the genuine and the sham; and, we must be determined. I sincerely call upon you all to do three things for the cause of democracy: first, join the discussions to deepen people's understanding of democracy; second, join hands with us to intensify the movement; and, third, join us to help Hong Kong by making ourselves determined fighters of democracy.

I also wish to take this opportunity to tell young people that when I was at your age, I thought that universal suffrage would have been implemented by now. However, this has not yet been the case. I hope that young people will not miss this opportunity. I hope that they can fight for democracy for their own sake. That way, they will not let down our predecessors and their next generation.

I so submit. Thank you, President.

PRESIDENT (in Cantonese): Does any other Member wish to speak?
MR RONNY TONG (in Cantonese): President, I have never abandoned the cause of democracy. Five and a half years ago, Dr Margaret NG approached me, requesting me to give up my professional practice and fight for democracy within the establishment. She did not tell me that it would be useless to fight for democracy within the establishment. Nevertheless, right since day one, I myself have been fully aware that it is always futile to fight for democracy within the establishment alone. But I must add that any form of voluntary withdrawal from the legislature, being it one day or one year in duration, will run completely counter to my conviction of political participation.

President, since the beginning of my political career, I have been wondering almost every day what will happen to Hong Kong if it is eventually denied genuine universal suffrage. I have also been wondering almost every day what will happen to me when genuine universal suffrage is eventually implemented in Hong Kong. However, President, it has never occurred to me that today, when I rise to speak on the motion topic, my position is so different from that of the Civic Party. But I cannot refrain from speaking on the motion topic.

The campaign of resignation en masse of Members from five geographical constituencies as a referendum may indeed arouse much passion and enthusiasm. Even Miss Tanya CHAN's speech was so very impassioned. The campaign is very appealing. Resignation en masse is a mass movement, but one prerequisite for a mass movement is unity and solidarity. Solidarity must be genuine in nature and must not be the result of coercion. GANDHI once remarked to the effect that true solidarity is solidarity that can stand the test of pressure and remain intact. In the case of false solidarity, I think, all major problems are simply swept underneath the veneer of "solidarity". And, this is actually the most likely cause of failure.

President, this morning, I received a letter from a "Hong Kong resident". As can be expected, the letter is meant to reprimand me. It is as impassioned as the speech of Mr WONG Yuk-man. It reads, "All pan-democrats must pluck up their courage and make sacrifices for the noble cause. They must have no fear and join hands to fight for a way out. They must display valour, speak for the masses and mobilize the forces of all people. They must behave like a dignified, enterprising and dauntless hero who can boldly face their descendants." By
sending me this letter, the sender seems to suggest that I do not possess any such qualities.

Last week, I happened to read an equally emotive article written by a veteran media worker, CHAN Sik-chee. The feelings expressed in this article are typical of the majority mentality expressed by my friends and the people I met with in the community nearly every day in the past few months. She writes, "As an elector who voted in every election in the past, I have become increasingly disgusted with the present arguments and debates. How did all these elected Members manage to join the legislature in the very first place? Were they not elected by each and every one of us? Now, they want to resign, but have they ever turned to us for any consultation? According to them, their continued presence in the legislature can no longer serve any useful purpose, because what they have is only the power of veto. They think that this power is such a paltry thing that they simply do not care about losing it. I must ask them when 'the theory of their useless presence in the legislature' has started. If they think that it is useless, why did they not tell me right at the very beginning? The election of each and every pan-democrat to the legislature owes a great deal to the huge efforts of all of us …… Now, simply by saying that their presence in the legislature is 'useless', they want to give up their seats as if such seats were all worthless …… They want me to voice my position on universal suffrage. I must tell them that I took part in the march on 1 July every year in the past. I have stated my position many times, to the extent that I am now even tired of doing so any more. If they really resign, thus enabling all those undesirable hopefuls to get a share, the 'position' I am going to state this time will be abstention and refusal to render any support."

President, when opinions are so sharply divided not only among pan-democrats but also among members of the public, can we still talk about the conduct of a referendum? Can we still assert that there is true solidarity among us? President, the fight for democracy in Hong Kong must be founded on the solidarity among its people. It is not the intention of CHAN Sik-chee and people with the same mentality as hers to abandon the cause of democracy. Nor are they any less impassioned in their quest for democracy than Miss Tanya CHAN. The only thing is that like me, they strongly disagree to the proposed tactic and strategy, that is, the motion today.
President, our debate today should have nothing to do with whether the pan-democratic camp is true to its principles and determined to fight for democracy. I hope that no pan-democratic Members will think that way. My point is that we must strive for solidarity. The solidarity I refer to is true solidarity, not false solidarity, not the kind of "solidarity" that sees the burial of divergent views under impassioned speeches. I hope everyone who aspires to democracy can give more careful thoughts to the meaning of genuine solidarity.

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

MR LEE CHEUK-YAN (in Cantonese): Earlier on, "Yuk-man" urged us to stand on the side of the egg. When I vote today, I will stand on the side of the egg because I support all the three of them. And, I also support all in the democratic camp even if there are any differences among us. I think the most important point is that since all of us are eggs, we must support one another. We are after all going to hit a stone with the egg.

In principle, I do not oppose the campaign of "resignation en masse of Members from five geographical constituencies as a referendum" because I believe that this can produce some positive impacts. This campaign can at least create more room for discussions and arouse extensive debates in society. In this way, the current issue of constitutional reform can become a "hot" topic in society. At the very least, therefore, the public can be induced to discuss Members' aspiration to and pursuit of democracy and universal suffrage.

Second, this campaign can indeed produce positive impacts. If we really succeed, every Hong Kong people will be able to directly participate in the process and cast his or her vote directly. There is of course a dangerous aspect to this proposal. I am talking about the risks involved. The question concerned may easily be distorted. The disputes among us may lead to the division of democracy supporters. We must carefully guard against such risks.

We must avoid any distortion of the question before we can achieve the effects of a referendum. To avoid any distortion is almost a mission impossible. But as long as we can stand together in unity, this mission impossible will become possible. In this connection, I always think that if we can unite, there
will be a future, and that if we cannot unite, nothing will be possible. That is why I hope that all pan-democrats can seriously consider how they can stand together in unity, so as to further the cause of democracy.

What "resignation en masse of Members from five geographical constituencies as a referendum" demands of the people is actually something modest. Members of the public are required to cast their votes only. Honestly, I think this demand is really much too modest. I have no objection to such a modest demand. But more importantly, I think that besides casting their votes, Hong Kong people must be a bit more enthusiastic. Without that kind of enthusiasm, without the determination to pursue ideals and democracy …… I am not saying that people should be prepared to die for the cause. But at least, they must be more enthusiastic. Therefore, I think that apart from "resignation en masse of Members from five geographical constituencies as a referendum", many more efforts must be made. Actions that were taken in the past — sit-ins, processions, hunger-strikes, and so on — must continue to be taken. And, we must also take actions that have never been taken until the day of success.

Therefore, I hope that Hong Kong people can be more enthusiastic. If all can be enthusiastic, we will succeed in whatever we do, including "resignation en masse of Members from five geographical constituencies as a referendum". I likewise hope that under the standard of solidarity, all pan-democrats can write a new chapter on the future of democracy in Hong Kong. Thank you, President.

MS AUDREY EU (in Cantonese): President, the two Members who spoke immediately before me, that is, LEE Cheuk-yan and Ronny TONG, both asserted that the democratic camp must unite. However, President, I think you are also aware that according to opinion polls, "resignation en masse of Members from five geographical constituencies as a referendum" is supported by 30% of the respondents, while 40% of the respondents is against the idea. Therefore, whether one is on the side of the 30% or the side of the 40%, one will have to agree that views are really divided. For this reason, I hope that efforts can be made to unite not only those in this legislature but also the people outside. According to LEE Cheuk-yan, unity can lead to success, and we must all be enthusiastic. Having listened to the speeches of Tanya CHAN and Ronny TONG just now, Members can notice that both of them are in fact equally enthusiastic and impassioned.
President, my position is between the respective positions of these two Members. I think that the pro-democracy movement must depend on the participation of the masses. The problem faced by the democratic camp right now is how the pro-democracy movement can be taken forward. Surely, one can always expect the Civic Party to join the actions mentioned by LEE Cheuk-yan a moment ago. We will surely take part. However, he cannot deny that some democracy supporters, on the other hand, do hope to have direct participation. That being the case, since the Civic Party always asserts that we will do our utmost and will not give up any opportunity of making progress, I suppose resignation _en masse_ should be one of the things we can do.

As a matter of fact, this is not the first time that the conduct of a referendum is debated in the Legislative Council. It has been debated many times. It was first raised by Dr Fernando CHEUNG. In all such debates in the past, the democratic camp invariably expressed its support for the conduct of a referendum. Therefore, this is in fact not something new. Some people think that the Civic Party is very moderate, so they wonder why it wants to stir up confrontation this time around. It seems that this is impudent insubordination. Well, mentioned also by LEUNG Yiu-chung earlier on, the conduct of a referendum was once a possibility considered in the process of drafting the Basic Law. Stephen LAM replied that a referendum was mentioned only in the first draft, and since the idea was subsequently ruled out and deleted, it should not be counted.

I wish to tell Secretary LAM that it was not the first draft. It was actually a version adopted by a resolution for publication. I am holding a copy of the Resolution of the Standing Committee of the National People's Congress on the Publication of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (Draft). The resolution was passed by a two-thirds majority on 21 February 1989 to endorse the publication of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (Draft). What I wish to discuss are Annex 1 and Annex 2 to this draft Basic Law. What is mentioned in Annex 1 on the selection of the Chief Executive? It reads, "During the term of office of the third Chief Executive, the Legislative Council shall formulate a specific method to decide, through a referendum in the Region, whether the Chief Executive shall be selected by general election after nominations are made by a broadly representative nominating committee in accordance with democratic procedures." Annex 2 touches upon the election of the Legislative Council. It provides, "During the
term of office of the fourth Legislative Council, the Legislative Council shall formulate a specific method to decide, through a referendum in the Region, whether all members of the Legislative Council shall be selected by general election. The result of the referendum shall be reported to the Standing Committee of the National People's Congress for the record.

Subsequently, the 4 June incident occurred. Eleven of the 18 Hong Kong Basic Law drafters issued a letter, asking for a faster pace of democracy and the deletion of the separate voting mechanism. This accounted for the Annex 1 and Annex 2 that were later adopted. The aim was to implement universal suffrage in 2007 and 2008. Therefore, the reference to a referendum was deleted not so much because it was considered an act of insubordination. At that time, the conduct of a referendum was mentioned, and an amendment was made following the 4 June incident. But it must be noted that the aim of the amendment was to quicken the pace of democratization. Regrettably, there were many subsequent distortions, including the change from a "three-step process" to a "five-step process". And, the original definition of universal suffrage is also altered. I also wish to point out that the existing Article 68 of the Basic Law on the election of the Legislative Council was originally Article 67. Article 67 of the Basic Law (Draft) published in October 1988 reads, "The Legislative Council shall be constituted by mixed elections." Mixed elections mean a combination of indirect and direct elections. However, in the ensuing discussions, someone raised the point that if specific reference is made to mixed elections, it would never be possible to implement universal suffrage. A point to be clarified regarding Article 67 reads, "If the members of the Legislative Council of the Hong Kong Special Administrative Region are to be selected by direct and indirect elections as provided for in the relevant provision, does it mean that there will be no universal suffrage in the Special Administrative Region after 1997?" This point was subsequently clarified, and Article 67 was changed to Article 68, which clearly provides that the ultimate aim is the implementation of universal suffrage.

When I spoke last time, I quoted from the third edition of the book complied by WANG Shuwen. It is explained clearly in this book that only an election based on "one person, one vote" can realize the implementation of universal suffrage. Owing to the time constraint today, I cannot repeat reading it. But I must call on Hong Kong people to borrow a copy of it from libraries. Copies of this book are available in the Legislative Council Library and the North
It is very difficult to buy this book in the market. I am talking about the *Introduction to the Basic Law of the Hong Kong Special Administrative Region*, edited by WANG Shuwen and published by the Party School of the Central Committee of the Communist Party of China. It states very clearly that universal suffrage is defined as direct election of "one person, one vote". But in its present consultation document, the Government defines universal suffrage as also covering functional constituencies. I also wish to point out that in the minutes of the 17th meeting of the political structure subgroup held years ago, someone proposed to delete the sentence "The ultimate aim is the election of all the members of the Legislative Council by universal suffrage." Why was such a proposal made? The aim was the retention of functional constituencies. It was recorded, "Some members are of the view that it is not absolutely necessary to attain the ultimate aim of electing all the members of the legislative Council by universal suffrage. If it is beneficial to Hong Kong, certain functional constituencies and other elements should be retained." But some members thought that the sentence should not be deleted, so in the end it was retained.

Therefore, the definition of universal suffrage is very clear. This also explains why we want to conduct a *de facto* referendum as a compromise when the Government shows reluctance to conduct a formal referendum. Thank you, President.

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

**MS EMILY LAU** (in Cantonese): President, Mr Albert HO has talked about the worries and views of some members of the Democratic Party on the issue earlier. Twenty-one days ago we issued a notice to the effect that a general meeting of the Party would be held on Sunday. The voting result on the day would be binding. I hope that all the some 700 members of our Party will attend that meeting and voice their opinions on the issue.

As Mr Albert HO has said earlier, we had held more than 10 meetings in our Party and many of these meetings were chaired by me. Besides, I also asked many local residents in the districts for their views. So I agree with Mr HO when he raised some worries earlier. However, if the Democratic Party decides …… President, that is, I can tell you once more that our motion topic is that "the
Democratic Party takes part in the resignation *en masse* in the five geographical constituencies in order to fight for dual universal suffrage in 2012." If our Party members vote in favour of that motion, I believe we will take part in that. So we have to see what the result of Sunday's voting is. This is also the reason why we will abstain from voting today.

Personally I also have some worries. This is because as Mr HO has said earlier, we are not only talking about the right to veto but also all discourse related to it. President, it was only in last year that I ran for election and got elected to this Council. My election platform was "the implementation of dual universal suffrage in 2012." When I ran for the election last year, I did not tell my voters that I would resign, nor did I say that I would abandon my pursuit for dual universal suffrage in 2012. In the amendments today, some have deleted dual universal suffrage in 2012 — I have to tell the Beijing authorities that the people of Hong Kong will still want to have dual universal suffrage in 2012 — but if that is deleted, there is no way I can accept them. That is also the pledge made by many Members last year in their election platforms.

President, now it is only 2009 — and I have said more than 10 times in this Council — that since we are in 2009, how can we know that dual universal suffrage cannot be held in 2012? President, the Chinese Communist Party may possibly have already stepped down by that time. So we from the Democratic Party and many members of the public who support us will not accept amendments that have deleted the demand for dual universal suffrage in 2012.

In an opinion poll conducted by the Democratic Party, more than half of the respondents say that they would support, or rather, they will insist on the implementation of dual universal suffrage in 2012. Now we are carrying out a "one person, one letter" campaign and we ask people on the streets to sign in. When they see us making that appeal, they will say at once, "2012! 2012!" This is the slogan which can make most people come out. President, this is something we from the Democratic Party most fervently believe. On 1 January we will stage a march and other activities and all of them are meant to show our insistence on the implementation of dual universal suffrage in 2012.

The term "referendum" used to be mentioned by LEUNG Yiu-chung, Fernando CHEUNG and many other Members. Is it a horrifying beast or monster? I once showed my support for the people of Taiwan to express their views and as a result I was hunted down for many years. Why can the people
not vote to decide matters that affect them? I think the SAR Government is acting most disgracefully. A referendum is something many people in Hong Kong want. So we will agree with Mr LEUNG Yiu-chung and hope that one day the people of Hong Kong can have a referendum. The meaning of referendum is everyone can vote on a certain matter and I trust that the people are mature and they are rational and it is certain that they can handle something like that.

Recently, I took part in a forum. A member of the public asked me about how foreign people saw this proposal of resignation *en masse* and whether they did not like it or they were for that. I replied that foreigners actually did not quite understand the issue. But President, foreigners know about democracy, human rights, freedom and the rule of law and all these are only possible when a price is paid with blood and they are there only as a result of a revolution and as a result of some acts of violence. It is likely that foreigners understand that at this stage, the people of Hong Kong do not want to resort to bloodshed and violence as a means of their confrontation. But I do not accept the idea that someone may say, "The National People's Congress (NPC) has made its views known and so the people of Hong Kong should forget it." Well, if the NPC has made its views known, then it can make its views known again, who cares?

President, what if the NPC has made its views known? Are these royal decrees? Now the people of Hong Kong are not trying to buy weapons to overthrow the Central Government, what we are doing is to stick to the things we have been insisting on for decades. President, this is the kind of insistence that costs us our Home Return Permit Cards! If we crave the power and the glory of other people, we could have got them as well. President, you know perfectly well that there are many such people around. But we are born diehards and we insist on the implementation of dual universal suffrage in 2012. No one can delete this. We will also show our support for referendum. We hope that the people can have a chance as soon as possible to show what they think in a direct manner, be it about universal suffrage or other important issues. The people should be able to express their views.

President, the Democratic Party will vote on Sunday. I hope all party members will attend that meeting and indicate their preference. Actually, on countless occasions our party members have made their views known and on countless occasions, the people have told us — President, I have heard that many times. We will try the best we can. We have been promoting it for decades.
As the saying goes, time will tell. We will continue to fight together with the people of Hong Kong. I will wait and see for how long the Communist Party can show its contempt for what we prefer.

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

**MR TAM YIU-CHUNG** (in Cantonese): President, I have been listening very carefully to views expressed by Members earlier. Members of the League of Social Democrats are calling to change the by-elections to be held after the resignation of Members into a referendum in disguise. Each political party certainly has the right to decide the course of its action and it also has the right to attach a label to its actions. People who are interested may join and they are free not to take part if they do not agree. But as we can see, this is not so simple. We can have some idea of that from the pressure which has been exerted on the Democratic Party lately.

There have been great contentions within the pan-democratic camp lately and the cause is due to that issue. This is rarely seen before. The Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) has not been feeling happy because of that, for that is not doing any good to democratization in Hong Kong and it will only serve to intensify conflicts in society and polarize discussions on constitutional reform. Many people do not understand why the Civic Party will follow the League of Social Democrats. Yesterday, Audrey EU published her open letter. But after reading that letter, many people may not be able to understand the real reasons behind it. Some even point out that there may be advice given from some sages from behind the scene. If that is the case, then the case can be understood somewhat more easily.

I would not speak long, for I do not want to get entangled in this issue. There are many reasons and arguments that we have said many times on occasions discussing the constitutional reform. And it would be repetition when they are put forward again. I wish to make a public appeal on behalf of the DAB that we sincerely hope the pan-democrats will not activate this resignation *en masse*. It would be real democracy if we show our support to democracy by backing up every step made towards it. Thank you, President.
MR FREDERICK FUNG (in Cantonese): President, I can say that I took part in social affairs ever since I graduated from university. In 1976, I left the University of Hong Kong and became a member of a pressure group. In 1982, I embarked on a political career upon my return from studies in Britain. In 1983, I was elected as a member of the Urban Council.

Why did I stand for the election at that time? In 1980, the Government published a green paper on district administration. The green paper talks about how district boards are to be formed and when they are formed, one third of the members are to be elected from direct elections in the districts. The District Officer would be the chairman. The other two thirds of the members are to be appointed. At the time when the green paper was launched, I was still studying in Britain. I studied the green paper and I pondered over the question of whether or not I should take part in that election. I studied the development of parliamentary politics in some European countries, especially the methods used by the communist party there which advocated revolution and subverting the government, but the methods they used to seize power changed from revolution and subversion to parliamentary politics.

As a matter of fact, during the 1970s, the communist party of two countries in Europe did a very good job. One of them was the communist party of France and the other was the communist party of Italy. Through parliamentary politics they obtained the support of the people. They got the votes and so they entered the political assembly and got the seats there. By increasing the number of seats they held, these communist parties began to exert more political influence on the policy formulation of their country and they even had hopes of gaining a majority in the political assembly and getting elected as the president of the country. Of course, as these parties develop, we can see whether or not they are successful in achieving their goal. But this is not what I want to discuss today. What I want to discuss is whether or not parliamentary politics has taken the place of the so-called politics of revolution and subversion and violent means of seizing power.

As societies get more civilized and as reason is given greater importance, people become more and more contemptuous of violence as society becomes more affluent. So I would think that in the long run, if we want to get into
politics, it would be a suitable approach to take if we go in the direction of taking part in parliamentary politics.

Therefore, at that time I wrote from Britain to the person in charge of the pressure group, saying that we should take part in the District Board elections. But at that time no one paid any attention to me. In 1982 when I returned to Hong Kong, I tried to persuade the pressure group, but I failed. In the end, this young man who had just returned to Hong Kong took part in the Urban Council elections in 1983 and luckily, he was elected. For 26 years afterwards, I served in the political assemblies. As compared to 26 years ago, the political assemblies today, irrespective of whether they are the District Councils in which the pan-democrats take up about 108 seats, or in the Legislative Council in which we take up 23 seats, we are now in a much better position. In the Legislative Council, it can be said that we have got a right to veto. This is much better than 26 years ago in which only one third were directly elected Members and I was the only person who proposed that I would like to stand for the direct elections. In other words, if we go in the direction of parliamentary politics, we should all the more mobilize the masses to support our political parties, that is, political parties of the pan-democrats, and the political parties should mobilize the masses. What we should do is to make use of our political aspirations we cherish and mobilize the masses and so win more seats in every election. With more seats we can exert an influence on government policies and we may even have a chance to form a government. Of course, this is only my dream which began 26 years ago and continues up to the present moment.

To a certain extent, I think that the resignation *en masse* plan runs counter to this direction I am heading. What I want is support of the people, forming a political party and entering into the political assembly. But the resignation *en masse* plan asks me to renounce my seat. Will renouncing a seat enable us to gain a greater political position, influence or pressure? I think all these should be studied and analysed before conclusions are made. However, for me, if I am to do that at present, I think I have to face three or even four great difficulties. Now I would like to share these with Members.

First, as of today, this is not a topic for referendum initiated by the Government, even though there are two political parties involved, that is, the Civic Party and the League of Social Democrats. Up to now, it is one topic for each party. There are still two topics to be discussed in society. Of course, I believe the two parties will change the two topics into one later on. But as we
can see, when these two topics have become one, would there be sufficient time
for society and the public to understand it before the time for voting comes?

Second, knowledge about referendum. When people are to vote, they are
not voting for a topic. Instead, they are to choose a person and pick from the
photographs of a number of candidates in their ballot paper. They are not
choosing a topic but a person. Of course, you may work for a general
mobilization and stage a great publicity campaign so that the whole society would
understand the event. It would be great if this can be done. But it is certainly
no easy task to make some three million voters understand.

The third problem is the spectrum. The pan-democrats do have a
spectrum of their own. In the case of West Kowloon, I am the mildest and
Yuk-man is the most radical. When people voted at that time, those who voted
for us would not vote for Yuk-man and those who voted for Yuk-man would not
vote for us. How should this spectrum be made a better one? In general, the
pan-democrats should really be united and things will get very difficult if they are
not united.

Fourth, about the differences we have had over these past few months. As
Members will know, we from the "League of People's Livelihood", that is, the
four Members who are concerned about people's livelihood have been making
appeals for solidarity. In early August, we called upon Members not to start
rows in meetings. At the meeting held on 27 September, the four of us just
remained silent and did not speak and this was because we wanted to demonstrate
our solidarity. But as you can see, there were disputes and contentions all
through these few months.

I got emails on the Facebook and I also got letters. Some people said that
Frederick FUNG was too mild and they would not vote for me any more. Some
other people wrote to me and called me, telling me to stand firm. They said that
they would never vote for those people. These two groups of people are
supporters of the pan-democratic camp. This kind of divergence has led to
division. As problems arise, how should they be handled? This is something
we ought to pay more attention to.

Of course, in the end I would agree with what Albert HO has just said that
strategically, we have the right to veto. But the resignation en masse plan this
time is really putting this right to veto at stake. In case of victory, we will not
reap any benefit; and in case of loss, the Government can just ignore us. We can also lose this right to veto as well. So I think the most important thing now is to get hold of these 23 votes with a right to veto. If we want to go one step further and if the Government wants to go one step further, and if Beijing also wants to go one step further, then please talk with us. In the course of this talk, please let us see clearly that we are really going one step further.

Besides, I want to mobilize the masses because they will lend their support to our fight to get some results from the talk and that is, progress in democracy. Also, our attempt to mobilize the masses is for getting more seats in the District Council and Legislative Council elections. We want to have greater influence in the political assemblies and get a majority. Thank you, President.

MR ALBERT CHAN (in Cantonese): President, when WONG Yuk-man, the chairman of the League of Social Democrats spoke, I was unable to hear him speak because I had to go to the funeral parlour in Hung Hom to pay my tributes. The reason why I left during the meeting of this Council for a trip to the funeral parlour in Hung Hom is because I had to pay my last respects to a teacher of mine during my primary school days who recently passed away. He was 73. Another elderly person in Hong Kong has left us without ever seeing democracy in Hong Kong. The number of such people is increasing from day to day. This is pathetic. Every year there are thousands of elderly people who die before it is their turn to get a place in the residential homes for the elderly. Likewise, there are many people who leave this world without ever seeing democracy in Hong Kong. I just have no idea how many of my friends, Members or just how many people here will be able to see democracy in Hong Kong while they live.

President, that there is no democracy in Hong Kong is because our society is sick. This Government is also sick. The democrats are also sick. The Government is sick because it has a tendency towards dictatorship. It has got down with a serious disease of wielding all the powers in its hands in the absence of any speck of humanity and character. As for our society, to put it simply, it is sick with the disease of "wealth obesity". Right? There are people who are so fat that they cannot even put on their socks, but they will never stop depriving the grassroots of their rights. They will never try to put an end to their obesity, unless and until their heartbeats come to a halt. There are many so-called intellectuals who side with these obese people and they oppress the public in
concert. They deprive the people of Hong Kong of their rights. When the obese and those obsessed with dictatorial powers come together, the basic political rights of the seven million Hong Kong people are just robbed.

Under the leadership of the democrats, the seven million people of Hong Kong should try to break the fetters of this system and they should struggle for democracy in Hong Kong. Democrats all over the world use all sorts of means and tactics to fight for democracy in their places. But President, I have followed the democrats in Hong Kong for more than 20 years and I am convinced that the democrats in Hong Kong are sick. There is no progress in the democratic movement in Hong Kong. This is the theme of my speech today.

The democrats mainly suffer from three kinds of serious diseases. First, loss of memory. Second, the personality disorder of narcissism. Third, loss of intellect. These three diseases explain why there is no progress in the democratic camp over the years and specifically, in the movement to fight for democracy at present.

President, one of the symptoms of the loss of memory is that people do not recall things that they should be very familiar with. Put simply, on fighting for democracy, some people might have said in the past that they would support a referendum. But all of a sudden, these people say that they cannot remember that. Some of these people may be selectively losing their memory. Some may lose their memory due to old age. They forget to do many things that they should have done. The second symptom and trait of the loss of memory is that they are unable to recall knowledge that they have freshly acquired. All through these 20 years, the democrats have been holding signature campaigns, hunger strikes and marches over and over again, but to no avail. Will they try to learn something new in order to provide some stimulus to this system and so fight for democracy for Hong Kong people? So the loss of memory is the first major disease of the democrats.

The second major disease is the personality disorder of narcissism. They would be really mad at some criticisms. It is all right if they rebuke the Government, but if they are rebuked by members of the public, they will "turn over the table", right? Also, they love to order people around. I recall when I was still in the Democratic Party, a non-full-time deputy chairman said that those of us who were full-time Members should attend meetings more often because he had to attend to other business. How could he say such things? I asked him
why he did not go full-time. He was not working full-time but he told full-time Members like us to take part in more meetings. He also said that we had more time and so we should attend more meetings. President, this is the truth and nothing but the truth.

The third symptom is excessively arrogant. This is an exaggeration on their own ability in the hope of attracting special attention. They say that they made tremendous contributions to the democratic movement in the past. They are self-styled pioneers of the democratic movement in Hong Kong. All other people are just nonentities who have failed to fight for democracy after 20 years. Please stop having this narcissist mania. These people are convinced that the problems they care are unique in this world. They are irreplaceable and they cannot be understood by other people. They have a fantasy for success, power, glory, beauty, ideal and love. They always cling to the rich and the powerful and they are convinced that affinity with the Government and the consortia will bring them benefits. A case in point is CHIM Pui-chung clapped his hands after a Member of the democratic camp had spoken. This could be an indication of this morbidity. They think that they should enjoy some privileges not accessible by others and it is only them who can lead the democratic movement. They crave long-lasting attention and praises. They may have been praised so much during the past decade or so, so much that they do not know where they should stand. They do not have sympathy …..

MR CHIM PUI-CHUNG (in Cantonese): I did not clap my hands. I only tapped the table.

MR ALBERT CHAN (in Cantonese): ….. do not have sympathy. For instance, it is so incredible that the democrats should have opposed the setting of a minimum wage, supported the listing of Link REIT and the one-off grant in the welfare sector. They have a strong sense of jealousy and they will accuse people of robbing them of the moral high ground.

The third major disease is the loss of intellect. President, this is a syndrome. It is a combination of a number of symptoms. They have cognitive and functional disorders in their memory, orientation, judgment, power to make calculations, abstract thinking, attention, and language. At the same time, there may be some kind of intervention behaviour and personality change. President,
it is symbolic that democrats are decorated with medals. Also, symptoms such as indulgences and hallucinations have seriously undermined their working abilities. When the people of Hong Kong are led by these morbid people from the democratic camp, what kind of hope can they have for the democratic movement here? Therefore, all these symptoms must be cleared before the democratic movement in Hong Kong can have a chance to survive.

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

**MRS SOPHIE LEUNG** (in Cantonese): President, originally I had no plans to speak, but after listening to the speeches made earlier, I find that this is a rare opportunity in which I can hear words from the bottom of some Members' heart. This makes me see him in a new light. But in order to avoid making that Member a target of attack by his comrades, I would not name him. He says that he wants to fight for democracy and it is only possible if all of us should be in one heart and of one mind.

Then he also says — I hope that I would not get his meaning wrong — that some people can talk in the most impassioned manner and have an outburst of their feelings, but we are not sure what is really in their mind. I think this is worth pondering by Honourable colleagues sitting here who may come from different political parties and groups. Do Members really mean what they say? Is it as simple as that? Or are they thinking that with this so-called resignation en masse, they may grab the votes of other people from their voting bloc in the by-elections? Rumours of that sort are found frequently in the media lately.

President, today I read a letter written by a group of voters who have been silent and staunch supporters of the Democratic Party for more than two decades. The letter was published in all the major newspapers. After reading the letter very carefully, I found that the contents are indeed amazing. With respect to the four questions asked, I would think that every person who agrees that a referendum should be conducted must give those questions a thought. I do not want to go into detail for the letter is clearly published in the newspapers. The aim of solidarity should not just be about ....... the progress of democracy. President, I would think that not just the democratic camp or the pan-democratic camp, but for everyone sitting here, are we here just to kill time or have we got nothing to do? All of us are striving for democracy under the "one country, two
systems" principle and in a gradual and orderly manner. I believe this is what everyone thinks.

But if people are like what Mr Albert CHAN has said, that they think that they are always right and they refuse to take the views of other people, then even as we may talk all night and day, there is no way we can ever reach a ……. This mini constitution of ours says that there shall be endorsement by a two-third majority of Members. If you are to go through this tiny eye of the needle, you can only work hard and strive to get the votes of two thirds of the Members. Then you can have your way. Otherwise, you have to seek common ground and tolerate differences. I do not think Members should go different ways in this Council. At least they should tolerate and be accommodating, and they should understand each other. It is only by talking things over that there can be conclusions.

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

MS CYD HO (in Cantonese): The pressing nature about constitutional reform lies in the fact that there are many pressing problems that need to be solved in a fair and equitable manner. An example is the expensive project of the Guangzhou-Shenzhen-Hong Kong Express Rail Link with a price tag of $66.9 billion. If our executive authorities and the Legislative Council are all returned and formed by universal suffrage and they are to be held accountable to the people, then an expensive project and a proposal which creates such a great impact on so many people cannot hope to seek funding approval here in this Council next Friday. So President, problems related to people's livelihood and governance have reached the proportions of dire distress and it would be really too late to implement dual universal suffrage in 2012.

Our general practice is to adopt the representative political system whereby Members elected to the Council are there to handle many issues. But when it comes to topics of far-reaching impact, then all the people of Hong Kong should be allowed to make a responsible decision. The constitutional system should be determined in the form of a referendum. Some people may support the call for universal suffrage in 2012 while some other people may accept it being implemented in 2017 and 2020 as proposed by the Government. Then the people should be allowed to indicate their preference clearly in the form of a
referendum and the Central Government should then be informed of the choice made. In an important issue like constitutional reform, all the people should come together and discuss, before votes are cast to decide. The decision of the seven million people should not be made simply by the some 20 Members of the democratic camp and more so it must not be decided by the executive team which does not have any public mandate. I therefore agree to the idea that resignation will lead to a by-election and hence a referendum in disguise. This is an effective way to allow public participation given the numerous constraints present.

Recently, some of us talk about "an economy with demand created by supply". Actually, there is also demand created by supply in politics. If we can have a platform and if there are by-elections where the people can focus their discussions, the people would be extra concerned. Then the conclusion so arrived will indicate the preference of the people and greater solidarity in society would result. This is because members of the public would have a chance to vote. They would have the motivation to understand the topic and they are more determined to play a part. But this is exactly what the Government fears most. The Government fears that once the people open up their minds, they will raise more and more demands for accountability. But if the Government just wants to fool and deceive its people in order to maintain the stability of its powers, how can this city have any future?

Over the past few months, various political parties and groups have aired different opinions. In the democratic camp, the disparity of opinions is unprecedented. The motion debate today is in a way a test of how broad and accommodating our minds are. We hope to have some rational and objective discussions. But over the past few months, there have been much use of emotive language and queries directed at each other. This breaks the heart of many people who support the democratic camp and who fight for democracy. They are at a loss as to what they should do. There are questions about a fight for leadership among the political parties. Such criticisms are indeed founded. So I appeal to all those who support democracy and beseech them to do a simple task. This is to lay bare their hearts and follow the dictates of their conscience. President, you are keen on the correct pronunciation of words lately and for these words which I have just spoken, they are just four characters in Chinese and the number of their strokes is less than 40 altogether. I really hope that everyone can meet this simple request. If only we will stop clinging adamantly to our bias, we can see clearly the true nature of things. The essence of this all is that
we have to make dual universal suffrage in 2012 a reality as soon as possible so that this constitutional system will be one that can truly serve the people and it will never become a competition for the right to discourse. If only the things we do are based on the rights and interests of the people, instead of for the sake of the honour of our political party or the glory of ourselves, then the judgment and choice we make will be simple and straightforward indeed.

That it is hoped that a referendum in disguise can result from the by-elections in five geographical constituencies is a task of immense difficulty, much more than the ordinary elections. This is because like what Mr TAM Yiu-chung has said, we need to explain to members of the public why this move is to be taken and why such a tortuous way is used to lead to a referendum in disguise. This is something never done in Hong Kong before. Any work done by a pioneer is bound to be hard. We must tell the people clearly what our justifications are. The work is a daunting task to the extreme. So the ideal thing is for it to be done together by all political parties and groups which support democratization. But when a consensus cannot be reached in the political parties and groups, can some second best options be adopted? The parties and groups can each work on their own front and in the course of it, they should avoid using emotive language as much as possible and they must not point an accusing finger at other people. For if not, what we will see first is that effect of a community torn apart and divided.

President, dear colleagues of the democratic camp, we are to decide on a bold and resolute course of action today. That requires us to be extra calm and united. We should be more patient and tolerant. Even when we cannot join hands in this plan to effect a resignation *en masse* and lead to a referendum in disguise, I would implore Members to leave the judgment to the people, for it is the people who should judge the merits or otherwise of each one of us and each one of the political parties and groups.

Lastly, President, I have to explain briefly why I cannot support the amendment proposed by Mr Alan LEONG. This is because implementing dual universal suffrage in 2012 is part of my election platform and for which I cannot renounce. So when this amendment is to be voted, I will leave the Chamber with great speed and I will come back in great speed after the voting. I will stay on taking part in the voting of other issues. Thank you, President.
PRESIDENT (in Cantonese): Does any other Member wish to speak?

MS MIRIAM LAU (in Cantonese): President, with respect to the controversies that centre the "resignation en masse of Members returned from five geographical constituencies", as things developed in these few months, it is like a serial drama sprawling with complicated twists and turns in the plot. There have been dazzling and constant changes with respect to the scale, candidates, aims and even dates of the resignation en masse plan. All these are extremely confusing. I am sure not many members of the public would know clearly what in fact is happening.

First of all, what is "resignation en masse of Members returned from five geographical constituencies"? Does it mean that all the 23 Members of the pan-democratic camp in the five geographical constituencies will resign? If not, is it a resignation en masse or simply a resignation? When there is one Member from the pan-democratic camp who will resign in each of the five geographical constituencies, this is basically not a resignation en masse but it is at most a resignation.

As for the list of Members to resign, according to media reports, and actually, I only learn about that from the newspaper, the candidates often change. There are a number of lists. At first, there were some lists and the Members involved said that they did not know about it and they were not consulted about it. This situation has led to criticism that this is in contravention with the spirit of democracy which emphasizes rational discussion and mutual respect.

On the reason why there is this resignation en masse, it is likewise subject to various interpretations. The situation is like no one can explain clearly why there is one. A few months ago when the League of Social Democrats first floated this idea of a resignation en masse, there were some reports at that time that the Civic Party was the first one to query, saying that in the case of the by-election on the Hong Kong Island two years ago, with the contending candidates being Mrs Anson FANG the former Chief Secretary for Administration and Mrs Regina IP the former Secretary for Security, the race was similarly a kind of universal suffrage with a single topic. But in the end the effect with respect to the quest for dual universal suffrage was not that significant. So at that time there were reports that the Civic Party queried whether or not it was necessary for a re-run. Now that the Civic Party has changed its stance into
supporting the resignation *en masse* plan proposed by the League of Social Democrats, Mr Ronny TONG who is a member of the Civic Party still insists on opposing the idea. I think we have all heard him make his passionate speech earlier.

In addition, the procedures involved have been subject to constant changes and they are unclear. People wonder whether this has anything to do with the closet politics which is reported by the media. Does that really exist? As a matter of fact, the public is interested in knowing, just like viewers with an insatiable appetite for serial drama. Even the Democratic Party queries about the resignation plan, saying that it is no more than a by-election, not a referendum. Some Members of the democratic camp say that simplifying the act of casting votes as a referendum is wishful thinking only. For me it is hard to believe in the claim that "resignation *en masse* of Members returned from five geographical constituencies" is like a plebiscite or a referendum. These are two entirely different things and must not be mixed up.

As for the topic of referendum which is claimed to be so crucial, if the whole thing is for dual universal suffrage in 2012, that is, as we all know, something impossible. As we have said many times in the debates held earlier, the Standing Committee of the NPC has made a decision and so it is not possible for us to have dual elections by universal suffrage in 2012. If we are bent on having our way and proceed with the resignation *en masse* plan and the by-elections, it will cost the Government $150 million. Some people would think that it is a waste of money and efforts. If the sum of money is used in other ways, such as the medical vouchers for the elderly, the amount of value of these vouchers would then be doubled. This would enable every person over the age of 70 get medical vouchers with a two-fold value of $500.

As for the time, at first it was said that the resignation would take place on the very day when the Government announced the consultation proposal. Then it was postponed to a time when the Democratic Party would make a decision. Then it was said that it was to be next May. Two days ago it was set at next month. These changes are so frequent that the people are just confused. A more important thing is that a referendum has never been held in Hong Kong before. Hence, there will only be by-elections after the resignation. Even when it is arbitrarily said to be a referendum, and even when the words "in disguise" are added, it cannot change the fact that it is a by-election in nature.
Furthermore, many opinion polls show that the public is opposed to this idea of "resignation en masse of Members returned from five geographical constituencies". Opinion polls done by the Hong Kong Transition Project, the Hong Kong Research Association, the Ming Pao Daily News and the Liberal Party all come up with the same result, that is, more respondents opposed "resignation en masse of Members returned from five geographical constituencies" than those supported it. Since public opinion on this matter is so clear, why then should the coalition of the League of Social Democrats and the Civic Party be doing something that runs counter to public opinion? It is the view of the Liberal Party that the aims of the resignation en masse plan are not clear and the justifications that it is a plebiscite are weak. The Liberal Party therefore advises this coalition to save on its efforts and concentrate on the question of how to increase the democratic element in the two elections with respect to the proposal for constitutional reform in 2012. The addition of such democratic elements would pave the way for the transition into elections by universal suffrage in 2017 and 2020. Therefore, the Liberal Party cannot support the original motion and the two amendments today.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): Mr WONG Yuk-man, you may now speak on the two amendments. You have five minutes.

MR WONG YUK-MAN (in Cantonese): President, as a matter of fact, when I proposed this motion, I anticipated that it would certainly be voted down. This is because almost all the motions proposed by Members of the democratic camp are all voted down under the separate voting system. It is an exceptional case today in that this motion will be voted down by the two groups under the separate voting system. I would think that this is the only motion among all the motions proposed by the democratic camp that fails to win the support of Members of the democratic camp. The reason why I propose this motion is actually a kind of venting of my political sentiments. I anticipate that it will be voted down. But
I would still like to thank friends from the democratic camp who propose amendments to my motion.

I have a lofty expectation for democratic politics. Or it may be said that I am expecting the emergence of a utopia. That is to say, when the day comes that direct democracy is mature and thinkers with noble sentiments do not need to stand for elections and the people will fall in with their thinking. True gentlemen form groups but not cliques. This is a solidarity grounded in common convictions and it is a group that transcends personal interests. It will win the trust of the people and political mavericks who manipulate party politics or personal advancement in power and position will be at the end of their wits. And the political assembly will cease to distort the views of the people. Although political parties still exist, they are unable to control the political assembly.

As I have said in the main speech, all the important events in history began as a kind of utopian idea but ended as reality. But for something to become a reality instead of a utopia, it must have the support of the great number of people who believe in it and their drive to make it come true. Now the motion I propose here is only a move to vent my political sentiments. Originally I had hoped that there could be some quality debate. That is why I said in the main speech that I hoped Members could debate eloquently on the subject with clear and rational arguments so that the truth can be made more evident with debates.

But unfortunately, many Members still choose to engage in discourses of extremely low quality and these can even not be called ……

PRESIDENT (in Cantonese): Mr WONG Yuk-man, you should speak on the two amendments.

MR WONG YUK-MAN (in Cantonese): …… discourse. The discourses of the two amendments are compared to the speeches made by other Members, including anything that queried our so-called resignation en masse …… I have said in the political explanatory statement about that point. Why are they in politics? They have not read the explanatory statement and they do not direct their reply to the question asked. They are of extremely low calibre. They do
not speak to the point and they are just there to mock and sneer. What has the democratic camp to do with you people? We cannot trust the media and also these maverick politicians. We should place our hopes for democracy on the people of Hong Kong, instead of on Beijing, the SAR Government, the pro-establishment camp or even the democratic camp. Secretary Stephen LAM may go on putting up his arrogant airs and that is because we ……

PRESIDENT (in Cantonese): Mr WONG Yuk-man, you should speak on the amendments.

MR WONG YUK-MAN (in Cantonese): …… people in this Chamber are of very low calibre. Lastly, I wish to respond to the amendments proposed by the two Members, including the one proposed by LEUNG Yiu-chung on referendum. He has talked about it many times. And I would also vote in support of the amendment proposed by Alan LEONG who is an ally of ours in "resignation en masse of Members returned from five geographical constituencies as a referendum".

Lastly, I wish to cite some remarks by Dr SUN Yat-sen to the following effect: If we have faith, then tasks as difficult as moving mountains and filling up seas can be successful. If we do not have faith, then tasks as simple as turning over our palm or breaking some twigs can never be achieved. Thank you, President.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, after presenting my arguments at the beginning of this debate, I would like to further respond to the comments made by a number of Members.

First, Miss Tanya CHAN says that she thinks that the Chief Executive has not been honouring the pledge he made at the time of the election. With respect to this, I wish to respond by referring to the following three points: First, the Standing Committee of the National People's Congress (NPC) made it clear in 2007 that the Chief Executive could be selected by universal suffrage in 2017 and the Legislative Council could be formed by universal suffrage in 2020. This is actually a milestone and an achievement made possible by the hard work done by
the third-term Chief Executive and the SAR Government. It is an achievement which marks the gradual progress towards the ultimate goal of universal suffrage in Hong Kong in the coming 10 years or so. It also shows that the progress obtained by the current Government in promoting democracy is more substantial and marked than that obtained by the Government of any term both before and after 1997. The Decision of the Standing Committee of the NPC states clearly a timetable for universal suffrage and it also provides an outline for implementing universal suffrage, especially in the election of the Chief Executive by universal suffrage: After a nomination committee is formed, a number of candidates for the Chief Executive election are nominated, then the Chief Executive is to be selected by universal suffrage by all eligible voters. That is truly "one person, one vote".

With respect to the election by universal suffrage to form the Legislative Council, in the report submitted by the Chief Executive to the Standing Committee of the NPC in 2007, it was stated that there were divergent views both within and outside the Legislative Council at that time on taking into practice the forming of the Legislative Council by universal suffrage. This is a political reality we have to face even to this day. But that does not mean that we will stop at this juncture and give up doing anything to strive for more progress.

Since there is a timetable for the implementation of universal suffrage and there is an ultimate goal in 2020, both the Government and the legislature must work hard to make universal suffrage a reality for the people of Hong Kong. So we should strive to achieve progress in democracy in 2012, 2016, 2017 and 2020. We must not march on the same ground and we must reach the goal of dual universal suffrage.

Ms Audrey EU makes a special mention again of our handling of the drafting of the Basic Law in 1988 and 1989. President, I would like to tell Ms Audrey EU through you that the document she refers to that was "passed" at that time is only the Draft Basic Law for solicitation of opinions and another round of discussions was held in Hong Kong with respect to that Draft Basic Law for solicitation of opinions. However, the constitutional arrangement of Hong Kong is such that it is prescribed pursuant to the Basic Law passed by the NPC on 4 April 1990. That is to say, the text of the Basic Law which has been passed shall prevail. So now as we are to further promote the constitutional development of Hong Kong, we should do it by referring to Annexes I and II to the Basic Law and the Interpretation of the Basic Law made by the Standing Committee of the NPC in April 2004. This means we should have a consensus
in three aspects. As I have just explained, there must be endorsement by two-thirds of the Members of the Legislative Council, consent from the Chief Executive, and the proposal must be approved or put on record by the Standing Committee of the NPC. Our proposal which results in election by universal suffrage to form the Legislative Council in 2020 will also have to comply with this five-part procedure.

When Dr Margaret NG mentioned universal suffrage to form the Legislative Council, she said that the SAR Government was guilty of "deception". This is a point I beg to differ. Although the goal of universal suffrage is not yet reached, the position of the SAR Government is clear enough. We have made it clear many times that the functional constituency elections which form the current Legislative Council do not meet the requirement of being universal and equal. Precisely for this reason, we strive to expand the democratic element in the formation of the Legislative Council in 2012. We have picked the District Councils functional constituency out of the 30 functional constituencies because it is one with the largest element of democracy and the broadest base of voters. We plan to expand the proportion taken up by this functional constituency in the formation of the Legislative Council in 2012 such that 60% of the seats of the Legislative Council in 2012 are to be returned by direct elections through geographical constituencies or indirect elections.

I would also like to respond to a question raised again by Dr Priscilla LEUNG on whether or not Members resign in the five geographical constituencies will be allowed to join the by-elections. We have discussed this issue in a meeting of the Legislative Council Panel on Constitutional Affairs. President, I would like to reiterate by saying that under the Basic Law and local legislation, if a vacancy appears in the political assembly, the SAR Government has the constitutional obligation to make arrangements for by-elections. Pursuant to the Legislative Council Ordinance, the Electoral Commission should announce that a vacancy has appeared in the Legislative Council and the seat in question is to be filled by a by-election.

Dr Priscilla LEUNG has also raised a question to the effect that if a Member resigns at his or her initiative, whether he or she should be allowed to run for the by-election. Members may of course express their views on that question. Full consideration will be given by the SAR Government upon receipt of such views. But a fundamental consideration is that Article 26 of the Basic Law stipulates that all permanent residents of Hong Kong shall have the right to
elect and be elected. If we amend the Legislative Council Ordinance rashly and forbid those who have resigned from running for the by-elections, then we may be challenged in law. In any case, according to the existing laws, should vacancies appear in the Legislative Council, even if it will cost the public coffers at least $150 million, we have no alternative but to comply with the law.

Mr CHIM Pui-chung makes a point by saying that timeliness, opportunity and harmony must be present in Hong Kong. I would say that Hong Kong is always a blessed place and we have already had the timeliness opportunity. As regards harmony, I would say that this could be fostered if there is collaboration between the political parties, the Government and the Legislative Council.

Ms Emily LAU puts an extra emphasis on the core values of Hong Kong and these are freedom, human rights and the rule of law. With respect to this, the SAR Government is in perfect agreement. We also agree that efforts should be made to achieve universal suffrage and to strive for democracy. We can gradually achieve the ultimate goal of universal suffrage on the existing foundation of freedom, human rights and the rule of law. This is the expectation of the people of Hong Kong. So the most important thing is that we should not allow the difference in opinions among the political parties to pose an obstruction to Hong Kong's democratization. We must strive for progress with respect to the two electoral methods in 2012 in Hong Kong, as well as further developments in democracy in 2016, 2017 and 2020 so that a broad base for universal suffrage can be formed for the realization of universal suffrage. President, I therefore call upon Members to oppose the original motion and the amendments. I so submit.

PRESIDENT (in Cantonese): I now call upon Mr LEUNG Yiu-chung to move his amendment to the motion.

MR LEUNG YIU-CHUNG (in Cantonese): President, I move that Mr WONG Yuk-man's motion be amended.

Mr LEUNG Yiu-chung moved the following amendment: (Translation)

"To delete "this Council appeals to" after "That," and substitute with "as constitutional development is a major issue affecting the well-being and
interests of all Hong Kong people, this Council appeals to the Special Administrative Region Government to allow"; and to delete "fully support the campaign of 'Resignation en masse of Members returned from five geographical constituencies as a referendum on the fight for dual universal suffrage in 2012', so as to, by way of direct democracy," after "all people in Hong Kong to" and substitute with "decide, through a referendum, the constitutional arrangements for 2012 and beyond, and"."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment moved by Mr LEUNG Yiu-chung to Mr WONG Yuk-man's motion be passed.

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

(Members raised their hands)

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

(Members raised their hands)

Mr LEUNG Yiu-chung rose to claim a division.

PRESIDENT (in Cantonese): Mr LEUNG Yiu-chung has claimed a division. The division bell will be rung 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 stop and the results 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, Mr Timothy FOK, Ms LI Fung-ying, Mr Vincent FANG, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr CHIM Pui-chung, Dr LAM Tai-fai, Mr Paul CHAN, Mr CHAN Kin-por, Mr IP Wai-ming, Mr IP Kwok-him, Dr PAN Pey-chyou, Mr Paul TSE 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 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, Mr WONG Kwok-kin and Mrs Regina IP 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, 25 were present, four were in favour of the amendment and 21 against it; while among the Members returned by geographical constituencies through direct elections, 29 were present, 18 were in favour of the amendment and 10 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.
MR ALAN LEONG (in Cantonese): President, I move that Mr WONG Yuk-man's motion be amended.

Mr Alan LEONG moved the following amendment: (Translation)

"To add "de facto" after "as a"; to delete "dual universal suffrage in 2012" after "the fight for" and substitute with "the implementation of genuine universal suffrage and abolition of functional constituencies"; and to delete "dual universal suffrage in 2012" immediately before the full stop and substitute with "genuine universal suffrage and abolition of functional constituencies"."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr Alan LEONG to Mr WONG Yuk-man's motion, be passed.

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

(Members raised their hands)

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

(Members raised their hands)

Mr Alan LEONG rose to claim a division.

PRESIDENT (in Cantonese): Mr Alan LEONG has claimed a division. The division bell will be rung 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 stop and the result be displayed.

Functional Constituencies:

Dr Margaret NG, Dr Joseph LEE and Mr CHEUNG Kwok-che voted for the amendment.

Dr Raymond HO, Mr CHEUNG Man-kwong, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Ms Miriam LAU, Mr Timothy FOK, Ms LI Fung-ying, Mr Vincent FANG, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr CHIM Pui-chung, Dr LAM Tai-fai, Mr Paul CHAN, Mr CHAN Kin-por, Mr IP Wai-ming, Mr IP Kwok-him, Dr PAN Pey-chyou, Mr Paul TSE and Dr Samson TAM voted against the amendment.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr Albert CHAN, Ms Audrey EU, Mr Alan LEONG, Mr LEUNG Kwok-hung, Miss Tanya CHAN and Mr WONG Yuk-man voted for the amendment.

Mr Albert HO, Mr Fred LI, Mr James TO, Mr CHAN Kam-lam, Mr LAU Kong-wah, Ms Emily LAU, Mr Andrew CHENG, Mr TAM Yiu-chung, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr CHEUNG Hok-ming, Mr KAM Nai-wai, Ms Starry LEE, Mr CHAN Hak-kan, Dr Priscilla LEUNG, Mr WONG Sing-chi, Mr WONG Kwok-kin and Mrs Regina IP voted against the amendment.

Mr LEUNG Yiu-chung and Mr Frederick FUNG abstained.
THE PRESIDENT, Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 25 were present, three were in favour of the amendment and 22 against it; while among the Members returned by geographical constituencies through direct elections, 28 were present, seven were in favour of the amendment, 18 against it and two abstained. 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): As Mr WONG Yuk-man has used up all his speaking time, so I will now put the question to you and that is: That the motion moved by Mr WONG Yuk-man 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 WONG Yuk-man rose to claim a division.

PRESIDENT (in Cantonese): Mr WONG Yuk-man has claimed a division. The division bell will be rung 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 stop and the result be displayed.
PRESIDENT (in Cantonese): Here are the voting results: Among the Members returned by functional constituencies, three were in favour of the motion, 21 against it and one abstained; while among the Members returned by geographical constituencies through direct elections, eight were in favour of the motion, nine against it and 10 abstained.

MR CHEUNG HOK-MING (in Cantonese): President, there is a problem with my button.

PRESIDENT (in Cantonese): Clerk, has it been recorded?

(The Clerk showed the voting result to the President)

PRESIDENT (in Cantonese): Mr CHEUNG Hok-ming, please state your voting preference.

MR CHEUNG HOK-MING (in Cantonese): President, I voted against the motion.

Functional Constituencies:

Dr Margaret NG, 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 Timothy FOK, Ms LI Fung-ying, Mr Vincent FANG, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr CHIM Pui-chung, Dr LAM Tai-fai, Mr Paul CHAN, Mr CHAN Kin-por, Mr IP Wai-ming, Mr IP Kwok-him, Dr PAN Pey-chyou, Mr Paul TSE and Dr Samson TAM voted against the motion.

Mr CHEUNG Man-kwong abstained.
Geographical Constituencies:

Mr LEE Cheuk-yan, Mr Albert CHAN, Ms Audrey EU, Mr Alan LEONG, Mr LEUNG Kwok-hung, Ms Cyd HO, Miss Tanya CHAN 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, Mr WONG Kwok-kin and Mrs Regina IP voted against the motion.

Mr Albert HO, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Ms Emily LAU, Mr Andrew CHENG, Mr Frederick FUNG, Mr LEE Wing-tat, Mr KAM Nai-wai and Mr WONG Sing-chi abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 25 were present, three were in favour of the motion, 21 against it and one abstained; while among the Members returned by geographical constituencies through direct elections, 29 were present, eight were in favour of the motion, 10 against it and 10 abstained. 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, 16 December 2009.

Adjourned accordingly at nine minutes to Eleven o'clock.
REQUEST FOR POST-MEETING AMENDMENTS

The Secretary for Development requested the following post-meeting amendments:

**Line 3, first paragraph, page 178 of the Confirmed version**

To amend "…… the building height was adjusted downward to 75 mPD to 15 mPD." as "…… the height of buildings within the construction site of Comprehensive Development Area (1) was adjusted downward from the original 75 mPD to 40 mPD to 75 mPD to 15 mPD." (Translation)

(Please refer to line 14 to 15, fourth paragraph, page 3014 of this Translated version)

**Line 2, second paragraph, page 178 of the Confirmed version**

To amend "…… from the original 6.0 ……" to "…… from the original 9.0 ……" (Translation)

(Please refer to line 2 to 3, last paragraph, page 3014 of this Translated version)
Appendix I

WRITTEN ANSWER

Written answer by the Secretary for Financial Services and the Treasury to Ms Audrey EU's supplementary question to Question 5

As regards information on the number of declined applications for appointing an inspector under section 142 or 143 of the Companies Ordinance since May 1999, the reasons for declining and the companies involved, as explained on 9 December 2009, a group of shareholders of the CITIC Pacific Limited submitted an application on 21 April 2009, which was declined.

According to our records, there have been four other applications for appointing an inspector under section 142 or 143 of the Companies Ordinance since May 1999. A table setting out relevant information is at Annex for Members' reference. As these applications have been declined, we consider it inappropriate to disclose the identity of the companies concerned but have instead provided their nature.

Annex

Applications requesting the Financial Secretary to appoint an inspector under section 142 or 143 of the Companies Ordinance — Cases declined since May 1999

<table>
<thead>
<tr>
<th>Date of application</th>
<th>Company nature</th>
<th>Reasons for declining</th>
</tr>
</thead>
<tbody>
<tr>
<td>18-01-2005</td>
<td>A private company</td>
<td>The case appeared to arise out of disagreements between the liquidator and a contributory. There was no sufficient ground in the public interest to conduct an investigation.</td>
</tr>
<tr>
<td>04-09-2003</td>
<td>A private company</td>
<td>The case appeared to be a commercial dispute with no apparent public interest involved. Further justifications were requested but no reply had been received.</td>
</tr>
<tr>
<td>24-01-2002</td>
<td>A private company</td>
<td>The case was essentially a private dispute between several parties over the sale and purchase of a property. No significant public interest was involved.</td>
</tr>
<tr>
<td>29-03-2000</td>
<td>A private company and two companies not registered in the Companies Registry</td>
<td>The alleged misconduct involved mainly breaches of joint venture agreements between shareholders. There were other possible remedies that might be pursued. There was no sufficient ground in the public interest to conduct an investigation.</td>
</tr>
</tbody>
</table>
Appendix II

WRITTEN ANSWER

Written answer by the Secretary for Financial Services and the Treasury to Mr Paul CHAN's supplementary question to Question 5

As regards the non-Hong Kong authorities with whom the Securities and Futures Commission (SFC) have signed co-operative arrangements, a list of the relevant lists is attached for Members' reference.

Cross-Border Co-operation

The SFC works closely with its counterparts worldwide concerning regulatory and enforcement co-operation. Throughout the years, the SFC has signed bilateral or multilateral co-operative agreements with different jurisdictions. In this section, you will have access to:

- the list of co-operative arrangements that the SFC has concluded with Mainland and overseas regulators for the purposes of exchange of information and investigatory assistance;
- the list of co-operative arrangements that the SFC has concluded with Mainland and overseas regulators for the exchange of information;
- the list of signatories to the Multilateral Memorandum of Understanding of the International Organization of Securities Commissions (IOSCO MMOU) on regulatory co-operation;
- other regulatory co-operative arrangements.

Co-operative arrangements that the SFC has concluded with Mainland and overseas regulators for the purposes of exchange of information and investigatory assistance:

<table>
<thead>
<tr>
<th>Country/Jurisdiction</th>
<th>Authorities</th>
<th>Arrangements</th>
<th>Hyperlinks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albania</td>
<td>Albanian Financial Services Authority</td>
<td>IOSCO MMOU</td>
<td>&lt;amf.gov.al&gt;</td>
</tr>
<tr>
<td>Australia</td>
<td>Australian Securities and Investments Commission</td>
<td>MOU — October 2001 IOSCO MMOU</td>
<td>&lt;www.asic.gov.au&gt;</td>
</tr>
<tr>
<td>Country/Jurisdiction</td>
<td>Authorities</td>
<td>Arrangements</td>
<td>Hyperlinks</td>
</tr>
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</tr>
<tr>
<td>Bahrain</td>
<td>The Central Bank of Bahrain</td>
<td>IOSCO MMOU</td>
<td>&lt;www.cbb.gov.bh&gt;</td>
</tr>
<tr>
<td>Belgium</td>
<td>Commission Bancaire Financière et des Assurances</td>
<td>IOSCO MMOU</td>
<td>&lt;www.cbfa.be&gt;</td>
</tr>
<tr>
<td>Bermuda</td>
<td>Bermuda Monetary Authority</td>
<td>CU — November 1992 IOSCO MMOU</td>
<td>&lt;www.bma.bm&gt;</td>
</tr>
<tr>
<td>British Virgin Islands</td>
<td>Financial Services Commission</td>
<td>IOSCO MMOU</td>
<td>&lt;www.bvifse.vg&gt;</td>
</tr>
<tr>
<td>Canada (Alberta)</td>
<td>Alberta Securities Commission</td>
<td>IOSCO MMOU</td>
<td>&lt;www.albertasecurities.com&gt;</td>
</tr>
<tr>
<td>Canada (British Columbia)</td>
<td>British Columbia Securities Commission</td>
<td>MOU — February 1996 IOSCO MMOU</td>
<td>&lt;www.besc.bc.ca&gt;</td>
</tr>
<tr>
<td>Canada (Quebec)</td>
<td>Autorité des marchés financiers</td>
<td>MOU — May 1998 IOSCO MMOU</td>
<td>&lt;www.lautorite.qc.ca&gt;</td>
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<tr>
<td>Cayman Islands</td>
<td>Cayman Islands Monetary Authority</td>
<td>IOSCO MMOU</td>
<td>&lt;www.cimoney.com.ky&gt;</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>Czech National Bank</td>
<td>IOSCO MMOU</td>
<td>&lt;www.cnb.cz&gt;</td>
</tr>
<tr>
<td>Denmark</td>
<td>Danish Financial Supervisory Authority</td>
<td>IOSCO MMOU</td>
<td>&lt;www.ftnet.dk&gt;</td>
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<tr>
<td>Dubai</td>
<td>Dubai Financial Services Authority</td>
<td>IOSCO MMOU</td>
<td>&lt;www.dfsa.ae&gt;</td>
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<tr>
<td>Finland</td>
<td>Financial Supervision Authority</td>
<td>IOSCO MMOU</td>
<td>&lt;www.fin-fsa.fi&gt;</td>
</tr>
<tr>
<td>France</td>
<td>Autorité des marchés financiers</td>
<td>MRAA IOSCO MMOU</td>
<td>&lt;www.cob.fr&gt;</td>
</tr>
<tr>
<td>Germany</td>
<td>Bundesanstalt für Finanzdienstleistungsaufsicht</td>
<td>MOU — March 1998 IOSCO MMOU</td>
<td>&lt;www.BAFin.de&gt;</td>
</tr>
<tr>
<td>Greece</td>
<td>Hellenic Capital Market Commission</td>
<td>IOSCO MMOU</td>
<td>&lt;www.hcmo.gr&gt;</td>
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<tr>
<td>Country/Jurisdiction</td>
<td>Authorities</td>
<td>Arrangements</td>
<td>Hyperlinks</td>
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<tr>
<td>Guernsey</td>
<td>Guernsey Financial Services Commission</td>
<td>IOSCO MMOU</td>
<td>&lt;www.gfsc.gg&gt;</td>
</tr>
<tr>
<td>Hungary</td>
<td>Financial Supervisory Authority</td>
<td>IOSCO MMOU</td>
<td>&lt;www.pszaf.hu&gt;</td>
</tr>
<tr>
<td>India</td>
<td>Securities and Exchange Board of India</td>
<td>IOSCO MMOU</td>
<td>&lt;www.sebi.gov.in&gt;</td>
</tr>
<tr>
<td>Israel</td>
<td>Israel Securities Authority</td>
<td>MOU — March 2006 IOSCO MMOU</td>
<td>&lt;www.isa.gov.il&gt;</td>
</tr>
<tr>
<td>Italy</td>
<td>Commissione Nazionale per le Società e la Borsa</td>
<td>MOU — May 1997 IOSCO MMOU</td>
<td>&lt;www.consob.it&gt;</td>
</tr>
<tr>
<td>Japan</td>
<td>Financial Services Agency</td>
<td>Statement of Intent — May 2005 IOSCO MMOU</td>
<td>&lt;www.fsa.go.jp&gt;</td>
</tr>
<tr>
<td>Jordan</td>
<td>Jordan Securities Commission</td>
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Co-operative arrangements that the SFC has concluded with Mainland and overseas regulators for the exchange of information:

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<td>Administration and Supervision Department of the State Administration of Foreign Exchange</td>
<td>MORC and Technical Assistance — December 1996</td>
<td>&lt;www.safe.gov.cn&gt;</td>
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<td>France</td>
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Notes:

Documents that are available are published with the consent of the counterparties.

- MOU — Memorandum of Understanding
- MMOU — IOSCO Multilateral Memorandum of Understanding
- CU — Confidentiality Undertaking
- MRAA — Memorandum Regarding Administrative Arrangements
- MORC — Memorandum of Regulatory Cooperation

**IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Co-operation and the Exchange of Information (IOSCO MMOU)**

The IOSCO MMOU, adopted by the IOSCO, is the first global information-sharing arrangement among securities regulators. It sets a new international benchmark for co-operation critical to combating violations of securities and derivatives laws. Applicants to become signatories to the IOSCO MMOU must undergo a rigorous screening process to verify their ability to co-operate as provided in the IOSCO MMOU.

The SFC is a signatory together with regulators from other jurisdictions worldwide. The following is a list of the current signatories:

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Other regulatory co-operative arrangements:

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<td>Letter of Intent — November 2004</td>
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WRITTEN ANSWER

Written answer by the Secretary for Transport and Housing to Mr LEUNG Yiu-chung's supplementary question to Question 6

As regards the details of the covenants made between the Hong Kong Housing Authority (HA) and The Link Real Estate Investment Trust (The Link REIT) under which premises are let at concessionary rent to non-profit-making organizations for social welfare or educational services, the aforesaid covenants aim to ensure that upon the listing of The Link REIT, a certain amount of the floor area should continue to be let at concessionary rent set by the HA to non-profit-making organizations recommended by the Social Welfare Department or the Education Bureau to operate social welfare or educational services. The area amounts to a total internal floor area of over 76,000 sq m. Under the covenants, the rents charged by The Link REIT to the recommended non-profit-making organizations in respect of the premises concerned should not be higher than the concessionary rent\(^\text{(Note)}\). The HA reviews the concessionary rent for similar premises under its management once every three years, and under the covenants, The Link REIT is required to adopt the revised concessionary rent. The current rate of concessionary rent, calculated on the basis of internal floor area, is $45 per sq m per month.

\(^\text{(Note)}\) The covenants stipulate that in cases where the premises are used for the operation of kindergartens, the rent charged should not exceed half of the market rent or concessionary rent charged by the HA in its premises, whichever is higher.