

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 16 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

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

THE HONOURABLE LEE CHEUK-YAN

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.

MEMBER ABSENT:

DR THE HONOURABLE DAVID LI KWOK-PO, G.B.M., G.B.S., J.P.

PUBLIC OFFICERS ATTENDING:

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

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

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

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

THE HONOURABLE DENISE YUE CHUNG-YEE, G.B.S., J.P.
SECRETARY FOR THE CIVIL SERVICE

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

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

THE HONOURABLE MRS RITA LAU NG WAI-LAN, J.P.
SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT

CLERKS IN ATTENDANCE:

MS PAULINE NG MAN-WAH, SECRETARY GENERAL

MRS VIVIAN KAM NG LAI-MAN, ASSISTANT SECRETARY GENERAL

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY
GENERAL

MRS PERCY MA, ASSISTANT SECRETARY GENERAL

PRESIDENT (in Cantonese): Clerk, please ring the bell to summon Members to the Chamber.

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

PRESIDENT (in Cantonese): The meeting starts.

TABLING OF PAPERS

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

Subsidiary Legislation/Instruments	<i>L.N. No.</i>
Exemption from Profits Tax (Renminbi Sovereign Bonds) Order	246/2009
Buildings (Amendment) Ordinance 2008 (Commencement) Notice 2009	247/2009
Building (Minor Works) Regulation (Commencement) Notice 2009	248/2009
Building (Minor Works) (Fees) Regulation (Commencement) Notice	249/2009
Prevention of Bribery Ordinance (Amendment of Schedule 1) Order 2009 (Commencement) Notice.....	250/2009

Other Papers

- No. 44 — Annual Report by the Board of Governors of the Prince Philip Dental Hospital and Audited Statement of Accounts 2008/09
- No. 45 — Secretary for Home Affairs Incorporated
Audited financial statements together with the Director of Audit's Report for the year ended 31 March 2009

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- No. 46 — Sir Edward Youde Memorial Fund
Signed and audited financial statements together with the Auditor's Report and the Report of the Board of Trustees for the period 1 April 2008 to 31 March 2009
- No. 47 — Queen Elizabeth Foundation for the Mentally Handicapped
Report and Accounts 2008-2009
- No. 48 — The Accounts of the Lotteries Fund 2008-09
- No. 49 — Office of the Privacy Commissioner for Personal Data,
Hong Kong Annual Report 2008-09
- No. 50 — Equal Opportunities Commission Annual Report 08/09
- No. 51 — The Sir Murray MacLehose Trust Fund
Signed and audited financial statements together with the Auditor's Report and Trustee's Report for the year 1 April 2008 to 31 March 2009
- No. 52 — Signed and audited financial statements together with the Auditor's Report and the Report on the Administration of the Chinese Temples Fund for the year ended 31 March 2009
- No. 53 — Social Work Training Fund Forty-eighth Annual Report by the Trustee for the year 31 March 2009
- No. 54 — Grantham Scholarships Fund
Signed and audited Statement of Accounts together with the Auditor's Report and Report by the Grantham Scholarships Fund Committee on the Administration of the Fund for the year ended 31 August 2009
- No. 55 — The Brewin Trust Fund
Audited financial statements together with the Auditor's Report and Report by the Brewin Trust Fund Committee on the Administration of the Fund for the year ended 30 June 2009

No. 56 — Signed and audited financial statements together with the Auditor's Report and the Report on the Administration of the General Chinese Charities Fund for the year ended 31 March 2009

Report No. 1/09-10 of the House Committee on Consideration of Subsidiary Legislation and Other Instruments

Report of the Bills Committee on Public Officers Pay Adjustment Bill

Report of the Bills Committee on Domestic Violence (Amendment) Bill 2009

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): Questions. First Question.

Implementation of Mutual Use of Electronic Money Systems of Hong Kong and Shenzhen

1. **MR JEFFREY LAM** (in Cantonese): *President, at the Hong Kong/Shenzhen Co-operation Meeting held on the 30th of last month, the Governments of Hong Kong and Shenzhen agreed to link up in the near future the two electronic money systems of Octopus in Hong Kong and Shenzhen Tong in Shenzhen to enable the cross-system usage of the stored-value cards (SVCs) concerned by residents in both places for travelling and shopping (the mutual use of the SVCs). In this connection, will the Government inform this Council:*

- (a) *when the mutual use of the SVCs is expected to be implemented; in calculating the transaction amounts, how the Hong Kong dollar (HKD) and Renminbi (RMB) are to be converted, including whether a fixed or floating conversion rate will be used; whether or not the conversion rate will be determined by the card issuers or the shops concerned; whether or not it knows if the card issuer has received any complaint about the miscalculation of or questionable*

conversion rates since Octopus may be used in certain retail outlets in Shenzhen from August 2006 onwards;

- (b) of the transport carriers and retail outlets to which the SVCs concerned will be applicable after the implementation of the mutual use of the SVCs, whether or not transport carriers travelling to and from other cities in the Pearl River Delta (PRD) Region will be included and whether or not the area of application will be expanded to cover other places in the PRD Region; and*
- (c) upon the implementation of the mutual use of the SVCs, which card issuer the cardholders should contact when they have lost their cards or wrong amounts have been deducted; what mechanism is in place to handle such situations; whether or not cardholders can check the records of transactions conducted through the aforesaid systems in both Hong Kong and Shenzhen; and whether or not automatic add-value services are available for the SVCs concerned in both places?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, the Administration's reply to Mr Jeffrey LAM's question is as follows:

- (a) Octopus and Shenzhen Tong have set up a task force to conduct in-depth studies and detailed discussions concerning the technical, business and operational aspects of the issue. Since the inter-operability of the two electronic money systems involves numerous complicated issues, including system standards, card reader compatibility, cryptographic capability, management concept, business operation and so on, further study is required by both parties before an implementation schedule can be worked out.

At present, for payments made by Octopus cardholders in Shenzhen, the exchange rate for the HKD against RMB is set by individual shop operators on a daily basis and displayed at conspicuous locations in shops. Transaction amounts are also printed in both RMB and the HKD on payment receipts.

According to the information provided by the Octopus Cards Limited (OCL), the OCL has not received any complaint about the miscalculation of exchange rates or other controversial disputes since Octopus cards can be used in certain retail outlets in Shenzhen.

- (b) It is our understanding that there is no single electronic payment card for public transport in the provinces and municipalities in the PRD Region at this moment. In the "Guiding Opinions on Expediting the Economic Integration in the Pearl River Delta Region" issued on 10 June this year, the People's Government of the Guangdong Province General Office has proposed the promotion of inter-city connection based on the use of a single card on public transport. However, the implementation arrangements have not been promulgated yet. The Government will closely monitor the development in this regard and follow up with the relevant parties as appropriate, with a view to examining the feasibility of expanding the usage of Octopus to public transport in other provinces and municipalities in the PRD Region.
- (c) Since the proposal of the inter-operability of the two electronic money systems is still under discussion among various enterprises and government departments, the implementation details have yet to be confirmed. The arrangements for customer services, including loss-reporting, refund procedures, transaction-record-checking and so on, will be considered together with other technical and business issues, with a view to ensuring that users of the two electronic money systems can have reasonable protection, apart from enjoying the convenience brought about by the service.

MR JEFFREY LAM (in Cantonese): *President, regarding the inter-operability of Octopus and Shenzhen Tong, there remains a number of issues that need to be studied. For example, the deposit for an Octopus card is \$50 while that for a Shenzhen Tong card is RMB 30 yuan. The Secretary has mentioned in the second paragraph of part (a) of the main reply that "the exchange rate for the HKD against RMB is set by individual shop operators on a daily basis" and I feel a bit surprised to learn of this practice. In view of the fact that the Government has given shop operators a free hand to determine their own exchange rates, will*

this give rise to various problems after the completion of transactions? Since Octopus can also be considered to be a form of money and if shop operators are allowed to determine their own exchange rates, will someone take this opportunity to raise their exchange rates to a very high level? This will cause confusion, disputes or bargaining. Has the Administration explored ways to monitor or control the fixing of exchange rates?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, I am grateful to Mr Jeffrey LAM for raising the supplementary question. As we are aware, concerning the operation of business by shop operators, normally, they will set their own exchange rates for customers making purchases with foreign currencies, be it in Hong Kong or Shenzhen. For example, at present, they will set their exchange rates in RMB or the US dollar for customers doing shopping in Hong Kong. They have such a practice. Our practice is to require shop operators to clearly state their exchange rates for customers' knowledge.

In fact, Octopus is a form of electronic money and there is no difference between holding cash and holding Octopus, only that transactions are carried out in the form of electronic money. Consequently, we are now exploring the extension of the current practice of allowing shop operators to determine their exchange rates, so as to make it also applicable under the Octopus system. On consumer protection, I believe disclosure has been achieved by the current practice of requiring shop operators to clearly state their exchange rates and specify on the receipts the prices of merchandise in RMB and the HKD.

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

MR JEFFREY LAM (in Cantonese): *The Secretary has not answered my supplementary question. Since the Government has given shop operators a free hand to determine their exchange rates, how will it monitor this situation? Have any guidelines been drawn up? The Secretary has only mentioned that shop operators are required to state clearly their exchange rates for customers'*

knowledge but has not given any answer to the question of how shop operators are to determine their exchange rates.

PRESIDENT (in Cantonese): Mr LAM, I believe the Secretary has already given an answer regarding the current policy adopted by the Administration in handling this matter.

MRS SOPHIE LEUNG (in Cantonese): *President, I wish to ask the Secretary about part (b) of the main reply. Regarding the promotion of the use of a single card on the Mainland, the Secretary has remarked that the authorities will "follow up with the relevant parties as appropriate". As said by the Secretary just now, Octopus is a form of electronic money and greater efforts should be devoted to the promotion of its use. I hope the SAR Government can take the initiative to hold discussions with other provincial and municipal governments. Given the imminent construction of the Guangzhou-Shenzhen-Hong Kong Express Rail Link, which will forge closer and more comprehensive ties between Beijing and Hong Kong upon completion, will the Government take the initiative to have discussions with various provincial and municipal governments, so as to implement the Octopus technology in various provinces and municipalities, thereby enabling a wider public use of the same?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): I wish to thank the Honourable Member for raising the question. The policy of the Government certainly aims at promoting the extensive use of Octopus. However, I wish to bring up a point here. In the course of promotion, the Government actually needs to overcome a number of technical and policy obstacles. Take Shenzhen as an example, first, can Shenzhen's smart card be mutually used in all places of consumption or modes of transport in the PRD Region? Looking at it from the present situation, the conditions for this to take place have yet to be developed. We would certainly welcome the implementation of policies by the Shenzhen Municipal Government to promote the use of electronic money and we will make efforts to follow up the relevant matters, as well as taking part in discussions as appropriate. Nevertheless, as I have mentioned just now, they need to resolve some policy and technical issues.

We are more than willing to take follow-up action, so as to achieve an extensive use of Hong Kong's Octopus on the Mainland.

DR SAMSON TAM (in Cantonese): *Electronic money is important to Hong Kong. Over the past years, the use of Octopus in Hong Kong has been successful and we are certainly pleased to see its extensive use. In my view, it is good to examine the mutual use of Octopus and Shenzhen Tong at present. That said, some people from the information technology sector have questioned why there is only the OCL in Hong Kong and they query whether or not it is operating in a rather monopolistic manner. If a competition law is in force, I do not know whether or not any challenge to the sufficiency of competition in the market will be directed at the OCL in the future, given that it is the only company providing such services. Consequently, in examining the use of Octopus on the Mainland, the Government will inevitably need to formulate some policies. May I ask the Secretary, in formulating new policies in the future, whether or not sufficient room will be provided for new competitors to gain entry into the market and introduce other forms of electronic money in parallel with Octopus and Shenzhen Tong?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, I am thankful to the Honourable Member for asking the question. In terms of policy, the Government adopts an open policy towards the issuance of cards in Hong Kong. We have taken note of the provision of electronic-money services in the market by other providers, in addition to the OCL. As Honourable Members can imagine, a certain degree of economy of scale is necessary for the extensive use of electronic money. That is to say, our economy should have reached a certain scale, so as to make it possible. Consequently, this is related to the structure of our market in the objective sense. Nevertheless, we have adopted an open policy and competitions are welcome. Regarding the operability of Hong Kong's electronic money in the PRD Region, the policy we adopt remains the same and that is, we hold an open-minded attitude in allowing mutual connection and mutual use of electronic money in the two markets.

MR LAU KONG-WAH (in Cantonese): *President, this matter has undergone discussions in this Council for a long period of time. Although Members keep making enquiries, it is disappointing to see that there seems to be no progress. Part (b) of the Secretary's main reply reflects that the Guangdong Provincial Government actually wishes to introduce a single card and the Secretary's reply is that the authorities need to wait for the announcement of details prior to taking follow-up action. In this regard, is the HKSAR Government too passive? Can it be a bit more aggressive? Otherwise, if the Guangdong Provincial Government has achieved the use of a single card but the use of Hong Kong's electronic money is only confined to Hong Kong, I believe this will cause much inconvenience to the public. May I ask the Secretary whether or not the authorities can be more active and aggressive, so that we need not ask follow-up questions in this regard repeatedly in this Council?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): *President, I wish to thank Mr LAU for raising the question. As he has correctly put it, this issue has been discussed in this Council on a number of occasions. In fact, the Hong Kong Government has all along adopted an active attitude towards this matter. The Hong Kong Monetary Authority and the People's Bank of China in Shenzhen have already undertaken work to handle the technical issues involved. Otherwise, we would not have been able to use such electronic money as Octopus in certain shops in Shenzhen today. All along, we have participated in the relevant work and the underlying role played by the Government is to encourage discussion between the OCL and the Shenzhen Tong Company Limited on how the mutual use of a single card can be achieved. In this regard, the Government is being proactive. That said, the progress of this matter in fact is not entirely dependent on the efforts of the Hong Kong Government but on the scope of the policy adopted by the Shenzhen authorities in various regards. I can tell Honourable Members that our role is to actively participate in the discussion. However, it is only after some of the issues have been resolved that a point of entry can become available for the promotion of our electronic money.*

MS CYD HO (in Cantonese): *President, some personalized Octopus cards can actually show the cardholders' modes of consumption and living habits. The police have also cracked some cases by checking the records of Octopus cards.*

Moreover, Octopus cards can also be used to pass through security systems at entrances of buildings. May I ask the Secretary whether or not any legal advice has been sought from the Department of Justice (DoJ) on how the privacy of individuals can be protected when the mutual use of a single card in the two places is implemented? What legal advice has been given by the DoJ? Can the advice be made public?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, regarding Ms HO's question, please allow me to seek the relevant information from the department concerned after this meeting because I do not have such information at hand.

PRESIDENT (in Cantonese): Second question.

Remuneration for Kindergarten Teachers

2. **MR CHEUNG MAN-KWONG** (in Cantonese): *President, since the 2007-2008 school year, the Government has implemented the Pre-primary Education Voucher Scheme (the PEVS) and abolished the "Recommended Normative Salary Scale for Kindergarten Teaching Staff" (the salary scale). It was reported that the former Education and Manpower Bureau, when consulting the trade on the PEVS in 2006, had undertaken to put in place comprehensive monitoring measures to avoid teachers of kindergartens (KG) (including kindergarten-cum-child centres) from being exploited in terms of pay. In this connection, will the Government inform this Council whether:*

- (a) *it knows, among the full-time KG teachers in the current school year, the respective numbers of those who have obtained the qualification of Qualified Kindergarten Teacher, Early Childhood Education Diploma and Bachelor's Degree in Education in Early Childhood Education, as well as a breakdown of the numbers by levels of their monthly salaries (that is, "\$6,000 or below" and levels at \$3,000 interval thereafter);*

- (b) *it has assessed if the monitoring measures adopted by the authorities have effectively ensured that serving KG teachers will receive salary increase after obtaining the Early Childhood Education Diploma; if the assessment result is in the affirmative, of the average percentage of increase in the salaries of such teachers in each of the past two school years; if it is in the negative, whether the authorities will consider re-instating the salary scale as well as providing matching subsidies according to the salaries of kindergarten teachers, so as to ensure that KG teachers will receive salary increase after they have upgraded their qualifications; and*
- (c) *the authorities will consider providing qualification subsidies to KG teachers which are linked to their qualifications, so as to reflect the authorities' respect and appreciation of the efforts of KG teachers in upgrading their qualifications through furthering studies?*

SECRETARY FOR EDUCATION (in Cantonese): President, since the 2007-2008 school year, the Government has implemented the PEVS to provide direct fee subsidy for parents, promote the upgrading of quality in pre-primary education and increase parental choice. Under the PEVS, KGs continue to operate under market forces, with flexibility in determining teacher salaries. The Government has substantially increased the resources allocated to pre-primary education through the PEVS. The level of fee subsidy under the PEVS will increase progressively from \$10,000 per student per annum in the 2007-2008 school year to \$16,000 in the 2011-2012 school year, thereby enhancing KGs' capacity to attract and retain quality teachers by offering appropriate pay and conditions of service.

My replies to the questions are as follows:

- (a) According to preliminary figures, in the 2009-2010 school year about 9 060 teachers (including principals) in local KGs are holding the Qualified Kindergarten Teacher or above qualification, of whom about 4 680 teachers have a Certificate in Early Childhood Education or equivalent, and 880 teachers have a bachelor degree in Early Childhood Education. A breakdown of teacher salary levels by qualification is not available. According to the data collected

from KGs in a questionnaire survey conducted by the Education Bureau (EDB), the average monthly salaries of full-time teachers (excluding principals) teaching half-day and whole-day classes in KGs offering local curriculum are \$9,800 and \$16,300 respectively in the 2009-2010 school year. A table showing the distribution of monthly salary levels of KG teachers is provided at Annex.

(b) and (c)

Flexibility for KGs to determine teacher salaries by market forces is the policy objective of the PEVS. As KGs have all along been run by the private sector, we believe that they are well placed to offer reasonable and competitive pay and conditions of service according to the market situation so as to attract and retain quality teachers. In fact, the PEVS has injected new resources to the sector, enabling KGs to offer reasonable remuneration to teachers. In addition, KGs joining the PEVS are required to disclose in the Profile of Kindergartens key operational information, including teacher salaries and other expenditure items. This is to enhance transparency and enable parents to make informed choices, taking into account the expenditure patterns of KGs.

We do not have a breakdown of teacher salary levels by qualification. However, based on the applications for fee revision by KGs in the past three years, the salaries of KG teachers have generally increased over the same period. Recently, we have collected from over 20 major school sponsoring bodies such information as the pay structures of teachers in their KGs, and noted that most of these bodies designed their pay structures by making reference to the recommended normative salary scale that existed prior to the implementation of the PEVS. The PEVS has allowed KGs greater flexibility in determining teacher salaries, taking into consideration such factors as a teacher's performance appraisal and qualifications, the conditions of individual KGs and the market environment.

As the Government has made substantial financial commitment to pre-primary education and injected new resources through the PEVS,

KGs should have adequate capacity in formulating salary scales and providing qualification allowances at their own discretion for their teachers. The Government's stance is that since pre-primary education is privately-run, the salaries of KG teachers should be determined by the market. Under the current policy, we do not see any need to formulate a salary scale for KG teachers or provide qualification allowances that are linked to qualifications.

Annex

Distribution of monthly salary levels of full-time teachers
in local KGs in the 2009-2010 school year

<i>Monthly salary</i>	<i>No. of full-time teachers (excluding principals) in local KGs</i>	
	<i>Half-day</i>	<i>Whole-day</i>
\$6,000 or below	128	4
\$6,001 - \$9,000	567	115
\$9,001 - \$12,000	385	583
\$12,001 - \$15,000	162	2 784
\$15,001 - \$18,000	113	1 660
\$18,001 - \$21,000	13	871
\$21,001 - \$24,000	4	562
\$24,001 - \$27,000	2	501
\$27,001 or above	3	98

Note:

The above table has been compiled based on the data collected from KGs in an anonymous questionnaire survey conducted by the EDB in September 2009. The figures include trained and untrained teachers (excluding principals). The response rate of the survey was about 90%, with some of the response being incomplete.

MR CHEUNG MAN-KWONG (in Cantonese): *President, the PEVS has been implemented for several years and KG teachers have also been upgrading their qualifications for several years. But as shown in part (a) of the main reply, the Government does not have any breakdown in respect of pay trend statistics of qualified KG teachers in terms of whether they are holders of relevant diploma or bachelor's degree. If the Government only has some general statistics without*

regard to the qualification of KG teachers, how can it effectively monitor whether KG teachers have been exploited in terms of pay? In particular, does the Government know whether KG teachers will receive better pay packages after completing in-service training? Does it mean that the authorities' current arrangement under which KGs are only required to disclose the salary levels of teachers on the Internet for the scrutiny of parents simply has no monitoring effect? Will the authorities immediately conduct comprehensive pay trend surveys and collate relevant statistics on KG teachers holding different qualifications? As the review by the Education Commission (the Commission) on the PEVS is underway, this would be a very important benchmark. But right now, the authorities do not even have any statistics to set this benchmark and in that case, how can the Commission conduct its review according to the real situation? If this is how the review is to be conducted, would it be just like asking a blind man to feel an elephant? Does it mean that the authorities are shirking their responsibilities?

SECRETARY FOR EDUCATION (in Cantonese): President, since the implementation of the PEVS, more than 90% of KG teachers have in fact received or are undergoing in-service training and we would take note of the pay trend of KG teachers on a yearly basis. In the past three years, we have observed that the salaries of KG teachers have generally increased. As I have mentioned in the main reply, according to the latest statistics for the 2009-2010 school year, the monthly salaries of KG teachers teaching half-day and whole-day classes are \$9,800 and \$16,300 respectively. We can see from the market trend that KG teachers are being offered reasonable pay in return and we have not received any complaint from KG teachers about exploitation. In fact, as Mr CHEUNG has mentioned, a working group under the Commission has already embarked on a review of the PEVS and it has held its first meeting in November. Members of the working group are aware of the concerns and demands of the public and the Legislative Council regarding various arrangements under the PEVS and their implementation. Later on, the working group will discuss and examine the details of the review. It will also conduct focus group discussions to gauge the concrete views of the public, Legislative Council Members and academics on the PEVS when necessary.

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

MR CHEUNG MAN-KWONG (in Cantonese): *My question is that if the Government does not have any breakdown in respect of the salary levels of KG teachers by qualification, how can it know that KG teachers have not been exploited in terms of pay after they have upgraded their qualifications? In addition, as the review is underway, will the authorities target this deficiency and conduct a survey on the salary levels of KG teachers having different qualifications so that the outcome of the review could be more realistic? This is my supplementary question.*

PRESIDENT (in Cantonese): Secretary, Mr CHEUNG is asking whether a salary level survey by qualification of KG teachers would be conducted?

SECRETARY FOR EDUCATION (in Cantonese): President, the guiding principle of the PEVS is that the flexibility currently offered by privately-run KGs should be used to determine the salaries of KG teachers. This principle is very important because we consider that KGs should have absolute flexibility to determine teacher salaries. Regarding whether we would monitor the salary levels of KG teachers, we have indeed done so. During the past three years, we have on one hand witnessed that KG teachers have continued to upgrade their qualifications so much so that 90% of KG teachers have completed or are undergoing further studies. On the other hand, we have also observed that the salaries of KG teachers have generally increased over the same period. Hence, we believe that market forces will continue to play their part.

MR CHEUNG MAN-KWONG (in Cantonese): *He has not answered my supplementary question, but I will not hold up other Members. He has not answered my question.*

MRS SOPHIE LEUNG (in Cantonese): *President, the Deputy Secretary has stated clearly in part (a) of the main reply that the objectives of the PEVS are to*

improve the quality of pre-primary education and to increase parental choice. My supplementary question relates to the statement he made in parts (b) and (c) of the main reply that market forces could hopefully bring about reasonable and competitive pay and conditions of services for KG teachers, which I think is something that will happen eventually. I want to ask the Secretary how can we know for sure that the quality of pre-primary education will really be improved in future because this is exactly the main reason for implementing the PEVS? How can we let the parents know that this is really a better choice? In addition, given that the PEVS is the competitive force driving the whole pre-primary education sector, how can this force be brought into full play so that the quality of pre-primary education can keep on improving? KG teachers are also aware that as their teaching standards improve, their KGs will gain a better reputation and hence, more students are attracted to enrol in their KGs. As a result, they will have a better chance of having a salary higher.

PRESIDENT (in Cantonese): Mrs LEUNG, you seem to have raised three or four questions. I think you are asking the Secretary how to improve the quality of pre-primary education, right?

MRS SOPHIE LEUNG (in Cantonese): Yes.

SECRETARY FOR EDUCATION (in Cantonese): President, as Mrs LEUNG has said just now, the PEVS has allowed KGs providing pre-primary education more resources to upgrade their quality through the model of the Government offering direct fee subsidies to KG parents. And how do we achieve this? First, we have asked KG teachers to obtain a Certificate in Early Childhood Education within five years. As I have said just now, 90% of KG teachers have already obtained or are studying for this qualification. At the same time, we have introduced a quality review mechanism and by now, more than 400 KGs have received quality assurance inspections. When conducting the quality assurance inspections, we have also conducted some surveys. Survey results show that KGs generally welcome the introduction of this mechanism as it has given them an opportunity to upgrade their services and this is generally acknowledged by the pre-primary education sector.

Regarding the question on how to enhance the transparency of relevant information to ensure wider choices by parents, as I have said just now, KGs are required to disclose their key operational information in the Profile of Kindergartens. Moreover, quality assurance inspection reports of KGs which I have just mentioned are also available for public reference on the Internet. We have reason to believe that through the PEVS with the additional resources allocated by the Government, the upgrading of quality in pre-primary education has already been achieved. At the same time, parents can also monitor the situation and make appropriate choices.

MR WONG SING-CHI (in Cantonese): *The Secretary has mentioned in the main reply that the increasing resources allocation is able to serve the purpose of "enhancing KGs' capacity to attract and retain quality teachers by offering appropriate pay and conditions of service." However, he has said in the last paragraph of the main reply that the matter should be "determined by the market". Considering the large amount of resources allocated by the authorities, the Government should have the responsibility to ensure that KG teachers are remunerated at a reasonable level. Even the Secretary says so himself. Then why nothing is done by the Government?*

Will the Secretary take up the objectives as stated by the authorities and conduct a review on the salary levels of KG teachers? KGs are often prevented from proposing fee revisions because of the market situation or the low birth rate. They may even have to cut costs and this has in turn affected the salaries of KG teachers. When considering the matter, will the Secretary give more thoughts to the proposal of providing qualification allowances to KG teachers in the absence of a salary scale so as to satisfy the urgent needs of the teachers and achieve the purpose of retaining quality KG teachers?

SECRETARY FOR EDUCATION (in Cantonese): The objective of the PEVS is to improve the quality of pre-primary education through the allocation of additional resources by the Government. In the past few years, we see that KGs have in fact applied for fee revisions. At the same time, we also witness an increasing trend in the salaries of KG teachers. Regarding the salaries of KG teachers, given the fact that the pre-primary education sector is privately-run, teacher salaries should not be determined by qualifications alone. Instead,

consideration should also be given to other factors such as a teacher's performance appraisal, the conditions of individual KGs and the market environment. The basic pre-conditions of the PEVS are that by allowing the pre-primary education sector to continue its free market operations and by going towards the direction of offering direct fee subsidies to KG parents, the pre-primary education sector can continue to develop.

MS STARRY LEE (in Cantonese): *The Secretary has mentioned time and time again in his replies that through the additional resources allocated under the PEVS, the objective is to upgrade the overall quality of pre-primary education. This is what the parents and the public are hoping to see. However, the real situation is that as the Government has explicitly required that KG teachers must complete their relevant training by 2011 and 2012, they are facing additional pressure. KG teachers are really facing great pressure arising from additional demands for further studies and increasing demands from the parents on the KGs. Many KG teachers have said to us that their wastage rates keep on increasing. As the PEVS is currently under review, can the Secretary give his promise here that he will ask the Commission to conduct surveys on the salary levels and wastage rates of KG teachers both before and after the implementation of the PEVS and to provide relevant reports to this Council and the Commission so that there can be a better understanding of the real situation and that the on-going review would be conducted in a more comprehensive manner?*

SECRETARY FOR EDUCATION (in Cantonese): I want to thank Ms LEE for her suggestion. The review of the PEVS by the Commission is already underway. We have heard the voices of the public and members of the working group are also aware of the concerns expressed by the public on the implementation of the PEVS such as the workload of KG teachers as mentioned by Ms LEE. On the one hand, we hope that with the additional resources allocated through the PEVS, KG teachers are encouraged to obtain higher qualifications. At the same time, we are also concerned that the workload of KG teachers would increase in these five years and they cannot be avoided. As I have just said, 90% of KG teachers have obtained or are studying for these professional qualifications. Of course, KG teachers pursuing further studies would experience additional pressure. But such pressure at work is alleviated to

a certain extent because KGs may hire substitute teachers with the additional resources they obtain under the PEVS. Moreover, the working group under the Commission would thoroughly review the concerns that come to its knowledge in relation to the PEVS. We will also organize focus group discussions to thoroughly explore all the issues brought about by the PEVS when necessary.

PRESIDENT (in Cantonese): Ms LEE, has your supplementary question not been answered?

MS STARRY LEE (in Cantonese): *The Secretary has not replied as to whether a survey would be conducted and provide the survey results to this Council and the Commission so that there can be a better understanding of the overall situation. The Secretary has just said that there would be focus group discussions but he has not replied my supplementary question directly.*

SECRETARY FOR EDUCATION (in Cantonese): The Education Panel has in fact suggested that we should report to it on the progress of the review. Regarding the actual work plan of the review, I think it should be left to the decision of the working group. Nonetheless, we will make timely reports to Members on the outcome of the review in due course.

MR CHEUNG KWOK-CHE (in Cantonese): *Nowadays, education has become market-oriented and this has only served to introduce management concepts and market culture into the teaching profession. In the past, KG teachers are dedicated towards teaching but now, they are concerned about money. I can foresee that this would only bring about division among colleagues and a lower standard of service provided to the low-income families and the grassroots. I want to ask the Secretary whether he will consider reinstating the salary scale for KG teachers? If not, whether consideration will be given to setting a minimum wage for KG teachers so that they do not have to worry about earning a living and forget about the need to exert efforts and improve the quality of education?*

SECRETARY FOR EDUCATION (in Cantonese): As I have just said, we have indeed been keeping watch of the pay trend of KG teachers since the implementation of the PEVS. We see that in the latest school year, the monthly salaries of KG teachers teaching half-day and whole-day classes are some \$9,800 and some \$16,000 respectively. Mr CHEUNG has just asked about the relief measures we have for the lower-income families. I hope we can note that although the review is still on-going, we are aware of the tuition fee increases of KGs in recent years and hence, from this school year we have adjusted the fee remission ceilings for KG students from low-income families on the basis of the respective weighted average fees of the non-profit-making half-day and whole-day KGs eligible for PEVS. Currently, the maximum amount of fee remission for half-day and whole-day KGs has been raised to \$18,000 and \$29,300 per student per annum respectively. We hope this can help alleviate the financial burden of the less well-off families. Generally speaking, the pre-primary education sector has always been provided by the private market. We think that through the allocation of direct subsidies from the Government to KG parents under the PEVS, the scheme has been working effectively.

PRESIDENT (in Cantonese): This Council has spent more than 23 minutes and 30 seconds on this question. Three Members who are waiting for their turn to ask questions are unable to do so.

PRESIDENT (in Cantonese): Third question.

Legislative Council By-elections

3. **DR PRISCILLA LEUNG** (in Cantonese): *President, recently, some political parties have proposed that one Member be designated from each of the five geographical constituencies of the Legislative Council to resign. If this proposal is implemented, the Government will have to arrange for by-elections. In this connection, will the Government inform this Council:*

- (a) *in respect of each of the Legislative Council by-elections held since the election of the First Legislative Council in 1998, of the respective*

amounts of public expenditure involved and the number of days between the day on which the notice of the existence of the vacancy in the membership of the Council was published in the Gazette and the polling day;

- (b) whether this year's allocation which may be used for conducting Legislative Council by-elections is sufficient for conducting by-elections in all five geographical constituencies at the same time; if it is not sufficient, whether the Government needs to seek funding approval from the Legislative Council, and whether it has studied how the by-elections will be conducted when the funding application has been rejected by the Legislative Council for several times; if it has, of the outcome; and*
- (c) given that section 17(1) of the Legislative Council Ordinance (LCO) stipulates that "a vacancy in the membership of the Legislative Council does not affect its power to transact business", whether it has studied if the effect of this provision will be affected by the duration of a vacancy; if it has, of the outcome?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, my reply to part (a) of the main question is set out below:

- (a) Since the 1998 Legislative Council election, three Legislative Council by-elections have been held, namely, the 2000 Legislative Council Hong Kong Island geographical constituency by-election, the 2001 Legislative Council Election Committee by-election and the 2007 Legislative Council Hong Kong Island geographical constituency by-election. The expenditure for the three by-elections amounted to about \$27 million, \$0.6 million and \$20 million respectively. The three by-elections were held 80 days, 59 days and 115 days respectively after the notice of the existence of the vacancy in the membership of Legislative Council was published in the Gazette.

- (b) When the Registration and Electoral Office (REO) prepares its estimates of operating expenditure for each financial year, it sets aside a provision for holding by-elections for any vacancies which may arise in the membership of Legislative Council and the District Councils (DCs). In general, the REO would set aside about \$18 million for holding by-elections in each financial year.

We currently estimate that at least \$150 million would be required if by-elections for all the five Legislative Council geographical constituencies in Hong Kong are to be held at the same time. The relevant estimate is higher than five times the expenditure of the 2007 Legislative Council Hong Kong Island geographical constituency by-election. This is because when the vacancy arose in the membership of the Legislative Council in 2007, the REO had started preparing for the 2007 DC election. The preparation for the Legislative Council by-election and the DC election were handled together in order to hold the Legislative Council by-election as soon as practicable. Accordingly, part of the expenditure on staff remuneration was saved. Besides, in order not to confuse electors, the publicity for the 2007 Legislative Council by-election was launched after the 2007 DC election. The duration for publicity was shorter and the expenditure was lower. The comparison of the expenditure of the two by-elections is set out in the Annex.

In fact, the scale of by-elections for all the five Legislative Council geographical constituencies is similar to that of a DC election. In the 2007 DC election, since 41 out of 405 constituencies were uncontested, there was no need to hold elections for the relevant constituencies. The REO, therefore, only had to set up 480 polling stations in Hong Kong at that time, and the expenditure then already exceeded \$150 million. If vacancies arise in all the five Legislative Council geographical constituencies, we expect that more than 530 polling stations would be required, as in the 2008 Legislative Council election. In addition, dedicated polling stations will have to be set up for imprisoned or detained electors, meaning that another 30 polling stations will have to be set up in penal institutions and police stations. In total, about 560 polling stations will be

required if by-elections for the five geographical constituencies are held. Hence, about 70 more polling stations will have to be set up as compared with the 2007 DC election. In fact, the expenditure of holding an election is directly proportional to the number of electors and polling stations. Therefore, if in 2010 we have to arrange by-elections for five geographical constituencies, the final expenditure may exceed \$150 million.

As the provision of the REO for holding by-elections would not be sufficient for holding by-elections for all the five Legislative Council geographical constituencies, the REO would seek funding from Legislative Council according to the established procedures, if it is necessary to hold the by-elections.

Under the Basic Law and the relevant local legislation, the Government of the Special Administrative Region (SAR) has the constitutional responsibility to hold by-elections when vacancies arise in the membership of Legislative Council. Section 36 of the LCO stipulates that the Electoral Affairs Commission (EAC) must, in accordance with regulations in force under the EAC Ordinance, arrange for a by-election to be held when the Clerk to Legislative Council makes a declaration as to the existence of a vacancy in the membership of Legislative Council. We believe Members would understand that the Government must act in accordance with the law and would approve the funding for arranging by-elections.

- (c) Sections 17(1) and (2) of the LCO stipulate that a vacancy in the membership of Legislative Council does not affect its power to transact business; and that neither a vacancy in the membership of Legislative Council nor a defect in the election of a Member, or as to the eligibility of a person to be a Member, affects the validity of its proceedings. Although there is no restriction as to the duration of the "vacancy in the membership of Legislative Council" under the LCO, as I have mentioned earlier, the SAR Government has the responsibility to hold a by-election to fill a vacancy in the membership of Legislative Council when it arises.

Annex

	<i>Actual Expenditure of the 2000 Legislative Council by-election (Thousand dollars)</i>	<i>Actual Expenditure of the 2007 Legislative Council by-election (Thousand dollars)</i>
Staff	5,250	0
Publicity	3,420	770
Others	19,020	20,010
Total	27,690	20,780

DR PRISCILLA LEUNG (in Cantonese): *President, the Secretary has mentioned at the end of the third paragraph of part (b) of the main reply that the expenditure of holding the by-elections may exceed \$150 million. I believe the Secretary is aware that a referendum needs to have legal and constitutional bases. According to "one country, two systems" and the Basic Law, Hong Kong does not have any mechanism for a referendum. The resignation en masse of Members returned from five geographical constituencies as a de facto referendum, so to speak, does not have a constitutional basis. Therefore, may I ask the Secretary here whether he has considered the fact that seeking Members' approval for funding by-elections which mislead the public to believe that it is a de facto referendum is equivalent to asking Members of this Council to concur with such a mode of election which violates the intent of Basic Law? This will further undermine the mutual trust between the Central Authorities and Hong Kong, making the goal of achieving universal suffrage more distant. I wish to ask the Secretary again, must he table funding application of \$150 million, if not more, for holding the by-elections and lobby for Members' endorsement of the application?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): *President, I believe the Central Government and the SAR Government's long-standing position is that we should act in accordance with the law under "one country, two systems". At present, we act by the Basic Law and the relevant local legislation. In other words, if a vacancy arises in the membership of the Legislative Council, we have the constitutional and statutory responsibilities to arrange for a by-election. The SAR Government will regard it as a by-election.*

It is a constitutional and legal fact that the Basic Law does not provide for the arrangement of a referendum. Hence, this election will only be a by-election.

MR CHIM PUI-CHUNG (in Cantonese): *President, the Secretary has emphasized in the main reply that this Council has the responsibility and obligation to approve funding for arranging by-elections. But can he give us his assurance? If the Legislative Council does not approve the funding after some Members have resigned, how will he address the problem then? Admittedly, it is too early now to discuss this, but will this lead to another political conflict?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, I always handle matters in a proactive manner. I believe Members of different political parties and groupings in this Council will differentiate between right and wrong. They know that we have a constitutional responsibility to maintain the composition of the Legislative Council at 60 seats. Moreover, we know that views in the community about this by-election are divergent, so are the views in this Council, but I believe Members will take account of the whole situation and maintain the composition of this Council at 60 seats. I believe Members on the whole will continue to stand by this point.

MISS TANYA CHAN (in Cantonese): *I believe both people who are acquainted with law or otherwise will respect this constitutional responsibility. Regarding part (a) of the Secretary's main reply, section 8 of chapter 541D of the Laws of Hong Kong does mention the time limit, which is from the day on which a declaration is made as to the existence of a vacancy (that is, upon gazettal of the notice of the existence of a vacancy in the membership of the Legislative Council) to the first day of the nomination period. Section 8 of chapter 541D more or less provides for the holding of the by-election as soon as practicable, subject to the actual situation. I wish to ask the Secretary, in respect of the several by-elections he has mentioned earlier, are there any records of the respective durations?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, according to local legislation, in the event of a vacancy arises in the membership of the Legislative Council, the EAC and the REO will indeed arrange for a by-election as soon as practicable. Generally speaking, preparation has to be made for practical arrangements such as manpower and the venue. The date of the by-election will normally be published in the Gazette first, and nomination will commence in about two weeks afterwards. The nomination period commences from the fourteenth to the twenty-first day, to be followed by the canvassing period which starts from the twenty-ninth day to the forty-second day. Thus, the maximum duration between giving notice in the Gazette and the ultimate holding of the by-election is about 11 weeks. The statutory provision, however, only includes the dates of the nomination period and canvassing period, which are six and nine weeks respectively. Regarding when the REO, EAC and the Chief Electoral Officer will give notice of the date of the by-election in the Gazette, it is subject to their decision.

MISS TANYA CHAN (in Cantonese): *The Secretary has not answered my supplementary question. My question is about the gazettal of the existence of a vacancy in the membership of the Legislative Council, but the Secretary has answered in respect of the gazettal and polling dates.*

PRESIDENT (in Cantonese): Are you asking the Secretary, in the previous three by-elections, how long the respective periods from the gazettal of the existence of a vacancy

MISS TANYA CHAN (in Cantonese): *In fact, the gazettal of the vacancy arisen goes first, to be followed by*

PRESIDENT (in Cantonese): to the nomination deadline were?

MISS TANYA CHAN (in Cantonese): *Exactly. My question is about those periods. The Secretary's reply just now was about gazetting the by-election date*

..... the polling period, which actually took place during the period I mentioned earlier. Hence, the Secretary has not yet answered my supplementary question.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, section 7 provides for the requirement of giving notice of the existence of a vacancy in the Gazette; that is, the nomination period shall be decided by the Chief Electoral Officer and it shall not commence before the day on which the notice of election or by-election is published in the Gazette. However, the entire procedure should certainly be preceded by a declaration made by the Clerk to Legislative Council in the Gazette as to the existence of a vacancy in the membership of the Legislative Council. The Chief Electoral Officer, the REO and the EAC will then proceed with the relevant procedures.

MR IP KWOK-HIM (in Cantonese): *I also wish to ask a follow-up question. In my recollection, a notice of by-election was published in the Gazette before the past three by-elections were held and in my recollection, the periods were different — in other words, the length of the period may vary — while the part which follows is relatively rigid because it is provided in the law. In this connection, is there a maximum or minimum period for publishing the notice in the Gazette? My concern is that if a by-election is to be held, the expenditure may exceed \$150 million. If so, will this amount of expenditure vary with the duration between the nomination period and the date of gazettal? This is because publicity, among others, may have to be launched. Does the Secretary have such a recollection? If so, what would be the difference in the amount of expenditure if the length of the duration varies?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, I believe the EAC and the REO will arrange the by-election in a pragmatic manner. First of all, as Members of the political parties and groupings concerned have not yet tendered their letter of resignation, the REO and the EAC can only make preliminary planning at the present stage subject to when the Members concerned will formally tender their resignation. Moreover, I believe the REO and the EAC will make full preparation for the smooth running of the by-election, which is our primary concern.

Regarding the time for giving notice in the Gazette, according to past electoral arrangement, the duration between the date of gazettal and the start of the nomination period is about two weeks. As for this by-election, I think the first and foremost issue now is the formal resignation of Members of the political parties and groupings concerned, only after which can we start this procedure.

MR IP KWOK-HIM (in Cantonese): *President, the Secretary has not answered my supplementary question.*

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

MR IP KWOK-HIM (in Cantonese): *I asked the Secretary when the notice would be published in the Gazette after the Members had resigned.*

PRESIDENT (in Cantonese): Were you asking what was the purpose of the notice to be published in the Gazette?

MR IP KWOK-HIM (in Cantonese): *The notice in the Gazette for holding the by-election. I also asked him the amount of money involved.*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, I believe I understand Mr IP Kwok-him's supplementary question. According to him, the sooner we gazette the date of the by-election, the earlier the Government and the REO will have to launch publicity for the by-election. The longer the duration between the gazettal and the nomination and canvassing periods, the duration of publicity will be longer and hence the expenditure will be greater. President, I believe we all wish to fill these vacancies as early as practicable, and the REO and the EAC have to be pragmatic so as to ensure the smooth running of the by-election. Therefore, I am of the view that the duration of the publicity and the expenditure involved will not have

a great impact on whether the expenditure for this by-election will exceed \$150 million. These factors may not have such a great impact.

MR FREDERICK FUNG (in Cantonese): *President, I would reckon that six Members will resign because Mr CHIM Pui-chung said that he would also resign if five Members of the pan-democratic camp resign. (Laughter) Thus, I am afraid that this expenditure estimate is inaccurate. May I ask the Secretary what the amount of expenditure should be if Mr CHIM Pui-chung also follows suit and resigns? (Laughter)*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, in fact, all along I am concerned about the intention of Mr CHIM Pui-chung to stay or otherwise because we are sometimes encouraged by his participation in Council debates and our speeches would become more lively. We estimate that at least \$150 million will be required for this by-election, which is certainly calculated on the basis that over 560 polling stations have to be set up. The normal manpower of the REO for 2010, which is originally not an election year, is about some 100 staff. To cope with the by-election, the REO may need to add 20 civil service posts and recruit over 250 non-civil service temporary staff. These additional manpower and financial provision are mainly used for arranging by-elections after Members from the five Legislative Council geographical constituencies have resigned. Of course, if Mr CHIM Pui-chung would also resign from his functional constituency and join the by-election, we will also need to arrange for a functional constituency by-election. However, I believe the additional expenditure involved is limited and will not have a great impact on the overall arrangement.

MR FREDERICK FUNG (in Cantonese): *President, the Secretary has not answered whether he has made an estimate of the amount of money involved.*

PRESIDENT (in Cantonese): Secretary, do you have a more accurate estimate?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, in fact, I have the major figures with me. Let me provide three figures for Members to compare. To begin with, \$154 million was used for the 2007 DC election in which members were directly returned from 405 constituencies; \$280 million was used for the 2008 election in which 30 seats were directly returned from geographical constituencies and 30 seats were returned from functional constituencies. As the direct election of Members from geographical constituencies is involved on this occasion, we estimate that at least \$150 million will be required. We have not taken into account the scenario of holding by-elections for vacancies arisen from the 30 functional constituencies. If a by-election will have to be held for one particular functional constituency, we would estimate that such a by-election will not have a great impact on the \$150 million budgeted. But Members can see the magnitude, that is, the expenditure of holding the DC election covering the entire Hong Kong Island, Kowloon and the New Territories amounted to \$154 million and that of holding the 2008 Legislative Council election amounted to \$280 million.

Therefore, we will be pragmatic about it. If by-elections have to be held for vacancies arisen from Members resigned from the five Legislative Council geographical constituencies, we will know what should be done.

PRESIDENT (in Cantonese): This Council has already spent 22 minutes on this question. I am afraid Members waiting for their turn to ask questions will not have the opportunity to do so today.

PRESIDENT (in Cantonese): Fourth question.

Development of Vaccine Industry in Hong Kong

4. **MRS REGINA IP** (in Cantonese): *It has been reported that Influenza A (H1N1) vaccine is in great demand as the epidemic continues to spread. In the United States, the Centers for Disease Control and Prevention has reported a shortage of the vaccine. Some experts have pointed out that being at the forefront of research into the epidemiology of influenza viruses, Hong Kong may have favourable conditions for developing the vaccine industry, which could*

contribute to the local public health system, promote the development of a research-based and innovation-driven economy, create high-end employment opportunities, and meet the vaccine needs of the Mainland and neighbouring Asian countries. In this connection, will the Government inform this Council:

- (a) whether it had launched or supported any technological initiative in the past five years to facilitate vaccine research and developing the vaccine industry; if so, of the details and its assessment of the effectiveness of such initiatives; and*
- (b) given that "innovation and technology" and "medical services" are among the six economic areas where Hong Kong enjoys clear advantages identified by the Government for further development, whether the Government will include the vaccine industry as one of the industries to be further developed, and take measures to promote the development of the vaccine industry and related research and development activities; if so, of the resources to be deployed and other measures to support such development?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, all along, various government bureaux and departments have been actively promoting the development of biotechnology, including research and development of vaccines. Our current efforts in promoting the development of local biotechnology sector mainly include funding of scientific research projects, provision of suitable supporting facilities and strengthening co-operation between Hong Kong and the Mainland in the research and development of vaccines. Details are set out below:

- (a) On scientific research, the Government provides funding support to various institutions and organizations through different channels for conducting research on biotechnology and infectious diseases. Take the Innovation and Technology Fund (ITF) as an example, since its inception in 1999 until 30 September 2009, it has provided funding of over \$300 million for more than 150 applied research projects in biotechnology-related fields, including the research and development and production techniques for vaccines. In addition, the Research Grants Council under the University Grants Committee

(UGC) has provided funding support to 12 applications for conducting research on epidemiology and vaccines in the past five years, involving a total of over \$11 million. The Areas of Excellence Scheme under the UGC has also allocated a total of \$76 million to local universities in the 2007-2008 academic year for conducting a research project on the Control of Pandemic and Inter-Pandemic Influenza. The project aims to explore new ways of treatment and develop new vaccines for the effective control of pandemic influenza. In addition, the Research Fund for the Control of Infectious Diseases administered by the Food and Health Bureau has, since its inception in 2003, provided over \$316 million for funding more than 400 research projects relevant to the prevention, treatment and control of infectious diseases. Some of the projects also included vaccine research.

- (b) On the hardware of supporting facilities, according to the Commerce and Economic Development Bureau, the ITF has over the years provided funding support to the Hong Kong Institute of Biotechnology (HKIB) for setting up its biologics manufacturing centre. The centre offers universities and biotechnology enterprises services including the processing of various biological products (including vaccines), manufacturing of products up to demonstration batch and commissioned research, hence providing support from fundamental research to clinical research for biological products.

The Hong Kong Science Park Biotech Centre was open in April this year to facilitate the development of local biotechnology industry. The Centre provides sites, advanced instruments and laboratory facilities for shared use by the biotechnology research companies in the Science Park. The Life Science Acceleration Programme launched by the Science Park also provides funds for incubatees to conduct research and acquire laboratory equipment.

- (c) In promoting exchanges on research and development of vaccines between Hong Kong and the Mainland, apart from actively promoting local biotechnology development, we have also looked into the feasibility of conducting research and development of vaccines in collaboration with the Mainland. As a matter of fact,

Hong Kong has a pool of experts in the field of influenza virus research, while the Mainland owns quality vaccine producing enterprises, abundant manpower and land resources. The two places complement each other with their own competitive edges. As such, we are now actively exploring the option that Hong Kong will provide research information and analysis on influenza whereas the vaccine manufacturers on the Mainland will take up vaccine production. This will not only pool together the resources of both sides to achieve complementary advantages on the research and development and production of vaccines, but will also provide a favourable environment for innovation to facilitate more in-depth and diversified exchanges and co-operation between scientific research talents on the Mainland and in Hong Kong.

To this end, we signed the Co-operation Arrangement on Joint Research and Development of Pharmaceutical Products (Vaccine) with the Guangdong Food and Drug Administration at the 12th Plenary of the Hong Kong/Guangdong Co-operation Joint Conference held on 19 August 2009. We are now working out the details with the Mainland authority, with a view to fostering collaboration in the research and development and production of vaccines so as to jointly prevent the outbreak of pandemic influenza and safeguard the health and welfare of the people of both sides.

- (d) As regards facilitating foreign enterprises to develop and produce vaccine in Hong Kong, we welcome foreign vaccine manufacturers to engage in the research and development as well as production of vaccines in Hong Kong. We will do our utmost to provide them with appropriate support and assistance. We have been in contact with some vaccine manufacturers to discuss the setting up of vaccine manufacturing facilities in Hong Kong.

President, the Government will continue to facilitate the development of local vaccine industry through the programmes and measures mentioned above.

MRS REGINA IP (in Cantonese): *Having listened to the Secretary's main reply, I am really disappointed and indignant. I believe a lot of people from the pharmaceutical sector would feel the same as they know that a professor from the University of Hong Kong (HKU) masters a new technology, that is, cell-based technology, for producing vaccine. But that technology is based on the use of cells rather than the conventional embryo and egg technology. Using the embryo and egg technology, the reward of vaccine development is unstable and there are often bad harvests. Given an outstanding technology, why can the setting up of a factory in Hong Kong not be considered to create more job opportunities for Hong Kong people and promote the relevant research and development? Just like Prof Charles KAO, Prof YUEN Kwok-Yung could well be awarded a Nobel Prize in the future. However, the Government has allowed the Mainland to develop all the good things instead of giving Hong Kong professors more opportunities of development, allowing the pharmaceutical sector to set up factories in Hong Kong, thus enabling science graduates to secure better employment. May I ask the Secretary why Hong Kong does not have the conditions for setting up pharmaceutical factories?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): I have not said that Hong Kong does not have the conditions for the producing vaccines, but, in various aspects, Hong Kong definitely there are two stages to vaccine production: the first stage is research and development and conducting microbiological or virological studies; another stage is the development of a production line; and the two things are totally different. Concerning the professionals in these two aspects, I believe that Hong Kong has more outstanding professionals in research and development. About setting up factories, suitable sites can be found in the Science Park or other places in Hong Kong, but, someone has to take the lead and promote the development. Generally speaking, there are few such professionals for the moment while international pharmaceutical concerns or pharmaceutical concerns producing vaccines on a large scale emphasize cost control in the selection of sites for the production of vaccines, including land and locations for the construction of factories, and general technical personnel. In this connection, we have all along proactively communicated and promoted understanding with interested persons abroad.

Mrs Regina IP has asked why the cell-based technology of the HKU cannot be used now. At present, we think that the cell-based technology is not just owned by the HKU as it has been developed in many places; for example, two pharmaceutical concerns in the United States are using this technology and they have methods of control such as patent rights. If we want to develop the relevant technology, we must be particularly careful and we must conform to the commercial and industrial developments in the international arena.

MR CHAN HAK-KAN (in Cantonese): *My supplementary question is similar to the question raised by Mrs Regina IP. I have recently visited The Hong Kong Polytechnic University (PolyU) and I know that they have developed a new anti-cancer drug which is found to be very effective as a result of laboratory and clinical studies. However, there are difficulties, that is, when they want the drug to be extensively used by the public, they encounter certain difficulties in the search for capital and pharmaceutical concerns. According to the Secretary, the Government has put a lot of resources into scientific research but I believe that the same problems are faced in respect of vaccine development and the development of the anti-cancer drugs by the PolyU, that is, how can scientific research results be turned into products for sale in the market and used by the public? The Secretary has just mentioned that land resources and policies are required, yet, how can the Government assist universities, scientific research bodies and pharmaceutical concerns and foster co-operation in them so that the results of scientific research will really become medicines produced for use by the public?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): A number of processes need to be gone through, from clinical or laboratory studies to the production of drugs. We have tried our best to obtain assistance from the Hong Kong Science Park Biotech Centre in respect of technology transfer or developing preliminary research into commercial products, which is not an easy task. In general, some large-scale foreign pharmaceutical concerns may develop tens of thousands of products each year, nevertheless, only a few types of pharmaceutical products can really be put into production. So, this is not an undertaking of a small scale. We can act as a bridge and assist them in contacting large companies with a view to obtaining the patent rights needed for

development. This task is very important. At this stage, if Hong Kong wants to engage in "one-stop" production, difficulties are certainly involved. But we think that the resources currently injected by the Government can at least help them take the first step forward in various areas.

DR PAN PEY-CHYOU (in Cantonese): *President, actually, the supplementary question I intend to raise is very similar to the one raised by Mrs Regina IP, however, I would like to add some information. If Hong Kong produces these vaccines, firstly, the floor areas of the factories need not be too large; secondly, little pollution would be caused; thirdly, there is no need to employ a large number of workers; and fourthly, there can be very close contacts with the research bases in Hong Kong, which is actually our edge. The advantages include creating more jobs and ensuring the supply of vaccines in Hong Kong, as well as promoting the development of other related biological industries. The Secretary has just said that we would wait for foreign pharmaceutical companies to make investment and set up factories in Hong Kong. Is this method of trusting to chance and strokes of luck a bit too passive? Will the Government consider taking the initiative to actively promote the relevant development with a view to turning the industry into a strategic industry?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, as I have just said, Hong Kong has a limited number of professionals in production lines, especially those for vaccine production. According to a vaccine company that we have contacted, if only quantities adequate for use by Hong Kong people are produced (even if all Hong Kong people use the vaccines, there would be only 7 million doses; if some people can choose to use it or not, there may only be 3 to 4 million doses). Such quantities are not enough to maintain the operation of a pharmaceutical producer. Generally speaking, about influenza vaccines in particular, a vaccine producer needs to produce around 20 million doses to maintain its operation.

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

DR PAN PEY-CHYOU (in Cantonese): *The Secretary has not answered the part of my supplementary question about whether the Government would consider taking the initiative to promote the relevant development proactively.*

PRESIDENT (in Cantonese): I believe the Secretary has actually answered your question. Secretary, do you have anything to add? Will the Government take the initiative to adopt a proactive approach?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): As I have said in my main reply, on the basis of the current strategies, measures and work done, we would like to attract those interested in co-operating with Hong Kong, regardless of whether the production will be carried out within or outside the territory, and to make use of the local expertise in the course of development for the benefit of Hong Kong.

MR IP KWOK-HIM (in Cantonese): *As I have noticed, the Secretary has emphasized our co-operation with the Mainland in part (c) of his main reply. Hong Kong has outstanding virologists, while the Mainland owns quality vaccine producing enterprises. The Secretary has also stressed that when he answered an Honourable colleague's supplementary question just now. Nevertheless, may I ask the Secretary: With respect to vaccines produced by this means, will they receive priority consideration in the Government's purchase of vaccines? The Secretary has just touched upon strategic considerations. Speaking from past experience, I find that in the course of purchase, some novelties or new producers are very often regarded as immature or already found in foreign countries, thus crippling the relevant development. From a long-term or strategic point of view, if such vaccines appear in the future, will they receive priority or special treatment, thereby benefiting Hong Kong and promoting the development of the pharmaceutical industry in Hong Kong?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, we should understand from our recent experience in vaccine purchase or contacts with pharmaceutical concerns that it is most important for us to take the overall

interests of Hong Kong into account in making a decision. For example, in respect of the seasonal influenza each year, we will select the best vaccine supplier or a supplier asking for the most reasonable prices through a tender process. If we invest in a vaccine factory and produce vaccines in Hong Kong, will the quality be the same as that of other vaccines? If that is the same, it will certainly be best for us to produce vaccines on our own or through co-operating with the Mainland and this may also be done. Nonetheless, to safeguard public health, we should always choose vaccines of the best quality for Hong Kong people, whether they are produced within or outside Hong Kong.

To be sure, if we invest in the relevant production or develop the relevant enterprises, we must upgrade ourselves to an acceptable international level. The work at this stage is not simple and we must hold different levels of discussion and reach a consensus with different companies. Concerning the Mainland, we must have communications with the Ministry of Health and the Guangdong Province. Everybody agrees that this should be done. In the past few years, Mainland vaccine factories have had speedy development, and there should be more than 10 factories now. We believe some of them have attained international standards.

PRESIDENT (in Cantonese): Last supplementary question.

MRS REGINA IP (in Cantonese): *President, I got increasingly saddened as I listened to the Secretary's answer. It so happened that the Secretary belittled the development potential of the local pharmaceutical industry. Does Hong Kong not have a good manufacturing practice all along? Has the Secretary already taken measures to strengthen control and upgrade standards in this regard? Hong Kong has always had an edge because of good quality, why should we give up local development? May I ask the Secretary if he agrees that, though Hong Kong has a small population, if there is an outbreak of a major epidemic that is, a global epidemic, we will be at a disadvantage in the purchase of vaccines? Last year when the Secretary initially received the provision, he was not able to purchase the vaccines. If we have the ability to produce vaccines, we can supply vaccines to Hong Kong and even to the Mainland and the whole world, which is really worth supporting and developing. How much money and space will then be needed?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, I cannot answer Mrs Regina IP's supplementary question fully because she has not mentioned the type of vaccine to be developed. In particular, a vaccine factory cannot produce influenza vaccines today and produce hepatitis vaccines tomorrow, for only a certain type of vaccine can be produced at a time. If changes are to be made to the production lines, many technical alterations have to be made. I agree that we have the relevant experts and our pharmaceutical factories have reached certain standards, but, developing vaccine production is entirely different from developing the standards of some non-patented pharmaceutical products. For this reason, we think that we cannot exaggerate our abilities at present. We must humbly accept the participation of other parties in the production of vaccines. I hope Members would understand that it is not the case that we are not making efforts or not developing this area, but we must do so step by step.

PRESIDENT (in Cantonese): Fifth question.

Publicity of Tutorial Schools

5. **MR PAUL TSE** (in Cantonese): *President, in recent years, there is a proliferation in the market of advertisements of tutorial schools claiming that they can guarantee that students will obtain excellent results in public examinations; some tutorial schools have spent enormous amounts of money on placing full front-page advertisements in newspapers and displaying huge advertisements in various outdoor media to boast that they have the largest number of students with Grades A, B and C and that their students are assured of "obtaining Grade A or a higher grade", and so on. In this connection, will the Government inform this Council whether:*

- (a) *it had, in the past three years, taken the initiative to investigate if the advertisements of tutorial schools contained false, exaggerated or misrepresented statements; if it had, of the respective numbers of advertisements and tutorial schools involved; whether it had issued warnings to and instituted prosecutions against the tutorial schools in respect of the advertisements which contained misrepresented statements; if it had not conducted any investigation, of the reasons for that and whether it will follow up expeditiously;*

- (b) *it has studied this unique phenomenon of Hong Kong that operating tutorial schools has become a trend and quite a number of tutors who call themselves "Tutor King" or "Tutor Queen" can become billionaires easily; if it has, of the results; if not, whether it will conduct such a study expeditiously; and*
- (c) *it has looked into the causes of the prevalence of tutorial schools; and whether such a situation reflects the failure of the education policy in Hong Kong, as well as its impact on students and the entire school education system; if it has, of the results; if not, whether it will conduct such a study immediately?*

SECRETARY FOR EDUCATION (in Cantonese): President,

- (a) According to section 86B(1)(b) of the Education Ordinance, no owner or manager of a registered or provisionally registered school — Sorry, I forgot to put on my microphone. Excuse me, President — shall publish any advertisement that contains information which to his knowledge is false or misleading. When a school is suspected of breaching the Education Ordinance by false advertising, or if complaints or referrals are received, the Education Bureau will investigate into the matter. If the case is substantiated, the Education Bureau will warn the persons concerned and request for rectification. If the contravention continues, prosecution action will be initiated. In the past three years, the Education Bureau has dealt with 16 cases of suspected false advertising by registered or provisionally registered tutorial schools. Detailed figures are shown in the Annex.

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

(b) and (c)

Although the Education Bureau has not conducted any study on the popularity of tutorial schools and its causes, there are various studies conducted by outside bodies which are very useful to us.

Tutoring outside school hours is not a unique phenomenon of Hong Kong. It is prevalent in East Asia and there is a growing trend in Western Europe, North America and Australia. Reasons for students to receive tutorial service provided by tutorial schools vary. Cultural factor is one reason, Chinese families usually attach much importance to academic results; some students wish to have better preparation before examinations or strive to excel; some parents cannot provide sufficient homework guidance; some are under peer influence, and some others even aim to make more friends through attending tutorial schools. We also should not overlook the fact that Hong Kong is a pluralistic city where demands for different services, including educational services, are diverse. In the light of the above, the impact of tutorial schools should not be generalized.

The Education Bureau's view is that students receive essential education at formal schools, where they have balanced developments in the domains of ethics, intellect, physical development, social skills and aesthetics. Outside school, students may also engage in other activities or pursue their interests. Tutorial schools mainly provide an option for academic subject teaching service outside formal schooling. Parents and students should cautiously consider whether it is necessary to enrol into tutorial schools, in the light of whole person development. The Education Bureau will continue to investigate into suspected cases of false advertising by schools in accordance with the Education Ordinance. We will also continue with our efforts on consumer education and provision of basic school registration information to help parents and students make informed choices.

Annex

Statistics on Investigations conducted by EDB relating to
Suspected False Advertising by Registered or Provisionally
Registered Tutorial Schools from 2006 to 2008

No. of cases reported by complainants	No. of investigations initiated by EDB	No. of referral cases referred	Total no. of cases	No. of advertisements involved	No. of cases Not substantiated	Substantiated cases		
						No. of cases	No. of warning letters issued	No. of prosecutions
10	2	4	16*	19	4	9@	7	0

Notes:

- * Among the 16 cases, four were actually on two cases; and there was one case where the complainant refused to provide relevant information, rendering follow-up action/investigation impossible.
- @ In one of these cases, an advisory letter instead of a warning letter was issued because the contract between the teacher involved and the school had been terminated, and the advertisement was not published by the school. In another case, no warning letter was issued due to prompt rectification by the school concerned.

MR PAUL TSE (in Cantonese): *Deputy President, I think the greatest problem may be that the authorities are not aware that this is a problem, or that the phenomenon reflects policy failure on the part of the authorities. The registration of these tutorial schools in particular is posing a problem, due to the labelling effect so caused by allowing these tutorial schools to register as schools. Moreover, the Secretary says in the fourth paragraph of the main reply that these schools provide "an option for academic subject teaching service outside formal schooling."*

Deputy President, more often than not, even the operation of travel agents is subject to supervision in various aspects, and their advertisements cannot include unfounded and exaggerated statements. However, no prosecution case has been recorded in the past three years, why nothing has been done? Should this be attributed to our system which allows the existence of a great number of tutorial schools? Actually, the name tutorial school is misleading, for they are

completely different from those that existed during our childhood days. Tutorial schools nowadays are indeed examination training grounds, and they are not tutorial facilities outside schools in any way. I hope the authorities will study this phenomenon thoroughly.

Moreover, I recently received a report from the Government, which states that in the past three years, the Government has spent more than \$1.5 billion on subsidizing overseas education allowance for civil servants. It is virtually admitting that the education policy adopted in Hong Kong is a failure. Since we cannot handle it ourselves, we seek assistance overseas. It is utterly unreasonable. Hence, I hope the Government will review the situation. Will the Government respond why it considers the phenomenon acceptable and that it does not show that education in Hong Kong is a failure?

SECRETARY FOR EDUCATION (in Cantonese): As I have said in the main reply earlier, there are many reasons for the community, students and parents to choose the tutorial services provided outside formal schooling. Apart from the reason of getting their children prepared for examinations, as mentioned by Mr Paul TSE earlier, many parents send their children to tutorial schools for they are aware that they cannot provide sufficient homework guidance to their children. In fact, according to our figures, there are around 2 100 private schools registered or provisionally registered under the Education Ordinance providing non-formal schooling, which include educational courses like tutorial classes, commercial studies, language learning and computer studies. All these are non-formal schools.

As I have mentioned earlier, Hong Kong is a pluralistic city where expectations and aspirations for education services vary from individuals. We think that different education service providers must be given room for offering services to meet market demand.

MR CHEUNG MAN-KWONG (in Cantonese): *Deputy President, misrepresented advertisements placed by tutorial schools may deceive thousands of students and reap huge profits as a result. However, about false advertisements placed by tutorial schools, the Government has to spend a lot of time to handle such cases, starting from the receipt of complaints or discovery of irregularities to investigation and taking action. Despite the subsequent issue of*

a warning, the fact is that students have been deceived and operators have reaped huge profits. Moreover, it is only a warning, and no prosecution was initiated in the past three years. Many tutorial schools only regard the Government as a paper tiger or a "feeble cat". Does the situation reflect that the Government lacks the resolve and ability to regulate false advertisements published by tutorial schools, and that it even fail to enforce the law seriously to protect the students?

SECRETARY FOR EDUCATION (in Cantonese): Among the 16 investigation cases I have mentioned earlier, many tutorial schools took follow-up actions and made improvement after warnings had been issued to them. Hence, prosecution procedures were not initiated.

Actually, I believe Members would understand that public schools providing formal education and private schools providing non-formal education are subject to different levels of supervision. This is a reasonable arrangement. Public schools are provided with support and subject to stringent supervision, for we have to ensure the proper development of formal education and that public money is spent reasonably. As for private schools providing non-formal education, including tutorial schools, they come into existence as a result of the demand from parents, students and the public. We must strike a balance between regulation and flexibility. On the one hand, fundamental supervision must be exercised, but on the other, the development of these private schools should be not impeded, for they have to cater for the needs of society.

In general, to ensure that existing manpower is used properly and effectively, the Education Bureau will focus on handling complaints and referral cases related to tutorial schools. It is hoped that these cases will be handled expeditiously and the prosecutions initiated will be successful so that a deterrent can be achieved. At the same time, we will continue with our efforts in consumer education and the provision of basic school registration information to parents, students and members of the public, hence they can make proper choices.

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

MR CHEUNG MAN-KWONG (in Cantonese): *In the final part of my supplementary question, I asked the Government whether the ineffective warnings issued and the zero prosecution case recorded reflected that the Government lacked the resolve and capability to regulate tutorial schools, and that it did not intend to protect the students. The Secretary responded by mentioning the unavailability of resources. Does it imply that he admits that the protection of students has not been taken seriously?*

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

SECRETARY FOR EDUCATION (in Cantonese): I want to add that the warnings issued are effective. Actually, regarding the 16 cases concerned, many warnings have been issued, and the tutorial schools concerned have followed up the cases and taken improvement measures. Hence, I believe the current steps taken are effective.

What else can we do? Once we see misrepresented statements, we will take proactive actions to follow up.

MR LEUNG KWOK-HUNG (in Cantonese): *Deputy President, the Under Secretary's reply is obviously irrelevant. He was right to say that education should be pluralistic, that flexibility should be provided for non-formal education, and that not all kinds of education should be subject to the kind of supervision applicable to formal education, for education should be universal and pluralistic.*

However, the present supplementary question I ask is about false publicity. Even in the case of formal education, if false publicity is involved, which means services other than formal education are provided, prosecution will also be initiated, am I right? For instance, if a secondary school adopting Chinese as a medium of instruction claims to be adopting English as a medium of instruction, it is a false representation that will cause damage and suffering to others. Worse still, money is involved in the present case. The Member asked the Secretary what measures would be taken to deal with false publicity, but he gave an irrelevant reply saying that education was pluralistic and so no regulation would be imposed. May I ask the Secretary whether he can make his email

address public here? If he receives less than 200 emails today complaining about that, I will carry his shoes for him.

Do you dare disclosing your email address and assigning a subject thread for this purpose, and then report to this Council next week the number of complaints you have received? Do you dare to do so? I now ask you whether you will make public your email address, so that parents or students may make direct complaints on false publicity to you. Will you make public the subject thread you assigned for this purpose here?

SECRETARY FOR EDUCATION (in Cantonese): Deputy President, first, Members may look at the Annex we have submitted to the Legislative Council today, they will see that

(Mr LEUNG Kwok-hung stood up)

DEPUTY PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, the Secretary is giving his reply, please be seated and let him reply your question.

MR LEUNG KWOK-HUNG (in Cantonese): *Put simply, will he disclose his email address and receive complaints?*

DEPUTY PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, your supplementary question is very clear, please be seated. Secretary, please continue with your reply.

SECRETARY FOR EDUCATION (in Cantonese): I would like to respond to the first part of the supplementary question, for a number of Members asked earlier how the 16 cases were handled. Actually, this is stated clearly in the Annex that warning letters were issued in seven cases. If tutorial schools concerned have taken action to improve the situation after receiving the warning letters, we will not proceed with the prosecution procedures. However, if the tutorial schools continue publishing false advertisements, we will instigate the

prosecution procedures, which include referring the case to the police and seeking advice from the Department of Justice. Mr LEUNG asked earlier whether the public might send email to me direct if they discovered false promotion materials. My answer to his question is that my email address is public information already shown on the web page of the EDB. In addition to my email, the EDB has set up district offices, and phone numbers and other email addresses are also available. The public is welcome to report those cases through these channels.

(Mr LEUNG Kwok-hung stood up again)

DEPUTY PRESIDENT (in Cantonese): The Secretary has already answered the part related to email. Please be seated.

MR LEUNG KWOK-HUNG (in Cantonese): *I wish to seek a clarification, for someone complains that he has sent an email to the Under Secretary but he has not replied.*

DEPUTY PRESIDENT (in Cantonese): This is not the supplementary question you asked earlier. Mr LEUNG Kwok-hung

MR LEUNG KWOK-HUNG (in Cantonese): *The person concerned has referred the case to me.*

DEPUTY PRESIDENT (in Cantonese): You asked the Secretary earlier whether he would make public his email address and he has already answered. Please be seated.

MR LEUNG KWOK-HUNG (in Cantonese): *He has not disclosed his email address.*

DEPUTY PRESIDENT (in Cantonese): Please be seated.

MR LEUNG KWOK-HUNG (in Cantonese): *He has not disclosed it.*

MR CHAN KAM-LAM (in Cantonese): *Deputy President, attending tutorial classes has become a trend, and it is evident that something is amiss in our formal education system. Parents send their children to attend tutorial classes for many reasons, but one of the major reasons is probably that there is some problem with our formal education system.*

At present, running tutorial schools has become a profitable business. However, the operation of these tutorial schools does not only involve the problems of publishing false information or false publicity, as mentioned by Mr Paul TSE, there are many other problems. For instance, some tutorial schools require students to pay \$20,000 to \$30,000 in one time for a certain number of classes, but during the period, the tutorial schools close down. Complaints of this type are large in number. So, regarding the number of complaints mentioned by the Secretary in his main reply, I hope that he can see things from a broader perspective. Actually, complaints relating to tutorial schools involve various aspects. Will the Bureau step up its regulation? In addition to the requirement for registration or the need to understand the academic standard and teaching quality of these tutorial schools, will more stringent regulation be imposed to safeguard the interests of parents and consumers?

SECRETARY FOR EDUCATION (in Cantonese): Actually, tutorial schools are subject to regulation. All tutorial schools must satisfy the registration requirements. Since, in general, these tutorial schools do not operate in purpose-built school premises, before they come into operation, they must obtain confirmation from the Lands Department that they comply with the terms and conditions of the land lease, and also approval from the Town Planning Board. At the same time, the premises concerned must obtain the certificates issued by the relevant departments, such as the Fire Services Department, the Buildings Department and the Housing Department. In general, these criteria need to be complied with in building registration.

Regarding the qualification of teachers, requirements have been laid down. Under the Education Ordinance, teachers of tutorial schools must possess the qualification of permitted teachers. I will not give the details here, for this involves the results they obtained in public examination and the required qualifications vary with the form they teach. The Member mentioned earlier in particular the fees charged. I would like to take this opportunity to explain the relevant requirements. Under the Education Ordinance, apart from the first installment, fees of the remaining terms must be collected on the first school day of each month when the course is in progress. As I have said earlier, we must enable parents and students to make suitable choice by providing consumer education, stepping up promotion and providing basic information to schools. We will continue with the work in this aspect. Regarding the relationship between formal education and tutorial classes which the Member has spoken in the beginning, I would like to state clearly that formal education provides balanced education in the domains of ethics, intellect, physical development, social skills and aesthetics. In the education reform and parent education we have provided over the years, we have all along emphasized the importance of whole person development for students

DEPUTY PRESIDENT (in Cantonese): Secretary for Education, may I remind you that you should reply to the supplementary question asked by Mr CHAN Kam-lam, and you have now digressed from the subject. Have you finished your reply?

SECRETARY FOR EDUCATION (in Cantonese): Alright. Thank you, Deputy President. I have nothing to add.

MS STARRY LEE (in Cantonese): *Deputy President, advertisements on tutorial schools are increasing nowadays, and they can be seen everywhere, as in newspapers, magazines and public vehicles. At the same time, these tutorial schools have created a great fortune for many "Tutor Kings" and "Tutor Queens". In view of the intense discussion of the development of education services, have the authorities ever thought of imposing regulation on tutorial classes so as to incorporate them into the education services? I think the*

authorities choose not to do so for they consider that tutorial services should not be strongly advocated. Am I right? However, honestly, this is the most sizable king of education services.

My supplementary question is on the prevailing trend of attending tutorial classes. Many students consider it essential to attend tutorial classes to acquire examination skills, for otherwise they will not know about them. Since most of the schools provide whole-day schooling at present, schools will end around 3.00 pm. Besides, students now have to participate in extra-curricular activities, one of which should be of a quiet nature and another should be physically more exertive. If these students have to attend tutorial classes, how much time do they have to spend altogether? I hope the Secretary will consider conducting a survey afterwards to examine the penetration rate of tutorial activities in students at present. I hope the Bureau and Members may obtain more information from such a survey, for the time students spend on tutorial activities will have a direct bearing on their physical and mental development. Will the Secretary undertake to commence work in this respect after returning to his office?

SECRETARY FOR EDUCATION (in Cantonese): We will monitor the development of tutorial schools closely. I do not rule out the possibility that a study mentioned by the Member earlier will be conducted in future when necessary. I agree very much with the views expressed by the Member earlier that students nowadays are very busy. So, how can we promote balanced development among students on the premise of whole person education? Actually, we appreciate that students and parents may have worries about examinations, and that they want to strive for excellence and better performance. However, we think that examination is not the only objective of education and there are other major concerns. To reduce the pressure brought about by one-off examination, we have introduced school-based assessment recently and will continue to work on this. Under the arrangement, department heads in schools who are familiar with students will assess the daily performance of students, providing more reference on the performance of students to us. We have also issued new learning profiles for students, so that tertiary institutions and prospective employers may consider various aspects other than the academic performance of students. We hope that by means of various measures

introduced, we may change the mindset of students and parents in over-emphasizing the importance of examination results and preparation for examination.

DEPUTY PRESIDENT (in Cantonese): This Council has spent more than 22 minutes on this question. Last oral question.

Elderly Health Care Voucher Pilot Scheme

6. **MR CHEUNG KWOK-CHE** (in Cantonese): *Deputy President, since the implementation of the Elderly Health Care Voucher Pilot Scheme (the Scheme) early this year, elderly groups have incessantly relayed to me that the amount of subsidy of the health care voucher is inadequate and the Scheme lacks publicity. Moreover, it is difficult for the eligible elderly to locate health care providers participating in the Scheme. In this connection, will the Government inform this Council:*

- (a) *of the number of elderly persons who have used health care vouchers to date, as well as the average amount of subsidy they used each time;*
- (b) *of the current number of private medical practitioners (including Chinese medicine practitioners, dentists and chiropractors) participating in this Scheme, as well as their respective percentages in the total number of private medical practitioners in Hong Kong of the number of private medical practitioners who have withdrawn from this Scheme to date; and*
- (c) *when it will review the aforesaid Scheme, as well as the methodology and procedure of the review?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Deputy President, the Government launched the three-year the Scheme on 1 January, 2009 to provide five health care vouchers of \$50 each annually to elders aged 70 or above to partially subsidize their use of private primary care services and to provide additional choices for them on top of the existing public primary care services.

Health care professionals who are eligible to participate in the Scheme include Western medical practitioners, Chinese medicine practitioners, dentists, chiropractors, nurses, physiotherapists, occupational therapists, radiographers and medical laboratory technologists.

The Scheme tries out the concept of "money to follow the patient" and pilots a new model for future subsidization of primary care services. We hope that through the use of health care vouchers, elders will be encouraged to choose private health care service providers in their nearby communities for primary care services which best suit their needs and establish a continuous-care relationship with them. We also hope that this pilot scheme will enhance our understanding of the needs and use of health care services of the elders, thereby enabling the Administration to devise an appropriate delivery model for health care services.

The Scheme has been designed with the convenience of the elders in mind. Through an electronic system, health care service providers will create accounts for elders who use vouchers for the first time, deduct vouchers directly from their accounts after they have received the health care services, and provide them with a printout showing the number of unused vouchers. Under this arrangement, elders need not pre-register, pre-collect health care vouchers, nor carry the vouchers. They only need to show their Hong Kong Identity Cards or Certificates of Exemption at clinics displaying the Scheme logo and use their vouchers immediately.

Since the launch of the Scheme, we have maintained close communication with the health care sector to gather their feedback for improving the operation. We have already implemented a series of system enhancement measures and streamlined the procedures for the convenience of both the health care service providers and elders. The Administration will continue to closely monitor the implementation of the Scheme and will consider further streamlining measures as appropriate.

Prior to launching the Scheme, we have publicized the Scheme through members of District Councils, non-government organizations, elderly homes and relevant government departments. In addition to brochures and posters, we will continue to promote the Scheme through the television and radio, and will continue to liaise with welfare organizations providing elderly services on how to further enhance the promotion of the Scheme to the elders.

I now proceed to reply each part of the question:

- (a) As at 5 December, 2009, over 260 000 elders have opened voucher accounts (constituting over 40% of elders eligible for the Scheme). The Department of Health has processed over 321 000 voucher claims. Over 70% of the elders used one to two vouchers per visit.
- (b) As at 5 December, 2009, over 2 500 health care service providers have enrolled in the Scheme (including over 1 700 who have provided services to elders using vouchers) with over 3 100 practices located in all districts. The number of practices in each district ranges from about 30 to 500. Since the launch of the Scheme up to 5 December, 2009, 113 health care service providers have withdrawn their enrollment from the Scheme, involving 120 practices. Among them, 37 withdrew due to a change in the clinics in which they work. During the same period, over 700 applications (involving over 1 000 practices) for enrollment were received. The number of enrolled health care service providers continues to increase.
- (c) The Scheme has been implemented for about one year. The Administration will conduct an interim review in 2010 as pledged, and also a full review after the three-year pilot period has ended. The reviews will cover the effectiveness of the Scheme, the appropriateness of its scope, subsidy amount, and so on. Besides conducting statistical analysis and reviewing of operational details, we will also conduct surveys to gather feedback from both the elders and health care service providers in the reviews.

MR CHEUNG KWOK-CHE (in Cantonese): *Deputy President, according to information from the Government, we can know clearly that at least 60% of the elderly people do not use this service. May I ask the Secretary whether or not publicity will continue or be stepped up, such as by resorting to various channels, and telling doctors in hospitals and clinics that under the Scheme, patients may actually seek consultation from doctors in private practice?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Deputy President, as I have mentioned in the main reply, we hope to liaise more with welfare organizations providing services to the elderly in the hope that they can assist in our efforts. Also, we would put up more efforts in publicity and broadcasting. With respect to service providers, it can be said that more and more Western medical practitioners and Chinese medicine practitioners are willing to join the Scheme and the Hong Kong Medical Association has set up an electronic platform whereby its members can be assisted in this respect. It is hoped that in the upcoming year an additional number of 500 Western medical practitioners would join the service. Of course, they should consider the fact that if their service targets are the elderly, they will join this pilot Scheme. So we can see that the number of users of this Elderly Health Care Voucher Pilot Scheme has been increasing. Having said that, we would think that when only 40% of the elderly persons use this Scheme, the participation rate may be on the low side. But some elderly persons may be used to getting medical services offered by the public sector health care system and so they may think that there is no need for them to get such services from private sector health care organizations. Therefore, we need to make some detailed analysis before we can determine the reasons for that. However, the most important thing is that our Scheme is aimed at helping elderly persons to get health care services through more channels available and if the services delivered are effective, we will not rule out the possibility that some fine-tuning be made in the services so that more resources can be obtained for them.

MR FRED LI (in Cantonese): *Deputy President, as seen from the main reply, as at 5 December, there are still 60% of the elderly persons who have not opened a voucher account and only some 2 000 health care service providers have enrolled in the Scheme. The number is far lower than expected. Deputy President, I have been to many places to listen to the views of the elderly people and they all think that the total value of the health care vouchers being \$250 is far too little. It is precisely because the value is so low that doctors do not feel attracted to joining the Scheme. So may I ask the Secretary whether or not this value of \$250 can be raised as soon as possible so that more elderly persons and doctors can be attracted to joining the Scheme?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Deputy President, with respect to the annual value of health care vouchers being \$250, we had discussed it on many occasions when the Scheme was launched. I have to stress that the amount we subsidize is not all the expenses involved but only a part of them. In our opinion, any person who seeks medical consultation should pay part of the expenses from his own pocket and by so doing he is shouldering some responsibility. Therefore, we hope to subsidize some of the expenses incurred to elderly persons so that they can find the service affordable. I have just said that some elderly persons would often get this service from public sector health care institutions and they are not used to getting subsidies in this aspect. We will later analyse what their preferences are and under what circumstances they can seek regular service from a health care service provider in the private sector.

As for the amount of \$250 a year, we have no plan to make any adjustments in the near future. This is because a decision can only be made after an analysis of the situation is made.

MR IP WAI-MING (in Cantonese): *Deputy President, we have asked many times just now the question of why the Secretary does not want to raise the value of these health care vouchers. As for details in the Elderly Health Care Voucher Pilot Scheme, there are certain things that we do not quite understand. Secretary, now the face value of each of the five health care vouchers is \$50. If elderly persons need to pay \$120, then they will have to use three of these vouchers. In this way, the subsidy provided cannot be fully put into use. As deductions are made electronically, when an interim review is to be conducted, can considerations be made to adopt an accountable approach so that the elderly persons can get the remaining value after paying their health care expenses, instead of restricting them to using this kind of health care vouchers each with an electronic value of \$50? May I ask the Secretary whether this practice can be changed after an interim review is undertaken and that changes can be made to this electronic system so that elderly persons can have their health care expenses reimbursed directly under this accountable approach and in so doing make the best use of the subsidy provided?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Deputy President, I wish to talk about this Health Care Voucher Pilot Scheme in detail. Elderly

persons are entitled to get health care vouchers each year with a value of \$250, that is, five vouchers each worth \$50 each. If an elderly person uses two or three vouchers this year, then he will have two or three vouchers left. And for the coming year, he will have another five vouchers. For example, he has used three vouchers this year, then he will have seven vouchers for use next year. This gives flexibility to the elderly persons so that they can decide when the best time to see a doctor is and this will avoid the situation where he has to see a doctor when in fact he is not feeling unwell. The elderly persons may save up these health care vouchers and when they are sick, they can have more vouchers for use. At the same time, we would encourage them not to use up all these vouchers at one time. This is because generally speaking, we would think that the elderly persons may need to see a doctor three or four times a year. Our medical staff, especially the doctors, would agree that the elderly persons should not use all the \$250 at one time.

We know from a preliminary analysis of the situation that each time these elderly persons would use one or two vouchers and this is what most of the elderly persons would do. Of course, we will make an analysis as to under what circumstances would they have to go to see a doctor or how they should choose, that is, under what circumstances they will see a Western medical practitioner and under what circumstances they will see a Chinese medicine practitioner or a dentist and so on. In this regard, we hope that more information would be available for reference by Members after we have completed our interim review in mid 2010.

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

MR IP WAI-MING (in Cantonese): *I have just he is still talking about why this is not revised*

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

MR IP WAI-MING (in Cantonese): *so that elderly persons can have say \$120, and they can be reimbursed \$120 in this way. Why does it have to be vouchers with a value of \$50? The Secretary has not answered this part of the supplementary question.*

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

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Deputy President, let me recapitulate once more. The aim of this Health Care Voucher Pilot Scheme is not a welfare measure but one in health care. It is put in place in the hope that elderly persons can also pay a small part of the health care expenses. Therefore, if they have to pay \$120, they should have the value of two vouchers deducted and pay the remaining \$20 which is a small amount. Alternatively, they can have the value of one health care voucher deducted and pay the remaining \$70. The choice is with the elderly persons themselves. And the doctors will make a record of that and tell them how many vouchers are left for their use. If they go to see the same doctor again or another doctor, they will know how many vouchers they still have. What we hope to do the most is that in this way, they can know how much value in the vouchers they still have got in the clinic and when they can consult the doctor again. In this way, a certain amount of protection and subsidy are available to the elderly persons.

MR WONG KWOK-HING (in Cantonese): *The Secretary mentions in the main reply that an interim review will be conducted in 2010. I would like to follow this up by asking the Secretary: Would this interim review include anything on lowering the age requirement for these health care vouchers? As a matter of fact, many elderly persons aged below 70 do not have any pension and other benefits, they hope very much that they can get these vouchers. So what will be included in the review? Would it include anything on lowering the age requirement for these vouchers? Also, how long would this interim review take? This is because a full review is to be conducted three years later, that is to say, a review will be conducted after the Scheme is in force for three years. Then how long will it take before findings are obtained for this interim review? My*

supplementary question is about the contents of the review and how long would it take before findings are obtained for this interim review.

SECRETARY FOR FOOD AND HEALTH (in Cantonese): This is a scheme which will last for three years, that is, 36 months. The interim period is of course 18 months after the Scheme is in force. We hope that a review can begin at that time and this review is expected to be completed by 2010. As for contents of the review, I have talked about them in the main reply. We will also review the fees charged by the clinics, the scope of our subsidies and so on. This is made in the hope that some adjustments can be made. Besides, we will see what special needs the elderly persons may have. Of course, the preferences they have for using these vouchers can help us in deciding on issues in primary health care and on how to enable more people to approach health care service providers. We will consider whether there is any need to expand or fine-tune this Scheme. What you have mentioned in your supplementary question will be included in our study as well.

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

MR WONG KWOK-HING (in Cantonese): *Deputy President, the Secretary in the reply he gives just now has not said whether the age requirement for these vouchers will be lowered.*

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

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Deputy President, I have said that this will be included in the study.

MR LEE CHEUK-YAN (in Cantonese): *A problem of mismatch has appeared. Now there are more than 3 100 practices located in all districts, but it turns out that the number of practices in each district enrolled in the Scheme ranges from*

about 30 to 500. Then the districts which have only 30 practices will be in a very miserable situation. Also, will the Secretary have a May be it would be difficult for him to talk about all of these, but he can provide supplementary information later and put the information in a table, listing out the details for the 18 districts, for example, districts with 30 to 500 practices and details about Chinese medicine practitioners, Western medical practitioners, dentists and so on. This will place us in a clear picture and I would request that such a table be given to us.

And what is my supplementary question? This is to target the three worst districts at present — and these three districts can be named. Will you put in more efforts in these three districts so that there will be more practices for the elderly persons to choose? It may be in these districts, the elderly persons As we know, elderly persons have a low mobility and if they are to travel a long distance to some locations, it may cause inconvenience to them. Will the Secretary put in more efforts in these few districts so that more service providers can render their service to the elderly persons? Deputy President, I hope to get some supplementary information in the end. Will the Secretary give us a written reply later?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Deputy President, the information I have got initially shows that the district with the fewest practices is of course the Islands, for the reason that the district has fewer medical services and a smaller population. The next one should be the Southern District and I believe there would not be too many clinics there. But compared with other districts the number is about 100. The North District may have fewer there are altogether 70 in the North District. From what we can see, these clinics are concentrated in Tsim Sha Tsui, Mong Kong, the Eastern District and Wan Chai. This has something to do with their distribution, but at least each district has got apart from the Southern District and the Islands, there are at least 40 to about 200 Western medicine practitioners in other districts. Also, all the districts have got some tens to some 100 Chinese medicine practitioners. The number of dentists is certainly smaller. But they are found in all the district. As for their numbers, even if there are not dozens of them in one district, there are about seven to eight. When we have sorted out the detailed information on that, we will give it to Members. (Appendix I)

MR LEE CHEUK-YAN (in Cantonese): *The Secretary has not answered me how to concentrate his efforts in those districts.*

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

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Deputy President, I will have to see whether or not the services available to elderly persons in these districts are worse off than those in other districts. Of course, we will have to see if this is really the case. This is because if they want to see a private medical practitioner but no one is available, then we will see what can be done about this. But if all along they would go to clinics operated by the Hospital Authority, then we will adjust service in that area.

DEPUTY PRESIDENT (in Cantonese): The last supplementary question.

MR LEUNG YIU-CHUNG (in Cantonese): *Deputy President, I would like to ask the Secretary, he has said earlier that an interim review will be conducted and it is a survey done in about 18 months after the implementation of the Scheme and it will be on maintenance expenses, doctors' fees and so on. I would like to ask the Secretary: If the report of the interim review thinks that there is a need to lower the age requirement or even increase the value of the vouchers, would it necessarily have to begin to take effect after three years, that is, after the Scheme has been in force for three years and has completed? Would implementation begin earlier, that is to say, after completing the review one and a half years later and the results of the review will be implemented in about two years later, instead of having to wait for three years?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Deputy President, what we will have to look at in our review is whether or not elderly persons using this service can obtain primary health care services easily and consideration will also have to be made on their health conditions. If there is any urgent need and change will have to be made within a short time, we will certainly make such changes upon completion of the interim review. But if we think that the effect of these changes cannot be fully ascertained for the time being, we may have to wait for three years before some other measures are introduced. So I would not

rule out the possibility that some fine-tuning will take place after the interim review.

DEPUTY PRESIDENT (in Cantonese): This is the end of the oral questions session.

WRITTEN ANSWERS TO QUESTIONS

Assistance for Secondary School Students

7. **MR ANDREW LEUNG** (in Chinese): *President, according to the Examination Reports of the 2009 Hong Kong Certificate of Education Examination (HKCEE) and the Hong Kong Advanced Level Examination (HKALE) published by the Hong Kong Examinations and Assessment Authority, most students did not have good and extensive reading habits, resulting in their compositions being empty in contents, their answers provided at oral examinations lacking substance, as well as their failure to cite current affairs and history accurately. The problem of errors in their choice of Chinese characters is also serious, which is a worrying situation. In this connection, will the Government inform this Council:*

- (a) *given that there have been comments that since examination is the basis of the mode of learning for primary and secondary school students, they seldom take the initiative to read materials beyond the scope of examination, whether the Government had launched any new programme in the past five years to encourage students to engage in more extra-curricular reading, so as to enhance their knowledge; if it had, whether it has assessed its effectiveness; if it had not launched such a programme, whether it will consider launching such a programme; and*
- (b) *given that there have been comments that the problem of making errors in the choice of Chinese characters by students has reflected the decline in their proficiency in the Chinese language, and that such a decline will in turn adversely affect students' thinking skills, what solutions the Government has in place to deal with this situation?*

SECRETARY FOR EDUCATION (in Chinese): President,

- (a) The Education Bureau has been attaching much importance to promoting reading among students to develop their capabilities for learning to learn. 'Reading to Learn' is one of the four Key Tasks in the curriculum reform. To implement the related measures, the Bureau has strived to develop relevant learning and teaching resources, provide professional development programmes for teachers as well as promoting research and development projects. In addition, public-sector schools are provided with the Extensive Reading Grant to procure reading materials for students. Parent education is promoted through seminars and publications to convey the important message of cultivating children's interest and habit in reading at an early age.

In recent years, Hong Kong students have achieved a marked improvement in reading literacy. In the Progress in International Reading Literacy Study (PIRLS) and the Programme for International Student Assessment (PISA) conducted in 2006, Hong Kong students have ranked second and third respectively in reading literacy. The efforts made by the education sector in promoting reading have borne fruit.

We will continue to promote the "Reading to Learn" culture in schools to develop students' reading interest, habit and competence so as to provide them with a good foundation for lifelong learning.

- (b) We appreciate the public's expectations of the Chinese standard of Hong Kong students. In the 2009 reports of the HKCEE and the HKALE, the Hong Kong Examinations and Assessment Authority pinpointed some candidates' weaknesses with a view to increasing the awareness of students and teachers so that students' Chinese standard can be improved with better learning and teaching. In fact, according to the 2007-2009 data, there is a continuous increase in the percentage of day school first attempters in HKCEE Chinese Language obtaining Level 2 or above, from 71.6% in 2007 to 73.3% in 2009. The percentage of day school first attempters in HKALE Chinese Language and Culture obtaining Grade E or above have also continuously increased from 94.1% in 2007 to 94.7% in 2009.

Hong Kong students' performance in various assessment projects (including international studies) has reflected that they are making continuous improvement in their Chinese standard. In particular, Hong Kong students' reading ability is consistently higher than the international standard. We therefore should not conclude that our students' Chinese Language and thinking standards and thinking skills are deteriorating, when in fact only certain candidates have written wrong Chinese characters in public examinations. Besides, starting from the curriculum reform in 2001, we have already reinforced the development of students' thinking skills in all Key Learning Areas. We recognize that our students have room for improvement, and we will continue to further improve the curriculum, and provide teachers with professional development opportunities so as to enhance the effectiveness of learning and teaching. We hope to work closely together with different stakeholders in striving to improve the language standard of our students.

Under-enrolment in Primary and Secondary Schools

8. **MR WONG YUK-MAN** (in Chinese): *President, I have received complaints from teachers that their schools were forced to cease operation due to under-enrolment and they have thus lost their jobs. In this connection, will the Government inform this Council:*

- (a) *of the respective numbers of primary and secondary schools which ceased operation in each of the past five years, together with a breakdown by their respective District Council districts;*
- (b) *whether it knows the number of dismissed teachers who have already found new jobs since those schools ceased operation;*
- (c) *whether the Government will reconsider lowering the basis for school places allocation for schools implementing small class teaching (SCT) from 25 to 20 students per class so as to enhance the quality of teaching and learning as well as reduce the number of schools which have to cease operation; if it will, of the time to do so; if not, the reasons for that; and*

- (d) *given that according to the policy address delivered by the Chief Executive this year, only 65% of public sector primary schools are implementing SCT starting from Primary One (P1), which is below the goal of 70% set by the Education Bureau, of the reasons for that; when the remaining 35% of public sector primary schools will implement SCT?*

SECRETARY FOR EDUCATION (in Chinese): President,

- (a) The number of public sector primary schools that had ceased operation in the past five years, viz. from the 2005-2006 to 2009-2010 school years, for not meeting the minimum threshold number of P1 students under the Consolidation Policy of Under-utilized Primary Schools is set out by district at Annex I.

The above-mentioned policy is not applicable to public sector secondary schools. All along, secondary schools have ceased operation due to various reasons such as the demand and supply of school places in the district, the school's own preference, and so on. According to our record, the number of public sector secondary schools that had ceased operation in the above-mentioned period is set out by district at Annex II.

- (b) We do not have statistics covering the employment situation of teachers of the above-mentioned schools upon their cessation of operation. That said, we are concerned about the stability of the teaching force. All along, we have rendered assistance to the redundant teachers of aided primary schools to facilitate their appointment. For secondary schools, the Education Bureau has put in place various support measures and options to facilitate the stable development of schools and the teaching force. Besides, we will continue to implement the Early Retirement Scheme for Aided Secondary School Teachers for eligible teachers so as to alleviate the teacher redundancy problem of the schools mentioned above.
- (c) SCT (that is, allocation of 25 students per class under the Primary One Admission System (POA)) has been implemented in public sector primary schools starting from P1 in the 2009-2010 school year.

The implementation of SCT is the Government's commitment to quality education. It is not a means to tackle the reduction of classes, cessation of school operation and surplus teachers, and so on, amidst the student population drop.

We fully appreciate the concern of the education sector over the declining student population. We have provided various development options, which include re-participation in the forthcoming POA cycle should there be anticipated shortfall of school places in the school net where the school locates, undergoing special review, joining the Direct Subsidy Scheme, operation of P1 class under private funding, or merging with other schools, and so on, to facilitate schools to continue with their operation. Furthermore, the minimum threshold number of P1 students has been reduced to 16 students per class alongside with the implementation of SCT, thus alleviating the impact of under-enrolment on schools. In fact, only one aided primary school failed to operate P1 classes in the 2009-2010 school year.

With the implementation of SCT from P1 in the 2009-2010 school year, we have currently no intention to further reduce the number of P1 students per class under the POA System.

- (d) We adopt a pragmatic and flexible approach to implement SCT, taking into account the practical circumstances such as the availability of classrooms, number of trained teachers as well as the wishes and needs of schools, parents and students. Indeed, the majority of the stakeholders agree that adopting a "one-size-fits-all approach" to reduce the class size under SCT would be inappropriate. Hence, we have not laid down a target figure for SCT. We reported the progress of our preparation for the implementation of SCT in public sector primary schools at the Legislative Council Panel on Education meeting on 29 February 2008. As stated in paragraph 7 of the relevant discussion paper, "out of 463 public sector primary schools participating in the current cycle of the POA, 323 schools or 70% have confirmed their readiness to implement SCT with effect from the P1 cohort in the 2009-2010 school year, that is, they would like to adopt the class size of 25 for admission of students under the POA beginning that year". The afore-mentioned "70%" reflected

those schools which had indicated their intention to implement SCT in the 2009-2010 school year. In our course of planning for SCT, we have to take into account individual schools' wish to implement SCT, the number of classrooms in the school nets and the latest population projections in assessing the demand and supply of classrooms in each school net during the 6-year planning cycle (with the first planning cycle from the 2009-2010 to 2014-2015 school years).

Upon assessment, in view of the anticipated shortage of school places in Yau Tsim Mong and Sham Shui Po districts in the next six years, schools in these districts which have opted to implement SCT were not allowed to do so in the 2009-2010 school year. As such, a total of 301 public sector primary schools have implemented SCT in the 2009-2010 school year, amounting to 65% of the public sector primary schools.

The second planning cycle of SCT (that is, the 2010-2011 to 2015-2016 school years) has been completed. The number of schools to implement SCT will increase to 318 (69%) in the 2010-2011 school year. In the light of the aspirations for SCT in the education sector, we believe that all schools would implement SCT in due course. We will, in March every year, invite schools which have yet to implement SCT to indicate their proposed implementation year to facilitate our planning.

Annex I

Number of Public Sector Primary Schools Closed from the 2005-2006 to 2009-2010 School Years

<i>District</i>	<i>School Year</i>				
	<i>2005-2006</i>	<i>2006-2007</i>	<i>2007-2008</i>	<i>2008-2009</i>	<i>2009-2010</i>
Central & Western	0	0	0	0	0
Eastern	0	0	1	0	1
Islands	1	2	0	1	1
Southern	0	0	0	2	0
Wan Chai	0	1	0	0	0

<i>District</i>	<i>School Year</i>				
	<i>2005-2006</i>	<i>2006-2007</i>	<i>2007-2008</i>	<i>2008-2009</i>	<i>2009-2010</i>
Kowloon City	0	1	1	2	1
Kwun Tong	0	0	1	2	0
Sai Kung	0	0	2	2	0
Sham Shui Po	0	1	2	0	0
Wong Tai Sin	0	0	0	1	0
Yau Tsim Mong	0	1	0	1	0
North	2	5	1	1	0
Sha Tin	0	1	1	2	4
Tai Po	0	1	1	0	0
Tsuen Wan	0	0	1	0	0
Kwai Tsing	1	2	0	1	0
Tuen Mun	1	3	0	0	0
Yuen Long	3	8	3	2	0

Annex II

Number of Public Sector Secondary Schools
Closed from 2005-2006 to 2009-2010 School Years

<i>District</i>	<i>School Year</i>				
	<i>2005-2006</i>	<i>2006-2007</i>	<i>2007-2008</i>	<i>2008-2009</i>	<i>2009-2010</i>
Central & Western	0	0	0	0	0
Eastern	0	0	0	0	0
Islands	0	0	2	0	0
Southern	0	0	1	0	0
Wan Chai	0	0	1	1	0
Kowloon City	0	0	0	0	0
Kwun Tong	0	0	0	0	0
Sai Kung	0	0	0	1	0
Sham Shui Po	0	0	0	0	0
Wong Tai Sin	0	0	0	0	0
Yau Tsim Mong	0	0	0	0	0
North	0	2	0	0	0
Sha Tin	0	0	0	1	1
Tai Po	0	0	0	0	0

<i>District</i>	<i>School Year</i>				
	<i>2005-2006</i>	<i>2006-2007</i>	<i>2007-2008</i>	<i>2008-2009</i>	<i>2009-2010</i>
Tsuen Wan	0	0	0	0	0
Kwai Tsing	0	0	0	0	2
Tuen Mun	0	0	0	0	0
Yuen Long	0	0	0	0	0

Hospital Authority Board

9. **MR ANDREW CHENG** (in Chinese): *President, the Hospital Authority (HA) was established in 1990 under the Hospital Authority Ordinance (Cap. 113) and its main functions include encouraging public participation in the operation of the public hospitals system. Regarding the operation of the HA, will the Government inform this Council whether it knows:*

- (a) *the respective numbers of meetings of the HA Board and its 11 committees (excluding the Hospital Governing Committees and the Regional Advisory Committees) held and those not held because of a lack of quorum, as well as the number of members whose annual attendance rates at meetings were below 50% last year;*
- (b) *if the HA Board and the aforesaid committees convened any public hearing last year in respect of their discussion items and invited the organizations concerned to attend and give their views; if so, of the number of public hearings convened and the number of organizations which attended these hearings; if not, how the HA ensures that it has fully understood the concerns and views of the organizations concerned in making its decisions; and*
- (c) *if the authorities will consider amending the Hospital Authority Ordinance in order that patient groups and the Legislative Council may elect representatives to be members of the HA Board; if they will, of the details; if not, what measures the authorities have put in place to ensure that members of the HA Board and the aforesaid committees, who are appointed without pay and in their personal capacity, can effectively monitor this huge and professional system of the HA?*

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

- (a) In the past year (that is, from 1 December 2008 to 30 November 2009), the HA Board has held 12 internal meetings and four open meetings. The 11 functional committees under the Board have held a total of 77 meetings during the same period. None of the meetings was called off due to a lack of quorum. During the period, the overall attendance rates of two members were below 50%. As members of the HA Main Tender Board attend the meetings on a rotational basis, their attendance rates at the HA Main Tender Board are not included in the above calculation.
- (b) At present, the HA Board holds about four open meetings a year to discuss and report on matters of concerns to the society and the public, such as the HA annual plan, progress reports on the highlighted service items of the HA, and the annual report of the Public Complaints Committee and the Patient Relations Office of the HA Head Office. Members of the public and organizations are welcome to observe the open meetings. The purpose of the open meetings is to enhance the transparency of the work and services of the HA.

Moreover, the HA Head Office has maintained communication with the public and patient groups through various channels. For instance, the HA introduces its new services and the development of existing services to patient groups and the public and consults them through regular and special meetings. Also, representatives from patient groups are currently included as members of the HA Board, the Public Complaints Committee and the Patient Satisfaction Survey Task Force.

At the cluster level, the Cluster Chief Executives and Hospital Chief Executives also visit the District Councils to report on and explain matters of concerns to patients and the public, such as the annual plan and new services of the cluster. Besides, the hospitals maintain communication with patients and the public through other channels, such as meeting with patient representatives, establishing the post of Patient Relations Officer and setting up patient resource centres, to understand their concerns and needs.

- (c) The HA is responsible for managing public hospitals to provide hospital and related healthcare services to the public. Its daily operation involves a wide range of work, including provision of medical services, financial and human resources management, procurement, implementation of works project, and so on. In appointing HA members, the Administration will carefully consider the background, expertise, past records of public service and service experience of each candidate. The existing mechanism effectively ensures that the HA Board has a proper and balanced mix of individuals so that people with relevant expertise and knowledge from different sectors can give advice to the HA on different aspects of its work. The mechanism functions smoothly and there is no need for changes.

Regulation of Undesirable Sale of Beauty Care and Slimming Services

10. **MR FRED LI** (in Chinese): *President, quite a number of members of the public have relayed to me that in the absence of specific regulatory legislation, some beauty care and slimming service operators have often adopted dishonest trade practices to operate their business in recent years. For example, they use advertisements containing misleading information for publicity and lure members of the public into visiting the companies concerned under various excuses and then forced them to sign unfair service contracts, and so on, by scare tactic. Consumers who have encountered the aforesaid situation often have nowhere to turn to for assistance, and thus their interests are not safeguarded. In this connection, will the Government inform this Council:*

- (a) *given that some members of the trade have proposed that a cooling-off period should be provided in the contracts for beauty care and slimming services, whether the Government has any plan to legislate to require that the contracts concerned must contain a cooling-off period clause, so that consumers may cancel the contracts and unconditionally get back the full amounts paid during the cooling-off period;*
- (b) *whether it has any plan to enact specific legislation to regulate advertisements which promote beauty care and slimming services, so as to prevent consumers from being misled by misrepresented advertisements; and*

- (c) *how it will educate and assist members of the public in protecting their own legitimate interests through existing legislation when procuring beauty care and slimming services?*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Chinese): President, while advocating free and open trade in order to foster a favourable and fair business environment, the Government is also committed to protecting consumer rights and enhancing consumer confidence. We are concerned about unfair sales practices in the market and are pressing ahead with the review of the current consumer protection legislation. We are examining how the current legislative regime could be strengthened so as to tackle unfair sales practices in a timely and targeted manner.

When formulating legislative amendments, we will strike an appropriate balance between protecting the fair and reasonable rights of consumers and the operational efficiency of business.

My reply to the three parts of the Honourable Member's question is as follows:

- (a) We welcome and encourage all industries to voluntarily adopt self-regulating measures that are beneficial to consumers, including the provision of a cooling-off period, in order to win over consumer confidence. As regards whether a cooling-off period should be imposed through legislation, we are examining the feasibility of this suggestion and on how to tackle the related implementation issues. As this suggestion amounts to an intervention into contracts concluded based on the free will of two contracting parties, it should be handled carefully. Furthermore, we will consider other measures which could strengthen consumer protection, such as legislative control on misrepresentation, high pressure or other undesirable tactics, which may have an impact on consumers when they conclude contracts.
- (b) We are examining the feasibility of making suitable amendments to the Trade Descriptions Ordinance (Cap. 362) to expand its coverage to false or misleading statements made in the course of the supply of services. Beauty care and slimming services will definitely be

among the service industries which would be subject to the proposed legislative amendment.

- (c) Currently, consumers may take out court action in accordance with relevant laws in respect of contract terms, or on matters relating to the compliance of contractual obligations by service suppliers. The Unconscionable Contracts Ordinance (Cap. 458) empowers the Court to refuse to enforce the unconscionable part of a contract. In determining whether a contractual provision is unconscionable, the Court may consider whether the contract clause is necessary to protect the legitimate interests of the business, and whether the consumer has been subject to any undue influence, pressure or unfair tactics. Besides, the Supply of Services (Implied Terms) Ordinance (Cap. 457) stipulates that a supplier should provide its service with reasonable care and skill. Where the time for the provision of services is not set out in the contract, the supplier should provide the service within a reasonable time. Consumers may consider seeking redress under contract law should they consider that a service supplier has not complied fully with any contract term. We note that the arrangements mentioned above are in the realm of private law, and accordingly we are examining whether we can strengthen consumer protection in other aspects.

On consumer education, we consider that enhancing consumer awareness and self-empowerment against unfair sales practices is equally important as legislative oversight. We have launched TV and Radio Announcements of Public Interests and posters, apprising consumers of the points to note when making pre-payment. A simulated scam case related to the undesirable sales practices adopted by slimming companies has been shown in the Police Magazine to raise consumers' awareness. In addition, in collaboration with the Consumer Council, we have published weekly newspaper columns on undesirable sales practices for 12 consecutive weeks starting from October this year. The Consumer Council also supports our endeavours by regularly disseminating messages on smart consumption and raising consumers' awareness of their rights through the media and the *Choice* magazine. We will continue to cooperate with the Consumer Council, the police and other

organizations (including major chambers of commerce, schools and the media) to step up efforts in this aspect.

Employment of Non-civil Service Contract Staff

11. **MR IP WAI-MING** (in Chinese): *President, regarding the Government's employment of non-civil service contract (NCSC) staff, will the Government inform this Council:*

- (a) *of the maximum numbers of days of annual leave that NCSC staff are entitled to, broken down by rank; in respect of those NCSC staff who are entitled to the maximum annual leave, the bureaux/departments/offices in which they are engaged and their grades;*
- (b) *of a breakdown, by rank of such staff, of the percentages (5%, 10% and 15% or above) by which their end-of-contract gratuities are calculated, as well as the number of the relevant contracts involved; of the criteria used by heads of department (HoDs) to determine the percentages for end-of-contract gratuities; and*
- (c) *as the Government stated in a paper submitted to the Panel on Public Service of this Council in May 2004 that "HoDs employ staff outside the Civil Service on fixed-term contracts of various duration (for example, one month up to three years) to meet service needs which are short-term, part-time or under review", yet at present, some NCSC staff have been in continuous employment for 10 to 20 years, what the definition of "service needs which are short-term, part-time or under review" is?*

SECRETARY FOR THE CIVIL SERVICE (in Chinese): President, the NCSC Staff Scheme was introduced in 1999. It aims to provide Permanent Secretaries and Heads of Departments (hereafter shortened as "HoDs") with a flexible means of employment to respond more promptly to changing operational and service needs of Bureaux/Departments (B/Ds) which may be time-limited, seasonal, or subject to market fluctuations; or which require staff to work less than conditioned hours; or which require tapping the latest expertise in a given area in

the market; or where the mode of delivery of the service is under review or likely to be changed.

As a general guideline, HoDs are advised by the Civil Service Bureau (CSB) that the terms and conditions of employment of their NCSC staff should be no less favourable than those provided for under the Employment Ordinance (EO) (Cap. 57) and no more favourable than those applicable to civil servants in comparable civil service ranks or with comparable levels of responsibilities where they exist. Within this general guideline, HoDs may determine the employment package (including leave and contract gratuity if any) of their NCSC staff, having regard to the job nature, condition of the employment market, as well as their management and operational considerations.

Given the nature of the NCSC Scheme, CSB only collects general information (such as the number of NCSC staff employed, the monthly salary range and the duration of contracts) twice a year from B/Ds. It does not require B/Ds to provide detailed information on the terms of employment of their NCSC staff.

With the above brief explanation on the NCSC Staff Scheme, my reply to the specific questions is set out below:

- (a) HoDs have been given the authority to determine the annual leave entitlement of their NCSC staff, provided that it is not below the minimum provision under the EO (that is, progressive increase of annual leave from 7 days for the first and second year up to 14 days for the ninth year and beyond) and not more than 14 days per year (which is the leave entitlement for the majority of civil servants appointed to basic ranks on new permanent terms and with less than 10 years of service). CSB does not have information on the leave entitlement of individual NCSC staff employed by the different B/Ds.
- (b) In order to attract recruitment and retention of suitable individuals to serve in specific NCSC positions, HoDs may, as necessary, offer end-of-contract gratuity to individual NCSC staff, payable upon satisfactory completion of the contract. As a general guideline, the gratuity payable, when added to the Government's Mandatory Provident Fund contributions, should not be more than 15% of the

total basic salary for the concerned individual NCSC staff engaged in work that requires managerial, professional, technical, or other specialized skills; and should not be more than 10% for the concerned individual NCSC staff in non-skilled jobs.

Based on the information collected from CSB's latest half-yearly survey of the NCSC staff position as at end June 2009, the majority (about 10 340 or some 64%) of the some 16 190 full-time⁽¹⁾ NCSC staff were offered gratuity in their contracts. The breakdown of these 10 340 NCSC staff is as follows:

<i>Percentage of end-of-contract gratuity</i>	<i>Number of NCSC staff (and percentage to total)</i>
At 15%	5 330 (51.6%)
At 10% to less than 15%	4 920 (47.6%)
Less than 10%	90 (0.8%)
Total	10 340 (100%)

CSB does not keep information on the breakdown of end-of-contract gratuity offered to NCSC staff by rank.

- (c) As explained at the beginning of this reply, HoDs may employ NCSC staff for different reasons. They may be employed to meet service needs which are time-limited. An example is the 10-year programme to remove unauthorized building works, where the concerned NCSC staff may, subject to their performance, remain in continuous employment for a number of years. HoDs may also employ NCSC staff for services which are intended to be contracted out in the longer term or services whose mode of delivery is under review. The concerned NCSC staff may, subject to their performance, remain in continuous employment until the contracting out is implemented or until the new mode of delivery of service comes into being. Separately, some NCSC staff may serve in one NCSC position after another without a break in service.

(1) "Full-time" means the employment is on a "continuous contract" under the definition of the EO. According to the EO, an employee who works continuously for the same employer for four weeks or more, with at least 18 hours in each week, is regarded as working under a continuous contract.

Kwun Tong Line Extension

12. **MS STARRY LEE** (in Chinese): *President, the scheme for the Kwun Tong Line Extension (KTE) gazetted last month did not adopt certain suggestions put forward earlier by local residents during the consultation meetings for the project. Such suggestions include the construction of a pedestrian subway to connect Whampoa Station to the pedestrian subway at the junction of Hung Hom Road and Tai Wan Road, as well as underground pedestrian links to connect Ho Man Tin Station to Ho Man Tin Estate and Oi Man Estate. Representatives of the Government and the MTR Corporation Limited (MTRCL) pointed out at the consultation meetings that the estimated daily pedestrian flow at the aforesaid locations did not reach the minimum standard for constructing such facilities. In this connection, will the Government inform this Council:*

- (a) apart from the aforesaid standard on pedestrian flow, whether the Government and the MTRCL have other reasons for not adopting the aforesaid suggestions; if they have, of the details;*
- (b) what standards of pedestrian flow for the construction of underground pedestrian connections are under the existing planning standards, as well as the requirement on pedestrian flow for the construction of such facilities at the aforesaid locations; and*
- (c) whether the Government and the MTRCL had, when planning facilities of the same kind in the past, considered factors other than pedestrian flow, for example, the potential of the facilities concerned in revitalizing old areas and promoting the development of tourism in the areas; if they had, of the details?*

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): President, on 11 March 2008, the Executive Council decided that the MTRCL should proceed with the further planning and preliminary design of the KTE. The KTE is the extension of the existing MTR Kwun Tong Line from Yau Ma Tei Station to Whampoa Station, with an intermediate station at Ho Man Tin. The Government and the MTRCL consulted the Traffic and Transport Committee of the Yau Tsim Mong and the Kowloon City District Councils on the project. We also conducted two rounds of extensive public consultation in collaboration with

the Kowloon City District Council in 2008 and 2009. The general public support the KTE project and request its early implementation.

Pursuant to the Railways Ordinance (Cap 519), we gazetted the KTE railway scheme on 27 November 2009 and started the statutory consultative process and detailed design for the project.

My responses to the various parts of the question are as follows:

(a) and (b)

One of the major elements in the design of railway projects is to look thoroughly into how there will be effective linkages with the neighbourhood. There is no exception to the KTE project. In the course of public consultation for the KTE, some locals suggested providing additional or improving the pedestrian connectivity facilities, including provision of separate pedestrian subways to connect Ho Man Tin Station and Ho Man Tin Estate/Oi Man Estate; and construction of a subway along Hung Hom Road connecting Whampoa Station to the existing subway at the junction of Tai Wan Road East/Fat Kwong Street/Hung Hom Road and to Laguna Verde.

In the provision of pedestrian linkages between railway stations and the neighbourhood, a number of objective factors would have to be taken into consideration, including conditions of the existing pedestrian network and facilities, road traffic conditions, road safety concern, pedestrian flow forecast, topographic conditions, technical viability and cost-effectiveness, and so on. Pedestrian flow is just one of the factors, amongst others, but not the only determining factor.

The Government and the MTRCL have studied the above suggestions for pedestrian links. For Whampoa Station, there is an existing footpath along Hung Hom Road which will connect directly with Whampoa Station to the junction of Tai Wan Road East/Fat Kwong Street. This levelled footpath is approximately 400 m long and about 3 m wide, and can adequately cope with the growth of pedestrian flow in future. The footpath is already planted with a

row of trees, providing a comfortable walking environment for pedestrians. As the suggested subway follows the same alignment as the existing footpath along Hung Hom Road, their functions would be duplicated.

Regarding the connection between Ho Man Tin Station and Ho Man Tin Estate/Oi Man Estate, we propose to construct a subway and a lift tower to connect the station with Chung Yee Street. We will also upgrade the existing walkway with cover and construct two covered footbridges to reach Sheung Lok Street and Hau Man Street at Ho Man Tin Estate and Oi Man Estate respectively. The design of this pedestrian link has made use of the existing pedestrian facilities and taken into consideration the varying gradients of Ho Man Tin district. The proposed pedestrian link will enhance the pedestrian network in the district with a view to providing a levelled, comfortable and cost-effective connection and walking environment. We have also considered providing direct subways to connect Ho Man Tin Station and Ho Man Tin Estate/Oi Man Estate, but this point-to-point linkage could not improve the existing pedestrian network in the district. Furthermore, when compared with the subway option, our proposal can provide a more comfortable walking environment and requires no extra land for the provision of ventilation and fire services facilities.

Whilst appreciating the aspirations and concerns of residents for the provision or improvement of station entrances, we are of the view that the proposed pedestrian links are suitable provisions having balanced the relevant considerations as mentioned above. Notwithstanding the above, we will continue to closely liaise with the locals with a view to improving the current proposal of pedestrian connectivity measures.

- (c) As mentioned above, there are a number of objective factors that need to be considered in assessing the provision of pedestrian facilities between railway stations and the neighbourhood. Expansion of the railway network can provide convenience to the public, promote economic activities, open opportunities for commercial developments and revitalize the local communities.

These will indirectly regenerate old districts, promote tourism and bring about economic benefits. For effective implementation of railway development projects, we will ensure that connectivity with the nearby pedestrian network can suitably provide a safe, efficient and convenient transit between stations and their neighbourhood. This is exactly the principle we are following in the planning of the KTE.

Construction of Green Buildings

13. **MR ABRAHAM SHEK** (in Chinese): *President, recently, the Chief Executive and the Secretary for Development have separately indicated that the authorities are actively considering not to grant extra floor areas to developers as an incentive for the construction of green buildings, and therefore are reviewing the existing measures and do not rule out enacting legislation at a later stage to require the provision of green features in buildings. In this connection, will the Government inform this Council:*

- (a) *of the criteria adopted by the authorities for determining whether or not legislation should be enacted to require the construction of green buildings;*
- (b) *whether it knows, among the cities with levels of development comparable to that of Hong Kong, which cities have enacted legislation on the aforesaid matter, and which cities promote the construction of green buildings only by means of incentive measures, as well as the reasons for their adopting different approaches;*
- (c) *regarding land purchased by developers from the Government and land in respect of which premium has been paid as well as land owned by the Urban Renewal Authority, the MTR Corporation Limited and the Airport Authority Hong Kong, whether any assessment has been conducted to ascertain if such land will be affected by the legislation or new regulatory measures to be introduced by the Government on the aforesaid matter in future; if so, of the details; if not, the reasons for that; and*

- (d) *whether the authorities will include a new element relating to construction of green buildings in the conditions of sale of Government land; if so, of the details; if not, the reasons for that?*

SECRETARY FOR DEVELOPMENT (in Chinese): President, with a view to encouraging developers to provide green, amenity and essential features in their building development projects, the Government grants gross floor area (GFA) concessions for these features as an incentive through the requirements stipulated in the Building (Planning) Regulations (Cap. 123 sub. leg. F), as well as the practice notes issued by the Building Authority. Nevertheless, in recent years, there has been rising public concern over the impact of such concessions on building bulk and height. In light of this, the Council for Sustainable Development (SDC) launched a four-month public engagement process entitled "Building Design to Foster a Quality and Sustainable Built Environment" on this policy and other topics in relation to the built environment. The SDC plans to submit a report to the Administration in the middle of next year. The Administration will carefully examine the recommendations in the report before mapping out the way forward.

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

- (a) At present, there is legislation in Hong Kong to require the provision of certain specified green features in buildings. For example, the Building (Refuse Storage and Material Recovery Chambers and Refuse Chutes) Regulations (Cap. 123 sub. leg. H) currently require that a refuse storage and material recovery room should be provided on every floor of a domestic building or of the domestic part of a composite building. This would enhance the rate of source recovery and recycling of domestic waste. Separately, the Environment Bureau has just introduced the Buildings Energy Efficiency Bill (the Bill) into the Legislative Council on 9 December. The Bill will specify the minimum energy efficiency standards for buildings in Hong Kong by mandating compliance with the Building Energy Codes.

In view of past experience, when the Government considers whether legislative approach should be adopted to require for the inclusion of certain features in buildings, in general, the importance of the

particular features will be considered. If the provision of such features on a temporarily voluntary basis is proven to be not effective, the Government will consider making the provision of such features a statutory requirement via legislation. The Government believes that the SDC will deliberate on how to formulate detailed criteria for legislation. At the same time, the Government will also carefully consider the matter.

- (b) The "Invitation for Response Document" for the aforementioned public engagement process issued by the SDC in June 2009 has set out the mandatory and administrative requirements on sustainable buildings on the Mainland and overseas cities. For example, in cities such as Beijing, Chengdu and Guangzhou, there are mandatory requirements on the width of closely packed high-rise buildings and minimum separation between building clusters. In Tokyo and some major cities on the Mainland, building setback requirements are mandatory and enforced with reference to the widths of roads nearby as well as zoning controls. In Singapore, incentive measures are in place to enhance the quality of the pedestrian environment at ground level. If certain criteria are met, GFA concessions will be granted for covered pedestrian areas.

Moreover, according to the consultancy report of "Building Design that Supports Sustainable Urban Living Space in Hong Kong" commissioned by the Buildings Department (BD), the Singaporean Government has, since 2001, encouraged the inclusion of "sky terraces" in new development projects to promote greening. In a set of revised guidelines issued by the Singaporean authorities in December 2004, it is stated that covered sky terraces are exempted from GFA calculation. In accordance with the "Handbook on Gross Floor Area" issued in February 2006, bonus GFA is granted for sky terraces in residential and hotel developments if certain criteria are met.

A preliminary study conducted by an inter-departmental working group led by the BD in 2006 revealed that GFA concessions are granted in New York and San Francisco for some green features (such as balconies, sky gardens and podium gardens) pursuant to their city planning laws.

(c) and (d)

As mentioned above, the SDC is collating and analysing the views received and aims to submit a report to the Government around the middle of next year. The Government will examine in detail the recommendations in the SDC's report in reviewing the current policy measures to map out the way forward. If the Government decides that changes should be made to the current policy measures, the relevant bodies, such as the Legislative Council, Land and Development Advisory Committee, Hong Kong Green Building Council, and so on, will be consulted on the details of the proposal through the established channels. We will then issue new practice notes for the implementation of the new policy measures. Given the time required for the above actions, we anticipate that the implementation of any new policy measures will not be earlier than 31 March 2011. If legislative amendment is required for the new policy measures, it will take a longer period of time for implementation.

We understand that during such period when the way forward has yet to be decided, the market may include a risk factor when participating in Government land auctions or calculating the premiums for lease modification or land exchange. That might create an adverse impact on public revenue. We think there is a need to provide clarity and certainty to the market. As such, we need to clarify the Government's intention, which is that any new policy measures will not have retrospective effect in the sense that the current arrangement in respect of the granting of GFA concessions will continue to apply to the green, amenity and essential features included in the general building plans if such plans are approved by the Building Authority prior to the implementation of any new policy measures.

As regards what new measures are to be introduced by the Government and how such measures will be concretely put into practice (for example, whether such measures will be included in the terms and conditions of land sale), such matters have to be further worked out.

Combating Smuggling Activities

14. **MR WONG TING-KWONG** (in Chinese): *President, regarding the work in combating smuggling activities, will the Government inform this Council:*

- (a) *of the respective quantities, types and values of goods smuggled into and out of Hong Kong by sea, on land and by air which were seized by the authorities in the past three years, as well as the number of persons arrested in connection with such cases;*
- (b) *of the recent situation of illegal smuggling activities using prestigious sedans and luxurious seven-seater vehicles; if the situation has become serious, of the details and reasons for that;*
- (c) *given the increasingly busy economic activities between Hong Kong and the Mainland, the number of vehicles travelling across the two places is increasing, whether the authorities had adopted specific measures in the past three years to focus on combating illegal smuggling activities on land; if so, of the details; if not, the reasons for that; and*
- (d) *whether the authorities have recently uncovered new ways of smuggling being used by law-breakers; if they have, of the details, and what combating actions the authorities have taken in this respect?*

SECRETARY FOR SECURITY (in Chinese): President,

- (a) The major types and values of goods smuggled by sea, land and air in the past three years and seized by the Customs and Excise Department (C&ED) are set out at Annex I with the number of arrested persons involved in smuggling activities set out at Annex II. As for the quantity of each type of smuggled goods seized, we are not able to provide an overall quantity for each major type of smuggled goods, since each type encompasses a wide range of different articles with a multitude of categories, and the computing methods and units for different categories vary.

- (b) From January to November 2009, the C&ED detected a total of 12 smuggling cases involving the use of private cars, representing a decrease of 54% compared with that of the same period in 2008 (26 cases). Among them the more common smuggled items were cigarettes and computer products. The C&ED will closely monitor the trend of using private cars for smuggling and step up inspection as and when necessary.
- (c) The C&ED adopts the following strategies to combat smuggling activities involving the use of vehicles:
 - (i) stepping up inspection of cross-boundary vehicles;
 - (ii) strengthening co-operation with local and Mainland law enforcement agencies, such as conducting joint operations and enhancing intelligence exchange;
 - (iii) using advanced equipment (for example, X-ray vehicle scanning systems and contraband detectors) to enhance the effectiveness of inspection; and
 - (iv) establishing partnership with the relevant industries and encouraging them to provide information and intelligence so as to assist the C&ED's law enforcement work.
- (d) Smugglers frequently change their smuggling practices to evade enforcement actions. For example, they often switch the methods for concealing smuggled goods, as well as the locations and time for loading and unloading. In response to the constantly changing smuggling practices, the C&ED will continue to step up their intelligence gathering efforts, enhance liaison and co-operation with relevant law enforcement agencies, and adopt flexible anti-smuggling tactics and operations in order to bring smugglers to justice.

Annex I

Major Types and Values of Goods Smuggled by Sea, Land and Air
and Seized by the C&ED in the Past Three Years

<i>Goods</i>	<i>Value (\$000)</i>		
	<i>2007</i>	<i>2008</i>	<i>2009 (Jan-Nov)</i>
By Sea			
Electrical and electronic products	42,970	70,750	31,400
Computer products	60,180	46,360	47,980
Optical Discs	89,200	---	37,480
Animals and plants (including fur)	24,750	48,180	32,060
Sub-total:	217,100	165,290	148,920
By Land			
Electrical and electronic Products	52,890	112,330	28,550
Computer products	6,570	18,430	8,530
Cigarettes and tobacco	27,770	26,760	42,430
Clothing and leather goods	60,690	38,390	24,110
Sub-total:	147,920	195,910	103,620
By Air			
Electrical and electronic products	---	470	1,520
Cigarettes and tobacco	100	150	440
Clothing and leather goods	620	---	400
Pharmaceutical products and chemical substances	970	4,490	4,460
Sub-total:	1,690	5,110	6,820
Total:	366,710	366,310	259,360

Annex II

Number of arrested persons involving smuggling offences

<i>Smuggling Route</i>	<i>Number of Arrested Persons</i>		
	<i>2007</i>	<i>2008</i>	<i>2009 (Jan-Nov)</i>
By sea	237	162	110
By land	233	261	145
By air	16	9	4
Total:	486	432	259

Assistance for People Recovered from SARS

15. **DR JOSEPH LEE** (in Chinese): *President, in 2003, the Government set up the Trust Fund for Severe Acute Respiratory Syndrome (SARS) (Trust Fund) to provide financial assistance for family members of deceased SARS patients, people who recovered from SARS and "suspected" SARS patients who had been treated with steroids. Regarding the provision of assistance for people who recovered from SARS, will the Government inform this Council:*

- (a) of the current balance of the Trust Fund, and the number of persons still receiving financial assistance from the Trust Fund at present;*
- (b) whether it knows the number of SARS patients who have been assessed by the Hospital Authority (HA) to be suffering from permanent dysfunctions; apart from the Trust Fund, whether the Government will make longer term arrangements for them;*
- (c) given that the HA provides SARS patients with life-long free medical services to treat their health problems caused by SARS, whether it knows the respective medical services provided and not provided by the HA, as well as the reasons for not providing certain services; and*
- (d) regarding persons who have been assessed to have recovered from SARS and hence may not continue to obtain assistance from the Trust Fund, whether the Government will follow up their situations, for example, look into their mental and health conditions and employment situations, and so on; if it will, of the details; if not, whether it will take follow up actions?*

SECRETARY FOR LABOUR AND WELFARE (in Chinese): President, the Trust Fund (Trust Fund) for Severe Acute Respiratory Syndrome (SARS) was established in 2003 to provide special *ex-gratia* financial assistance on compassionate grounds to families of deceased SARS patients, recovered and suspected SARS patients⁽¹⁾. The Trust Fund provides:

(1) Suspected SARS patients refer to those who were clinically diagnosed as having SARS on admission, treated with medication for SARS, but turned out subsequently not to have SARS.

- special one-off *ex-gratia* relief payments for eligible family members of the deceased SARS patients; and
- special *ex-gratia* financial assistance for eligible recovered or suspected SARS patients treated with steroids suffering from longer term effects attributable to SARS (including the effects of medication received for SARS, if any), resulting in some degree of bodily dysfunctions, subject to proof of medical and financial needs.

To be eligible for the *ex-gratia* financial assistance, recovered or suspected SARS patients must have some degree of SARS-related dysfunctions, which mainly include bone abnormality (namely avascular necrosis), pulmonary dysfunction, physical dysfunction and psychological dysfunction. The assistance is made up of two components:

- monthly financial assistance, having regard to (i) the income loss/reduction of the recovered patient/suspected patient arising from SARS; and (ii) any justifiable increase of expenditure arising from SARS⁽²⁾. The assistance to cover the income loss/reduction in (i) is subject to a cap of 200% of the prevailing Median Monthly Domestic Household Income, while that in (ii) is provided on a reimbursable basis; and
- monthly medical expenditure assistance, which covers (i) expenditure for dietary supplement and transport expenses; and (ii) other justifiable medical expenses reimbursable with reference to the rates of the HA.

The Administration's reply to the various parts of the question is set out below:

- (a) As at end-November 2009, 156 recipients were receiving financial assistance (including monthly financial assistance and/or monthly medical expenditure assistance) under the Trust Fund. The current balance of the Trust Fund is about \$32 million. Adopting the existing disbursement rate, it is projected that the Trust Fund should be able to maintain operation for another two to three years and continue to provide financial assistance to the recipients in need.

(2) The justifiable increase in expenditure includes any reasonable non-medical expenses incurred by the patients arising from SARS, such as expenditure for domestic helpers for patients who cannot carry out household chores after SARS.

- (b) The Administration is now reviewing the conditions of the Trust Fund recipients, with the objective of examining whether there is a need for some longer term arrangements to cater for the needs of those who, according to the HA's assessment, are suffering from permanent dysfunctions.
- (c) The HA implemented the Fee Waiver Scheme for Post-SARS Follow-up Complications (Scheme) in 2005 targeting those patients who were infected with, but already recovered from, SARS. The HA would issue a post-SARS follow-up card to these patients. Card holders are entitled to free medical treatment and rehabilitation services when they attend the medical follow-up with the HA specialties on illnesses related to SARS. These specialties include Family Medicine, Respiratory Medicine, Orthopaedics and Traumatology, Paediatrics, Psychiatrics, Pain, Physiotherapy, Occupational Therapy and Clinical Psychology. If the recovered patients need to consult specialties other than those listed above for treatment on illnesses related to SARS, their in-patient and out-patient charges would be waived if they have documentary referrals from their current attending doctors.
- (d) SARS recovered patients in need of any medical, welfare or employment services may approach the relevant departments for assistance. The social workers responsible for their cases will also provide assistance according to their needs.

Assistance for Inmates

16. **MR LEUNG KWOK-HUNG** (in Chinese): *President, I have received complaints from inmates and discharged inmates that currently the facilities in the cells of the various penal institutions under the Correctional Services Department (CSD) are not adequate, and their basic needs have been neglected. In this connection, will the Government inform this Council:*

- (a) *of the number of cells which are not fitted with individual toilets at present, broken down by institution, and the capacity of such cells; whether individual toilets will be fitted in every cell; if so, of the implementation timetable; if not, the reasons for that, and whether it*

has assessed if the lack of individual toilet in cells is a neglect of the needs of inmates; if such an assessment has been made, of the results; if not, the reasons for that;

- (b) of the respective numbers of confirmed cases of inmates suffering from heart disease, asthma and pulmonary disease in each of the past five years;*
- (c) whether the various penal institutions have set up no-smoking cells at present for holding inmates who are chronic disease patients suffering from heart disease, asthma or pulmonary disease; if so, of the number of such cells and the capacity of each cell, and the numbers of inmates who were punished for smoking in no-smoking cells in each of the past five years; if such cells have not been set up, the reasons for that; and*
- (d) of the numbers of inmates who received injections of sedatives (commonly known as "doping injections") in each of the past five years?*

SECRETARY FOR SECURITY (in Chinese): President,

- (a) Generally, all cells operated by the CSD are fitted with individual toilets. To fulfil this basic requirement, preparation is being made to install individual toilets in 10 single cells in Siu Lam Psychiatric Centre. Meanwhile, there are a total of 24 single cells in various institutions which are not fitted with individual toilets for special security reasons. These include eight cells for isolating persons suspected of concealing drugs in their bodies, and 16 protected rooms for the temporary accommodation of persons with self-harm behaviour or emotional instability. Generally speaking, while dropping pans are provided for inmates accommodated in the eight isolation cells, inmates staying in the protected rooms can notify the CSD staff when they need to use the toilets, and arrangement will be made for them to use the toilets outside the protected rooms.

The 24 single cells not fitted with individual toilets due to security reasons are listed below:

<i>Name of institution</i>	<i>Number of isolation cells</i>	<i>Number of protected rooms</i>
Castle Peak Bay Immigration Centre		2
Chi Sun Correctional Institution	1	
Lai Chi Kok Reception Centre		1
Pak Sha Wan Correctional Institution		1
Pik Uk Correctional Institution		1
Stanley Prison		2
Siu Lam Psychiatric Centre	5	6
Shek Pik Prison		2
Tai Lam Centre for Women	2	1
Total:	8	16

- (b) According to the CSD's statistics, the number of inmates admitted to correctional institution hospitals due to heart diseases, asthma and pulmonary diseases from 2004 to 2008 is as follows:

<i>Year</i>	<i>Heart diseases⁽¹⁾</i>	<i>Asthma</i>	<i>Pulmonary diseases⁽²⁾</i>
2008	167	326	151
2007	75	200	222
2006	111	246	176
2005	167	288	164
2004	315	167	121

Notes:

- (1) Heart diseases include "chronic rheumatic heart diseases", "hypertensive heart diseases", "hypertensive heart and renal diseases", "acute myocardial infarctions", "other ischaemic heart diseases", "conduction disorders and cardiac arrhythmias", "heart failure" and "other heart diseases".
- (2) Pulmonary diseases include "respiratory tuberculosis", "malignant neoplasm of trachea, bronchus and lung", "bronchitis, emphysema and other chronic obstructive pulmonary diseases" and "pneumoconiosis".
- (c) All indoor areas of correctional institutions are no-smoking areas, except the designated smoking areas such as single cells and designated smoking booths inside dormitories, dining rooms and workshops.

The number of inmates punished by the CSD for smoking in no-smoking areas in the past five years is as follows:

<i>Year</i>	<i>Number of inmates punished by the CSD for smoking in no-smoking areas</i>
2008	63
2007	70
2006	14
2005 (1.2.2005 - 31.12.2005) ⁽³⁾	18

Note:

(3) The CSD started to keep the relevant statistics in February 2005.

- (d) The CSD will only give sedative injections to inmates as and when Medical Officers prescribe such treatment according to the inmates' health conditions. In the past five years, the number of inmates who were prescribed with sedative injections by Medical Officers posted to penal institutions by the Department of Health is as follows:

<i>Year</i>	<i>Number of inmates prescribed with sedative injections by Medical Officers</i>
2008	295
2007	288
2006	228
2005	265
2004	193

Participation Patterns of Hong Kong People in Physical Activities

17. **MR FREDERICK FUNG** (in Chinese): *President, according to the consultancy study "Sport for All — Participation Patterns of Hong Kong People in Physical Activities" published earlier by the authorities, over half of the respondents failed to meet the level of the "baseline indicator" of physical activity level, that is, at least an accumulation of 30 minutes a day and at least three days a week in moderate or vigorous physical activities. Moreover, three of the*

sports they participated in most frequently were jogging, swimming and badminton; and more than half of the respondents used mainly the leisure facilities of the Leisure and Cultural Services Department (LCSD) or other government departments. Based on the above study findings, the Community Sports Committee proposed to further promote Sport for All in the community through education and upgrading services from time to time, so that more people will be encouraged to actively participate in sports and physical activities. In this connection, will the Government inform this Council:

- (a) what specific strategies the authorities have adopted to promote physical activities (including those at family, community, school and workplace levels, as well as in other aspects of daily life) through education among members of the public so as to facilitate them to meet the level of the "baseline indicator";
- (b) given that entries for the Standard Chartered Hong Kong Marathon 2010 which was open for registration earlier were full in no time, which reflected the level of enthusiasm of the public in participating in jogging and confirmed the findings of the aforesaid study on the sport with the most frequent participation, whether the authorities will, in response to the findings of the study, consider improving and increasing the sports facilities concerned, including whether they will:
 - (i) consider the provision of jogging tracks with vibration-absorbing materials on the wider pedestrian walkways, along existing waterfront areas and those under planning, as well as on the pedestrian walkways adjacent to cycling tracks, and so on; and consider providing more jogging tracks or resurfacing jogging tracks with those materials in parks; if so, of the specific plans and timetable; if not, the reasons for that;
 - (ii) consider how to make good use of outdoor public swimming pools which are closed in winter, including converting them

into heated swimming pools or making use of the space to set up temporary sports facilities, and so on; and

- (iii) review the utilization of the badminton courts under the LCSD at present, and encourage the Hong Kong Housing Authority (HA) and private housing estates to provide small-scale indoor badminton courts; if they will, of the details; and*
- (c) in addition to the measures to step up promotion and education as well as improve the hardware, whether the authorities will consider providing other incentives, such as allowing free use of leisure facilities managed by the LCSD one day per week or month, or even during the less popular sessions in a day; and encouraging or subsidizing employers to organize sports activities for their employees or provide specific time each week during working hours for sports, and so on, so as to encourage the public to participate in physical activities; if it will not, of the reasons for that?*

SECRETARY FOR HOME AFFAIRS (in Chinese): President, my reply to the three parts of the question is as follows:

- (a) Promoting "Sport for All" is one of the Government's sports policy objectives. Currently, the LCSD is adopting a two-phased approach to implementing this policy. First, the LCSD is promoting the importance and benefits of regular exercise to the community through public education. Thereafter, the LCSD will promote community-wide participation and encourage the public to take part in sports activities by providing a diverse range of activities.

The focus of the public education phase, which started in June this year, is to explain the findings of the Consultancy Study on "Sport for All — the Participation Patterns of Hong Kong People in Physical Activities" (Consultancy Study) to stakeholders and to enlist their support for promoting "Sport for All" in the community, as well as to conduct publicity campaigns through various channels

to target stakeholders and people belonging to different groups. At present, the LCSD is introducing the findings of the Consultancy Study to the relevant committees of the 18 District Councils (DCs) inviting the DCs to support the promotion of sport in the community. At the school level, the Education Bureau will introduce the findings of the Consultancy Study to kindergartens, primary and secondary schools, in addition to encouraging schools to attach greater importance to sports through the Student Sports Activities Co-ordinating Sub-committee. At the community level, we will step up promotion and education efforts by organizing large-scale sports carnivals, producing Announcements of Public Interests and publicity materials, disseminating the contents of the Consultancy Study and other publicity information through government web pages, broadcasting publicity materials at LCSD venues, schools, and through different media such as Roadshow and television. We will also introduce the findings of the Consultancy Study to the business sector, provide them with information on LCSD sports venues, and distribute to them publicity materials on sport and physical activities so as to encourage employers and employees alike to participate in sports and physical activities.

The second phase of work, under which we will promote community-wide participation, will start in April next year. We will conduct a comprehensive review of the existing community sports activities and public demand for sports facilities in the light of the findings of the Consultancy Study. We will also design and provide more sports and physical activities suitable for people from different age groups in collaboration with National Sports Associations (NSAs). Moreover, we plan to conduct a similar consultancy study once every five years to collect data on public participation in sports and physical activities to allow us to understand better the factors affecting levels of participation, so that we can provide facilities and services that will better serve the public.

- (b) The LCSD provides a wide range of sports facilities in districts throughout the territory to meet the needs of the public. Where practicable, the department provides additional facilities that are

more popular, in the light of population growth and after considering the views of the relevant DC and members of the public.

- (i) As regards jogging tracks, the LCSD will use shock-absorbing surfacing when constructing new jogging tracks and resurfacing existing ones in parks under its management so as to provide better protection for joggers. In the coming five years, the LCSD will construct 14 additional jogging tracks in various districts. As for the suggestion of providing jogging tracks with shock-absorbing surfacing on the wider pedestrian walkways, along existing waterfront areas and those under planning, as well as on the pedestrian walkways adjacent to cycling tracks, according to the requirements for public footpaths specified by the "Transport Planning And Design Manual", the width of public footpaths has to complement the design of adjacent facilities such as carriageways or cycleways. The available space and expected volume of pedestrian traffic at each location also needs to be taken into account. Providing a jogging track with shock-absorbing surfacing on a footpath will take up part of its width. Apart from affecting pedestrian movement, this may also affect the use of handcarts, bicycles or even emergency vehicles. In addition, shock-absorbing surfacing materials are less durable than the materials currently used for surfacing footpaths. They are also more liable to cause accidents when worn or damaged, and require frequent maintenance. Given these considerations, the Highways Department does not have any plans to study the provision of jogging tracks on footpaths under its management.
- (ii) For swimming facilities, in the coming five years the LCSD will provide 11 new facilities with indoor heated swimming pools, some of which will be converted from existing outdoor swimming pools. These projects include the redevelopment of the Victoria Park and Kwun Tong Swimming Pools, the reprovisioning of Kennedy Town Swimming Pool and

conversion of the secondary pool at Lai Chi Kok Park Swimming Pool.

- (iii) Badminton courts under the management of the LCSD have a relatively high average utilization rate of 82%. We will provide 64 additional badminton courts in various districts in the coming five years.

Separately, there are established guidelines on recreational facilities for both public housing and private residential properties. As regards the provision of ancillary facilities for public housing developments, the HA, in consultation with relevant government departments, provides recreational facilities in its public housing development projects for use by its tenants in accordance with the Hong Kong Planning Standards and Guidelines. Under exceptional circumstances and subject to the availability of resources as well as without affecting the overall development potential, the HA may consider providing additional small indoor venues in suitable projects.

For private residential properties, the government encourages the provision of recreational facilities. If a developer provides recreational facilities (including indoor badminton courts) in such properties for the exclusive use of owners and their *bona fide* visitors, subject to the merits of each case, the developer may apply for exclusion of the floor area of such recreational facilities from the calculation of gross floor area pursuant to the Building (Planning) Regulations (Cap. 123 Sub. Leg. F), outline zoning plan and relevant conditions of the land lease concerned (if applicable). Following the Council for Sustainable Development's recent public engagement exercise, the Administration will review this policy in accordance with the views collated and the advice of the Council.

- (c) The LCSD has been implementing the "Free Use Scheme" to allow schools, NSAs, district sports associations (DSAs) and subvented non-governmental organizations (NGOs) to apply for free use of main arenas and activity rooms of sports centres, squash courts, hockey pitches and artificial turf bowling greens under LCSD management during non-peak hours (from 7 am to 5 pm, Monday to Friday) from September every year to June the following year. In addition, to help organizations arrange recreation and sports activities to encourage members of the public or employees to participate more actively in sport, the LCSD also gives schools, NSAs, DSAs, NGOs, registered organizations and institutions priority in reserving recreation and sports facilities three to 12 calendar months in advance.

Further, the LCSD also offers half-price concessionary rates for the hire of facilities to encourage members of the public to develop a habit of doing exercise. Students and senior citizens aged 60 or above can enjoy half-price concessionary rates when using swimming pools and facilities at water sports centres during any session and land-based recreation and sports facilities during non-peak hours. For schools and NGOs, a half-price concessionary rate is offered for the use of swimming pools at specific hours and the land-based recreation and sports facilities during non-peak hours. People with disabilities and recognized disability service agencies are entitled to half-price concessionary rates for using all types of recreation and sports facilities during any session.

To promote "Sport for All" and to encourage the public to participate in sport, the LCSD organizes a wide variety of training courses, recreation and sports activities, and sports competitions through its District Leisure Services Offices for public participation. Moreover, various major events and territory-wide programmes including the Corporate Games and the Masters Games are also organized. The LCSD also organizes diversified free programmes for different target groups, including the elderly, people with disabilities and young people at risk. To promote further the culture of "Sport for All" in the community and to strengthen the public's sense of belonging to

their own districts, the LCSD has organized the biennial Hong Kong Games (HKG) since 2007. The 2nd HKG was held in May 2009 and a total of 2 307 athletes participated.

Compensation Arrangement for Resumption of Wah Kai Industrial Centre

18. **MR ALBERT CHAN** (in Chinese): *President, I have learned that since the resumption of the Wah Kai Industrial Centre (Wah Kai Centre) by the Administration in 2000, more than 100 factory operators have still not received reasonable compensation. Yet the Administration is still spending a huge amount of public money to engage consultants and experts to deal with the claims of the operators concerned. Some factory operators have even alleged that the consultants engaged by the Administration have deliberately delayed the settlement of claims, causing the expenditure on consultancy fees to increase substantially. In this connection, will the Government inform this Council:*

- (a) of the number of factory operators of Wah Kai Centre who have been compensated as at December 2009 and the amount of compensation paid out;*
- (b) of the total amount of expenditure on engaging the aforesaid consultants or experts to date since the Administration announced the resumption of Wah Kai Centre in 1999; and*
- (c) whether the authorities will consider using arbitration as a means to deal with those cases of the factory operators of Wah Kai Centre whose claims have not yet been settled so as to expedite the provision of compensation and reduce the expenditure on engaging consultants; if they will, of the details, if not, the reasons for that?*

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

- (a) As at 3 December 2009, we have processed a total of 954 cases of compensation claim since the resumption of Wah Kai Centre under

the Railways Ordinance (Cap. 519) in 1999. Of the cases handled, 828 cases have been settled. The total amount of compensation and related payments paid out is \$733,574,915.93.

- (b) Consultants were commissioned in 2004 and 2008 to handle a total of 22 compensation claims from the industrial operators of Wah Kai Centre, of which 11 cases have started legal proceedings in the Lands Tribunal. As at 3 December 2009, a total of \$681,000 was paid on consultancy fees.
- (c) The Railways Ordinance has provided for the relevant mechanism for determination of claims: if an affected person (the claimant) fails to reach an agreement with the Government on the compensation claims, either the claimant or the Government may refer the case to the Lands Tribunal for determination. Henceforth, we do not see the need to institute a separate arbitration arrangement. Besides, the existing Government consultancy agreement has set a ceiling of consultancy fee for each claim, the lowest being \$30,000 whilst the highest being \$160,000, depending on the nature of the case.

Investigation of Incident of Hong Kong Journalists Being Assaulted While Covering News in Xinjiang

19. **MS EMILY LAU** (in Chinese): *President, at the Council meeting on 21 October this year, I moved a motion on the incident of Hong Kong journalists being assaulted by law enforcement officers while covering news in Xinjiang. Some of the Members who spoke at the meeting indicated that they hoped the Mainland authorities would investigate this incident, and Mr IP Kwok-him, who is also a Hong Kong deputy to the National People's Congress, indicated that his party "will continue to monitor the progress of the investigation", but "before there is any investigation outcome, ... have reservations about moving a motion of condemnation". In his response, the Secretary for Constitutional and Mainland Affairs did not mention whether the Mainland authorities have investigated the incident. In this connection, will the Executive Authorities inform this Council whether:*

- (a) *it knows if the Mainland authorities have investigated the aforesaid incident; if it knows that investigation has been conducted, whether it will make enquiries with the Mainland authorities about the progress and expected completion date of the investigation, as well as whether the Mainland authorities will release the investigation outcome;*
- (b) *it has taken any action to follow up the aforesaid incident; if so, of the details; if not, the reasons for that; and*
- (c) *it will convey to the Mainland authorities the views expressed by Legislative Council Members at the aforesaid motion debate and urge the Mainland authorities to investigate thoroughly the said incident and ensure that enforcement officers will not cause harm to journalists again?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Chinese): President, the HKSAR Government (the Government) has been very concerned about the incident in early September this year involving Hong Kong journalists being taken away by Mainland public security officers. The Government has been following up the matter. Regarding the matters raised in the question, our response is as follows -

Immediately after the incident, the Government enquired with the concerned Mainland authorities to find out the latest situation and provided practicable assistance to the concerned Hong Kong journalists, who were released soon afterwards. The Government also conveyed the strong views of the Hong Kong media to the Government of the Xinjiang Autonomous Region through the Hong Kong and Macao Affairs Office of the State Council (HKMAO).

During the debate of the motion on "Defending Press Freedom" at the Council meeting on 21 October, a number of Members expressed their wish for the Government to convey in a timely manner the concern and views of the Hong Kong media to the relevant Mainland authorities, and to ensure that the rights of Hong Kong journalists to conduct lawful reporting activities on the Mainland would be protected. In fact, we have on several occasions helped convey their views in this respect. Although the original motion and motion as amended

were not supported, after the motion debate we have again conveyed Members' views through the HKMAO, including the wish expressed by some Members for the relevant Mainland authorities to re-investigate the incident and publicly disclose the investigation results.

Our main focus is to ensure that Hong Kong journalists are able to conduct lawful reporting activities on the Mainland. The Government has all along been following up the matter through appropriate channels. When the Chief Executive met the Minister of Public Security just before the National Day of the PRC this year, the opportunity was taken to express again the Government's concern over the matter. The Minister of Public Security stated clearly that he understood the Government's concern, and reiterated the Central Authority's established policy was to protect the rights of the Hong Kong journalists to conduct lawful reporting activities on the Mainland.

Unused Government Premises and Unused Platforms of MTR Corporation Limited

20. **MR KAM NAI-WAI** (in Chinese): *President, according to the Report No. 50 of the Director of Audit, three government premises in different buildings, originally reserved as the MTR entrance/exit areas of the MTR Corporation Limited (MTRCL), have remained unused for a long period of time, the longest time being nearly 30 years. Moreover, it has recently been reported that a platform of the MTR Airport Express (Airport Express) Hong Kong Station has remained unused for 12 years since its completion. In this connection, will the Government inform this Council whether it knows:*

- (a) *the respective numbers of unused government premises reserved to be used for developing railway facilities as well as unused MTR platforms and their details (including location, duration of and reasons for being unused, current conditions with the relevant photos, annual maintenance costs and other related expenses involved, original planned use and restrictions on use, future development planning, difficulties in changing the use as well as estimated accumulated economic losses so far); of the contents of the complaint cases concerning such unused premises and platforms*

received by the authorities concerned and the progress of the follow-up actions;

- (b) how the present daily patronage of the Airport Express Hong Kong Station as originally projected compares with the actual patronage at present; of the patronage level required for the commissioning of the aforesaid platform; and when the patronage is expected to reach such a level; and*
- (c) whether the MTRCL has any plan to change the use of the unused platform of the Airport Express Hong Kong Station, for example, temporarily opening part of the platform for public use?*

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): President, the design of railway alignment and stations has to undergo a detailed planning process and will not be finalized until the railway scheme is authorized by the Executive Council. The purpose of making reserved areas for railway schemes prior to their finalization is to minimize disruptions arising from the subsequent railway works, and the unnecessary disturbances and compensation arising from land resumption. If such areas are not reserved beforehand, implementation of the most optimal railway scheme may not be possible. This is certainly not in the public interest. The Government will scrutinize the railway reserved areas in order to ensure that these areas will suitably cope with the future railway development.

My responses to the various parts of the question are as follows:

- (a) When planning the Hong Kong Island Line, the MTRCL has reserved the MTR entrance/exit areas in the following six buildings:
 - (1) No. 121 King's Road
 - (2) No. 107-118 Connaught Road West
 - (3) No. 402-404 Des Voeux Road West
 - (4) No. 410-424 Des Voeux Road West
 - (5) No. 156-160 Des Voeux Road West
 - (6) No. 207/235 Des Voeux Road Central

The section of the Hong Kong Island Line between Chai Wan and Sheung Wan was commissioned in 1985 while the design of the section between Sheung Wan and Kennedy Town (that is, the West Island Line) was finalized in 2009. Among the aforesaid MTR reserved entrance/exit areas, Reserved Area (5) will be used as one of the entrance/exits of the Sai Ying Pun Station of the West Island Line. Please refer to the attached photographs showing the present conditions of these reserved entrance/exit areas.

Reserved Areas (1), (2) and (3) mentioned above are government premises. Throughout the period when these areas are owned by the Government, we have spent a total amount of \$1,000, \$4,500 and \$30,000 respectively on maintenance and other related expenses, which were mainly used for changing the hoarding, dewatering and pest control, and so on. For Reserved Area (3), the Government is following up with the Incorporated Owners of the building on the problem of the waterproof layer of the reserved area at the basement. As for the remaining two reserved areas, there is no outstanding complaint that needs to be addressed. As regards Reserved Areas (4), (5) and (6), they are still privately owned. These reserved areas have been included in the land grant conditions imposed by the Government.

According to the land grants and other related legal documents, the reserved areas mentioned above are limited to be used for MTR station entrance/exits, but not for other uses. While we are considering the use of these reserved areas as the entrance/exits of railway stations in their vicinity, the relevant government departments will also consider the change of use of the reserved areas for other beneficial purposes. However, the feasibility of such change of use will involve many complicated considerations, including the compliance with the requirements of the Buildings Ordinance, the provisions in the Deed of Mutual Covenant of the relevant buildings, technical restrictions of the associated building structures, and so on. We shall take all these factors into consideration in the current feasibility study for the change of use of the above reserved areas.

- (b) Like other infrastructure developments, railway projects are usually planned for 50-year long operation periods. Yet, short term projections are likely to be affected by the overall social and economical factors as well as the rate of development in the region. The Airport Express is one of the major transport modes between the Hong Kong International Airport and urban areas. Since the opening of the Hong Kong International Airport in 1998, Hong Kong has experienced several financial crises as a result of unforeseeable international economic turmoil. The projected population and economic growth in Hong Kong have changed as well. The Airport Express has also faced fierce competition from other public transport modes. In 2008, the average daily patronage of the Airport Express was 29 000. For the Airport Express at the Hong Kong Station, the trains are currently using the same platform for arrival and departure.

As the Hong Kong Station is situated within the central business district, further construction works for a second platform at a later date will inevitably cause inconvenience to the local community. And, the construction works will also have a substantial impact on the daily operation of the existing railway. Therefore, a second platform has been constructed at the time of constructing the Airport Express. At present, the tracks of the second platform in the Hong Kong Station are used for temporary stabling of spare trains to meet special train service requirements.

When the train frequency is increased from the current five trains per hour to seven trains per hour or more, the second platform will be required for the operation.

- (c) The MTRCL has considered alternative uses of the second platform of the Airport Express at the Hong Kong Station temporarily. However, the second platform is within the paid zone. When taking into account the land use restrictions, the costs of additional building and fitting out works, and so on, the MTRCL thus considered the second platform was not suitable for other uses.

(1) No. 121 King's Road



MTR Reserved Areas

(2) No. 107-118 Connaught Road West



(3) No. 402-404 Des Voeux Road West

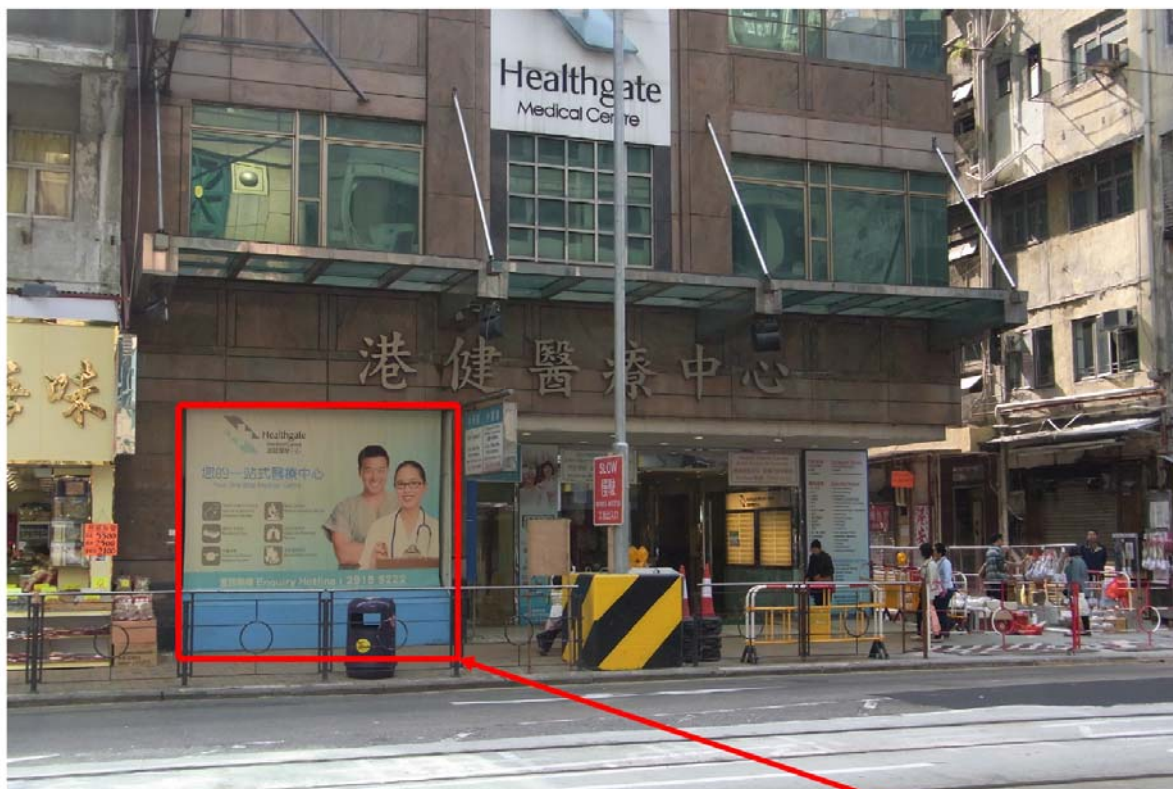


MTR Reserved Areas

(4) No. 410-424 Des Voeux Road West

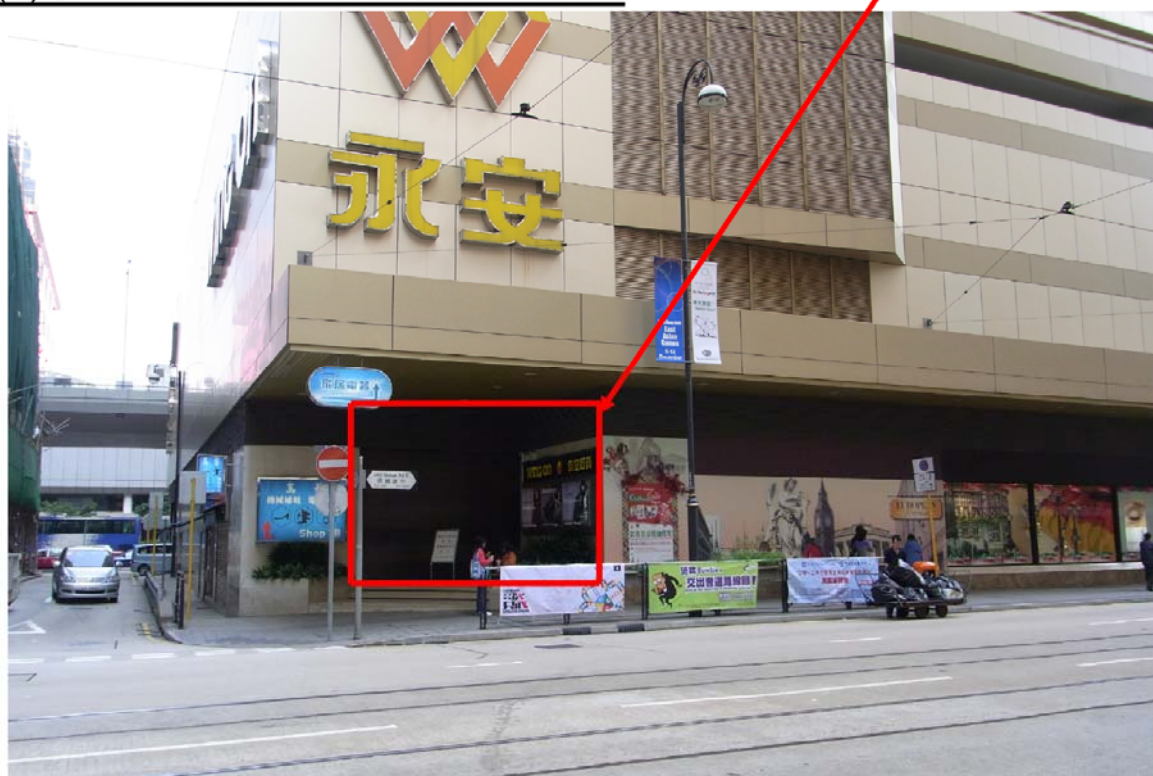


(5) No.156-160 Des Voeux Road West



MTR Reserved Areas

(6) No. 207/235 Des Voeux Road Central



BILLS**First Reading of Bills**

DEPUTY PRESIDENT (in Cantonese): Bills. First Reading.

TOYS AND CHILDREN'S PRODUCTS SAFETY (AMENDMENT) BILL 2009

CLERK (in Cantonese): Toys and Children's Products Safety (Amendment) Bill 2009.

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

DEPUTY PRESIDENT (in Cantonese): Bills. Second Reading.

TOYS AND CHILDREN'S PRODUCTS SAFETY (AMENDMENT) BILL 2009

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): Deputy President, I move the Second Reading of the Toys and Children's Products Safety (Amendment) Bill 2009 (the Bill).

The main objective of the Bill is to update the safety standard for toys and children's products set out in the Toys and Children's Products Safety Ordinance (the Ordinance). At present, Hong Kong adopts a multiple safety standards regime for toys and children's products to regulate the safety level of toys and children's products. The existing safety standard adopted by us is in general anchored on international safety standards or standards adopted by major economies. Toys and designated children's products must comply with any one of the relevant standards. This regime not only ensures that the level of safety

accorded to children is on par with that in advanced economies but also avoids the costs of having to establish a separate set of standards for the Hong Kong market. This arrangement is well received by society and the industry.

As the safety standards for toys and children's products specified by the Ordinance fail to reflect the latest international standards, the Bill proposes to update the standards stipulated in the Ordinance.

I will now introduce the major amendments proposed in the Bill. For toys, we propose to adopt the most up-to-date, operative versions of the three sets of standards.

The first set of standards is the International Standard ISO 8124 series established by the International Organization for Standardization, supplemented by IEC 62115 standard (for electric toys) established by the International Electrotechnical Commission. This set of standards will replace the standard now stipulated in the Ordinance, the International Voluntary Toy Safety Standard (IVTSS), which has been withdrawn by the institute establishing the standard.

The second set of standards is the European Standard EN 71 series established by the European Committee for Standardization.

The third set of standards is the ASTM F963 established by the American Society for Testing and Materials.

The Bill stipulates that toys manufactured or sold in Hong Kong must comply in all aspects with any one of the three named sets of standards.

Moreover, as the three sets of safety standards for toys are now included in the principal ordinance, the replacement of any one set of these standards or the adjustment of any one of their titles will require the introduction of a bill to the Legislative Council for corresponding amendments. To enhance the efficiency of making legislative amendments and to ensure that safety standards adopted for products are kept abreast of time, it is proposed in the Bill that all safety standards for toys and children's products be put in the Schedules to the Ordinance. With such an arrangement, when the international institutes on standards amend the safety standards of toys and rename or replace the full set of standards,

corresponding amendments can be made expeditiously to the relevant standards for toys by amending the schedule.

As for designated children's products, the Bill proposes to adopt the most up-to-date, operative standards, adding new standards for certain types of products and deleting a small number of standards which have been withdrawn. We propose to remove a children's product, the "baby nests", from the Ordinance, for the only safety standard applicable to this product has been withdrawn by the British Standards Institution (BSI) earlier. The "baby nests" referred to in the Ordinance are not the kind of sleeping bag of our general understanding. These basket-shaped baby nests are used to cover the body of babies including their faces and are used for keeping warm mainly in cold regions. We were informed by the BSI that this type of product could hardly be found in the British market, so the relevant standard does not have a practical need and is thus withdrawn. An inspection of the market in Hong Kong by the Customs and Excise Department (C&ED) did not find this type of product on sale. Upon the amendment of the Ordinance, all baby nests will be subject to the general safety requirements specified in the Consumer Goods Safety Ordinance (Cap 456), so that adequate protection will continue to be provided to safeguard the safety of the users of this type of product.

Deputy President, we have consulted 46 major trade associations and organizations advocating children welfare on the proposed amendments. The submissions received all support the proposed amendments. The Panel on Economic Development of the Legislative Council was consulted in November and members supported the introduction of the Bill to the Legislative Council. We had again written to the trade and the relevant organizations advocating children welfare before the Bill was gazetted to introduce the content of the Bill. The C&ED, which is responsible for the enforcement of the Ordinance, will continue to enforce the legislation in a stringent manner. In particular, as Christmas is drawing near, colleagues from the C&ED have stepped up inspections and provided some "tips" on choosing safe toys, hoping that parents can have peace of mind when choosing toys and children can play with safe toys.

Deputy President, I so submit. I hope Members will support and pass the Bill. Thank you.

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Toys and Children's Products Safety (Amendment) Bill 2009 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.

Resumption of Second Reading Debate on Bills

DEPUTY PRESIDENT (in Cantonese): We now resume the Second Reading debate on the Import and Export (Amendment) Bill 2009.

IMPORT AND EXPORT (AMENDMENT) BILL 2009

Resumption of debate on Second Reading which was moved on 18 November 2009

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

(No Member indicated a wish to speak)

DEPUTY PRESIDENT (in Cantonese): I now put the question to you and that is: That the Import and Export (Amendment) Bill 2009 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): The Import and Export (Amendment) Bill 2009.

Council went into Committee.

Committee Stage

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

IMPORT AND EXPORT (AMENDMENT) BILL 2009

DEPUTY CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Import and Export (Amendment) Bill 2009.

CLERK (in Cantonese): Clauses 1, 2 and 3.

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

(No Member indicated a wish to speak)

DEPUTY CHAIRMAN (in Cantonese): I now put the question to you and that is: That clauses 1, 2 and 3 stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

DEPUTY CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bills

DEPUTY PRESIDENT (in Cantonese): Bills: Third Reading.

IMPORT AND EXPORT (AMENDMENT) BILL 2009

SECRETARY FOR SECURITY (in Cantonese): Deputy President, the

Import and Export (Amendment) Bill 2009

has passed through Committee stage without amendment. I move that this Bill be read the Third time and do pass.

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Import and Export (Amendment) Bill 2009 be read the Third time and do pass.

Does any Member wish to speak?

(No Member indicated a wish to speak)

DEPUTY PRESIDENT (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): The Import and Export (Amendment) Bill 2009

Resumption of Second Reading Debate on Bills

DEPUTY PRESIDENT (in Cantonese): We now resume the Second Reading debate on the Public Officers Pay Adjustment Bill.

PUBLIC OFFICERS PAY ADJUSTMENT BILL

Resumption of debate on Second Reading which was moved on 8 July 2009

DEPUTY PRESIDENT (in Cantonese): Mr IP Kwok-him, Chairman of the Bills Committee on the above Bill, will now address the Council on the Committee's Report.

MR IP KWOK-HIM (in Cantonese): Deputy President, in my capacity as the Chairman of the Bills Committee on Public Officers Pay Adjustment Bill (the Bills Committee), I would now brief the Council on the major deliberations of the Bills Committee. The Bills Committee has held six meetings in total and listened to the views of public groups (mostly staff associations in the Civil Service) and representatives of subvented bodies, such as the Hospital Authority (HA) and the Hong Kong Council of Social Service (HKCSS).

The Public Officers Pay Adjustment Bill (the Bill) seeks to reduce the pay of the following public officers by 5.38%:

(THE PRESIDENT resumed Chair)

- (a) civil servants remunerated on pay points on civil service pay scales/ HA pay scales and public officers remunerated on pay points of the Independent Commission Against Corruption (ICAC) Pay Scale with a dollar value exceeding \$48,400;
- (b) Director of Audit; and
- (c) other public officers with a monthly pay of more than \$48,400 who are not civil servants or ICAC officers.

The Bill includes an additional arrangement that no pay point in the upper salary band after the adjustment will be lower than \$48,700, so that the lowest pay point of the upper salary band will be \$300 above the upper limit of the middle salary band.

The Bills Committee has expressed a number of concerns on the proposals of the Bill. One of the major concerns of the Bills Committee is that the Government, on the one hand, decided to freeze the pay of civil servants in the lower and middle salary bands; but, on the other hand, decided to cut the pay of civil servants in the upper salary band and above by 5.38%, which is exactly the same as the net pay trend indicators (PTIs). Members have queried why the Government, after taking into account the same factors, has decided to reduce only the pay of civil servants in the upper salary band and above in strict accordance with the PTIs without any moderation. Some Members consider that the differential treatment will cause divisions. They think that the Government should consider reviewing the decision on pay cut given that the state of the economy is recovering and the cost of living is on the rise.

The Administration says that the Government has taken into full account the six factors under the established mechanism. It has also noted the slightly negative net PTIs for the lower and middle salary bands, the mild inflationary environment, stability and morale (including affordability of the civil servants concerned) of civil servants in these two salary bands, and has thus decided that their pay should be frozen in 2009-2010. On the other hand, having regard to the net PTI for the upper salary band and to the other factors under the established

mechanism, the Government decided that the pay of civil servants in the upper salary band and above should be reduced by 5.38% (that is, equal to the net PTI for the upper salary band) in conjunction with the introduction of the aforementioned additional arrangement.

Regarding the recent improvement in the overall economic situation, the Administration has explained that the relevant situation will be reflected in the next pay trend survey (PTS) covering the 12-month period from 2 April 2009 to 1 April 2010. The Government will take these changes into full account in deciding the civil service pay adjustment next year.

The Bills Committee notes that the 2009 PTS results have not been unanimously accepted and validated by the 16 members of the Pay Trend Survey Committee (PTSC). In view of the disputes involved, the members concerned have requested the Administration to reduce the proposed adjustment rate. However, the Administration has advised that the views and concerns as expressed by some of the staff side representatives had been fully considered by the Chief Executive-in-Council, and that the Chief Executive is satisfied that the 2009 PTS had been conducted in strict accordance with the survey methodology and the Government thus does not see the need for reviewing and moderating the results of the 2009 PTS.

Some Members have pointed out that the proposed pay cut of 5.38% is record high since the reunification. Members consider that the proposed pay cut will significantly affect the civil servants concerned. Some Members have expressed concern that the proposed pay cut will adversely affect staff morale and asked the Administration to consider some mid-way proposals on pay reduction rate, for instance, lowering the pay reduction rate properly according to the inflation rate. The Administration has explained that in conducting the PTS, actual pay movement data of those employees in the surveyed companies with earnings falling within the defined salary range of each salary band during the survey period have been collected. Thus, the pay adjustment data collected through the annual PTS reflect the actual pay movements of private sector employees with salaries comparable to those of their civil service counterparts. The Administration has advised that under the current mechanism, the other proposals as suggested by members on pay reduction rate are inappropriate.

Some members consider that the proposed pay adjustment may trigger off a spate of wage cuts in the private sector and adversely affect economic recovery.

Some members oppose implementing pay reductions by legislation, for they consider the approach an abuse of the legislative system and a violation of the spirit of contract. However, the Administration has advised that according to the legal advice obtained, legislation is required to effect civil service pay reduction for the sake of certainty and to forestall possible legal challenges.

The Bills Committee has expressed concerns about the impact of the Bill on the salaries of employees of subvented bodies. The Bills Committee has written to the eight universities to conduct a survey in this respect. It has also met with representatives from the HA and the HKCSS at a meeting to understand the salary arrangement these organizations may make upon the passage of the Bill for their employees. The Bills Committee also notes that once the Bill is enacted, the Social Welfare Department (SWD) will issue letters to the affected welfare subvented bodies to remind them of the principles they have to follow. Moreover, under the Lump Sum Grant Subvention System, an independent complaints handling committee has been set up by the SWD, which will follow up the complaint cases from staff of subvented bodies.

The Bills Committee notes that the Administration will amend Part 1 of the Schedule to the Bill. These amendments are purely technical in nature. Given the decision made by the Chief Executive-in-Council on 20 October to accept the salary and increment-related recommendations in the Grade Structure Review reports on the directorate and on the disciplined services, it is necessary to make amendments to the pay scales concerned to bring them in line with the decision. The Bills Committee has no objection to these proposed amendments.

At the last meeting of the Bills Committee held on 20 November, the Bills Committee passed a motion proposed by Mrs Regina IP on opposing the resumption of the Second Reading debate on the Public Officers Pay Adjustment Bill. I requested the Administration to take into consideration the motion passed by the Bills Committee at that time. Today, the Administration proposes the resumption of the Second Reading debate on the Bill and three Members will propose amendments to the Bill. Since the Bills Committee has not had formal discussion on their amendments, I am not in a position to express views on these amendments on behalf of the Bills Committee.

Next, I will speak in my personal capacity:

President, this is the third time that the Legislative Council is handling pay cut for civil servants by means of a bill. At present, there are approximately 150 000 civil servants. I believe society definitely agrees that maintaining the stability of this huge team is of paramount importance.

For wage earners, be it those earning handsome salaries at senior positions or grass-roots workers, I believe no one wants to face the prospect of pay cuts or take the blow of a pay cut. However, in view of the battering by the tidal waves of the financial tsunami in the past year or so, in general, employees in society believe that compared with dismissals, pay cut is the least unfortunate of all misfortunes because at least, they can keep their jobs. The SAR Government is the largest employer in Hong Kong. In dealing with the issue of pay adjustment for civil servants, owing to the constraints of the mechanism, pay adjustment for civil servants always experiences the problem of time lag. Over the years, this has raised a lot of queries among the general public. Why do civil servants always receive a pay rise or are spared from pay cuts when other employees have to take pay cuts? However, civil servants may query why they have to take pay cuts when private companies are planning to increase the pay of their employees. Civil servants and the public raise these questions all the time.

In fact, I also know that at present, the pay adjustments for civil servants made on each occasion are made according to the established mechanism. The Democratic Alliance for the Betterment and Progress of Hong Kong (DAB), I myself included, treasures the existing mechanism because it will safeguard the interests of civil servants in the long run. In the past year, employees in the private market have taken pay cuts or no-pay leave. My daughter works in a fairly large-scale accountancy firm. All the employees of the firm, from top down, were ordered to take 15 days of no-pay leave. Under this arrangement, her salary has actually been reduced by as much as 10%. In fact, the figures of the market show that a pay cut is warranted. If a pay cut is not implemented, how would the public around us feel? Why? Over the past few years, when the public were hard hit by the financial turmoil and the financial tsunami, members of the public have asked time and again why, or have kept saying that while they were enduring all the miseries, civil servants could be immune to them and remain unaffected, nor did they have to take any pay cut.

This time around, civil servants in the lower and middle salary bands will receive a pay freeze, having taken into account their affordability. The pay

adjustment for senior civil servants this time around will be a reduction of 5.38%. According to my rough estimate, civil servants with a salary of \$48,700 will take a cut of some \$2,600 per month. Of course, to those at the top, such as the Directors of Bureaux or Permanent Secretaries, at the rate of 5.38%, the pay cut will be as much as \$13,000. Certainly, they do not want to see this happen. However, in comparison with civil servants in the lower and middle salary bands, I believe that the impact of the pay cut on the quality of life of senior civil servants, or in terms of their affordability, is acceptable and within an affordable extent. From the perspective of the overall impact on society, this represents a kind of social commitment made by civil servants. I also believe that senior civil servants should be able to understand this point and accept the pay reduction arrangement. This will deliver to the public the message that civil servants are tiding over hard times together with the public, so as to forge a harmonious society.

Hence, for my part, with these remarks, I support the resumption of the Second Reading debate and the Third Reading of the Bill. Thank you, President.

MRS REGINA IP (in Cantonese): President, I speak in opposition to the resumption of Second Reading debate on the Public Officers Pay Adjustment Bill (the Bill). As pointed out by Mr IP Kwok-him earlier, in the last meeting of the Bills Committee, I moved a non-binding motion to oppose the resumption of the Second Reading debate of the Bill and the motion was passed.

First, I have to state that in principle, I object to the Government's approach of implementing a pay cut by legislative means. As pointed out by Dr Margaret NG at the meetings of the Bills Committee, using legislative means to override the terms of the contract between employers and the employees was to abuse the law to violate the spirit of contract. Actually, the SAR Government, as the biggest employer in Hong Kong, has set a very bad precedent. Not only has it intensified the conflicts between employers and employees but also dealt a serious blow to morale.

The second point I wish to make is that this is the third time the mechanism of implementing pay adjustment by legislation is used. This is really a clumsy and politicized mechanism. Mr IP Kwok-him said earlier that he supported the Government in adhering to this mechanism. However, I would like to draw the

attention of Honourable colleagues to the fact that this mechanism is extremely clumsy. Take the implementation of the pay cut by legislation this time around as an example, after the decision to impose a pay cut on senior civil servants was made by the Chief Executive-in-Council on 23 June, it is after six months that the scrutiny of the Bill has been completed on 16 December this year. The process has taken as long as six months.

At first, the Government projected that the pay cut would affect 18 000 civil servants and save some \$2 billion. However, since the period has been shortened to several months starting from January next year, the saving has been reduced to a mere \$500 million. However, since the Government uses legislative means to deal with this matter by introducing a Bill into the Legislative Council, this matter has inevitably been politicized as civil servants or staff members of other subvented bodies will definitely make representations to the Legislative Council and lobby for Members' support. We, as representatives of the public, must listen to their demands. In other words, the Government is the culprit that politicizes the pay reduction mechanism. This will definitely intensify the conflict between the Government as an employer and its employees and will not be conducive to establishing a harmonious society. We also have to devote a lot of effort to attending meetings and meeting with civil service organizations, other subvented bodies and the people affected. Honourable colleagues may even have to canvass for votes among themselves. This approach adopted by the Civil Service Bureau has indeed intensified the internal conflicts of society. Hence, I cannot give my support to this mechanism in any way.

Third, the pay adjustment mechanism adopted by the Government this time around has singled out civil servants in the so-called upper salary band. This move has actually deviated from the original mechanism and further politicized the issue. In the last three pay reductions implemented by the Government — in 2002, I was a Director of Bureau at the time. I remember that the former Financial Secretary, Mr Anthony LEUNG, led us in coming to the Legislative Council and canvassing for votes. We were ordered to come to the Legislative Council late at night to station here and canvass for votes. I received the order to go on the mid-night shift. I remember that when I came here on that day, at that time, Members complained that the Government was forcing them to "do the dirty work". The rates of pay reduction were 4.42% for the upper salary band, 1.64% for the middle salary band and only 1.58% for the lower salary band. In

2004 and 2005, the salaries of civil servants had to be cut back to the 1997 level, with across-the-board pay cuts of 3% and 6% implemented in two years. Nevertheless, back then, the "broad-brush" approach based on the results of the pay trend survey conducted by the Government was adopted but the decision this time around is a political one. The Government has singled out the so-called senior civil servants and targeted this punitive measure at them. I wonder if the Government intends to punish them or that they are just made a scapegoat to appease the public.

We all remember that at the end of last year, certain senior financial officials, like Chief Executive Joseph YAM, said that there would be a second wave of financial tsunami. Early this year, many senior financial officials painted a picture of doom and gloom for the economy. Perhaps the Government was under political pressure, so it decided to use certain civil servants as the scapegoat. In fact, this move runs counter to the mechanism since not all civil servants but only the so-called senior civil servants are subjected to the pay cut.

Mr IP Kwok-him said just now that he believed senior civil servants, such as Directors of Bureaux, would find the reduction of 5.38% this time around affordable. In fact, of these 18 000 civil servants, those regarded by the public as senior civil servants earning \$100,000 or \$80,000 per month only account for a small number. The majority of civil servants affected are professional grade staff earning some \$40,000 to \$50,000. They are actually middle-ranking or front-line civil servants responsible for management. Nowadays, in the face of the increasingly stringent monitoring by the mass media and society, as well as the higher expectations of the public, this group of civil servants is now working under much greater pressure than before. Moreover, many of them have just embarked on their career and they need to pay the mortgage on their properties and take care of their children. The 5.38% reduction is arguably the deepest cut since the reunification. To borrow a line from *Julius Caesar* by SHAKESPEARE, this is the most unkindest cut of all. The economic difficulties that we are now facing are not comparable to the situation found in 2002, 2004 and 2005. Hence, the mechanism of implementing pay cuts by legislation is causing serious time lags. By the time the pay cut is implemented, the situation in society will have changed.

I have discussed with many people in private organizations. They do not think that merely because they had to take pay cuts and no-pay leave, it is

necessary for the Government to penalize its senior civil servants to appease the public. I can even tell the Secretary — although all the Honourable colleagues behind me are not present — in the course of lobbying, I met the senior management of the Hong Kong General Chamber of Commerce (HKGCC), the Federation of Hong Kong Industries and the Chinese General Chamber of Commerce. They told me that they had not convened a general meeting on this issue or conducted any survey but they gave me their personal views. Mr Andrew BRANDLER from the HKGCC, who is also the head of the China Light and Power Company and the manager of a large company with a lot of staff, personally think that civil servants are over-paid. This point is open to debate and discussion but he stated explicitly that he personally was opposed to the pay cut.

At a time when the economic environment is beginning to change, the Government is taking such a clumsy step to punish the so-called senior civil servants and creating such a great controversy. Is this worthwhile? I really hope that the Government will review the mechanism of implementing pay cut by legislation. I hope the Government will listen to the appeal of civil service organizations to adopt a pay freeze instead of a pay cut. In the future, if it considers it necessary to deduct from civil servants the pay cut that they should have received, further discussions can be held after the economic environment has changed. If the Government does not want to adopt a pay freeze, it should refer the dispute over the pay cut to arbitration but joint consultation would be most desirable. In fact, the best option is a pay freeze and joint consultation comes second. Down the list comes arbitration, which is surely better than introducing this Bill into the Legislative Council because the latter will only politicize the entire pay reduction procedure, intensify the conflicts within the Government and compromise harmony in society.

Furthermore, in opposing the Bill today, I am not only speaking on behalf of civil servants, rather, the Bill will affect many subvented organizations. In the course of scrutinizing the Bill, we asked many subvented organizations about the impact of the Bill on them. Mr IP Kwok-him said earlier that many subvented organizations had expressed their views. Teachers of subvented schools will be affected. The eight universities in Hong Kong have also stated in a reply to Members that if the Government implements a pay cut, they will very likely follow. Hence, the number of people affected is by no means limited

to 18 000 only. Actually, many wage earners will also be indirectly affected. I have discussed the issue with the wage earners of some private organizations and they consider that the issue has a close bearing on them.

Now, I have become the head of a small-and-medium enterprise. I can also tell the Government that we also follow the Government in giving a pay rise or pay cut to our employees. When the Government gives a pay rise, we follow suit. When the Government implements a pay cut, I can tell my staff, "The Government has made a pay cut and I will also follow suit.". The Government may say that a pay cut covering three months time is only a minor issue. But it must remember that this may affect the pension payable to some retirees because the base amount will be reduced, so even if a pay rise may be implemented in future, the benefits they subsequently receive will still be affected.

Hence, I have to make an appeal to the Government. I know the Secretary has already secured enough votes for the passage of the Bill, so all that powerless Members like us can do is to speak but the outcome may only be speaking to no avail. No matter how, the Government has to reconsider the mechanism of implementing pay cuts by legislation and whether more harm than good will be done. In introducing a bill like this to the Legislative Council, the Government is actually forcing many Members to "do the dirty work".

President, with these remarks, I oppose the resumption of the Second Reading debate of the Bill.

MR LEE CHEUK-YAN (in Cantonese): President, on behalf of the Hong Kong Confederation of Trade Unions (CTU), I oppose this piece of legislation on making a pay cut as a matter of principle and from a practical point of view.

I will first talk about the principle. Why do we oppose implementing a pay cut by legislation? Because it is a very high-handed approach to change the terms of private contract by legislative means. To change the terms of the contract by legislative means is to use sheer might to achieve one's end. We consider such an approach totally unacceptable in principle. This is the third time that such an approach has been adopted. From the outset, we asked the Secretary whether a mechanism could be put in place to avoid having to resort to legislative means every time. At that time, we proposed a mechanism to the

Secretary but the Secretary apparently said that an agreement could not be reached.

In fact, the mechanism is very simple. According to the International Labour Conventions No. 151, to which the Hong Kong Government is a signatory, the Government is obliged to conduct collective bargaining with civil servants and if both sides fail to reach an agreement, they can still rely on the arbitration mechanism. Therefore, if the entire collective bargaining mechanism is included in legislation relating to one-off actions, so that the agreements reached by means of collective bargaining are respected, it will no longer be necessary to implement a pay cut by legislation.

Members all know that before the reunification, I proposed a piece of legislation on collective bargaining in 1997. Apart from providing that employers have to acknowledge the right of trade unions to collective bargaining, there is also a provision stating clearly that agreements reached through collective bargaining are protected by law and binding.

In other words, had collective bargaining been used to resolve the whole incident, it would not have been necessary to come to the Legislative Council every time and collective bargaining is the approach that shows the greatest respect to employees. Therefore, I have to reiterate that we object to the Government resorting to this high-handed approach every time. The Government should solve the problem through collective bargaining.

Now, on the practical reasons for our opposing the 5.38% pay cut for senior civil servants, how is the present situation like? The economy is picking up. Even if a pay cut is implemented this time, the next cycle of pay review will begin three months later. Having done so much, in the end, the pay cut will only be applicable for three months before the next cycle starts. This being the case, why does the Government not just allow them to enjoy the stability? In fact, what does Hong Kong society need the most? Stability, stability in life, is needed the most in Hong Kong society. Everyone, including civil servants, wants to live in stability. If so, why does the Government not allow civil servants to enjoy stability while serving the people of Hong Kong? In view of the great expectations of the public, civil servants are facing great pressure and increasing workload, so it is only a humble request to allow them to enjoy stability.

All right, the Government may ask whether, since a mechanism is in place, it should adhere to it only when the result is favourable but ignore it when it is not. However, Members may notice that in this mechanism, not only are the indicators used as the reference, factors like affordability, morale and inflation are also taken into account. We can see that there is inflation now. As for morale, if a pay cut is implemented, how possibly can the morale not decline? Next comes the issue of affordability. For civil servants earning \$48,000 or more, their salary will be cut by over \$2,000. Just think about the many kinds of expenditures they have to meet each month. What do you think their affordability will be like if their salaries are suddenly cut by more than \$2,000? Members can imagine the financial pressure borne by civil servants affected by the pay cut. In view of this, if morale, affordability, inflation and the whole incident are taken into account, the decision against implementing a pay cut can actually be made.

In the Bills Committee, I asked the Government whether these several factors had been considered. The Government said that it had considered a host of factors. We welcome the approach adopted for civil servants in the lower and middle salary bands, for the Government has considered the morale and affordability of these civil servants and decided not to implement a cut on their pay. But in the case of senior civil servants, why did the Government not consider these factors? However, the Government is not doing a good job. It said to us that these factors would not be considered but in fact, it was being hypocritical. Why do I say so? Frankly, the Government has actually considered the factor of morale. From what can we see this?

Members should look at another figure. Members all know that the Finance Committee has just endorsed the review of the salary structures of the disciplined services, directorate grade and a small number of civilian grades. I once said that the review of salary structures took place only once in two decades. This once-in-two-decade salary structure review will enable the civil servants in the disciplined services, the directorate grade and a small number of civilian grades in the upper salary band to receive a pay rise through a review of the salary structures.

Let me cite a figure which I obtained from the Government. At present, there are 1 200 civil servants in the directorate grade. Among them, 40% will receive a pay rise of 3% from 1 April. From 1 April onwards, 5 400 members of

the disciplined services will receive a pay rise of 4%. Among the 12 000 non-directorate civil servants earning \$48,000 or above, only 40 — which is really a minority of the minority — will receive a pay rise of 4% to 5% from 1 April. Members will remember that these people have taken to the streets and joined rallies and of course, I consider the campaigns launched by trade unions highly reasonable. It is out of consideration for the morale of these civil servants that the Government has increased their salaries by 3% to 4% with effect from 1 April. Members can think about this: Despite the pay cut that will take effect on 1 January and last only three months, these civil servants will get a pay rise of 3% to 4% from 1 April onwards, so eventually, the rise will be more than enough to offset the pay cut.

I have no objection to this but I think the Government is being wily. The Government is not being fair to those civil servants whose pay cut cannot be cancelled out. There are some 12 700 of them. They would consider this unfair because the pay cuts of other civil servants will be cancelled out but theirs will not be. These 10 000 odd civil servants are left alone to suffer the pay cut. Worse still, the employees of subvented organizations, such as the employees of universities, teachers and employees of welfare organizations, cannot say anything. Each of them has to sign an agreement to indicate their acceptance of the pay cut, thus creating a lot of troubles for them.

The Government's decision has caused a lot of people to suffer a pay cut. However, it has done something to enable the pay cut of certain people to be cancelled out. This arrangement causes further division among them and further politicizes the incident. It is unfair to those civil servants who can do nothing but take such an unfair treatment lying down. Hence, from the perspective of fairness, all civil servants should be spared from the pay cut and the Government can at the most put the pay cut on record. I proposed right at the beginning that the cut be recorded and considered together with the next pay review. In that event, stability will prevail. Why can the Government not allow civil servants have a sense of stability?

The Government may say that it has to take into account the views of the public. I think the public should also give this second thought. All of us are wage earners, so if civil servants have to take a pay cut, it will do no good to those working in private organizations. Discussions on pay rise are now

underway, and many trade unions under the CTU are discussing the issue of pay rise. However, employers of private organizations may say that since the Government has just implemented a pay cut, what need is there to talk about pay rises? Therefore, those working in private organizations will also be affected. All along, employees in private organizations have been deprived of their share of the fruit of prosperity. If this piece of legislation is passed, they will continue to suffer from such deprivation. Moreover, if the pay for a group of people is reduced, in fact, there will also be an impact on the economy. Everyone will have to tighten their belts and spend less. This will have an adverse effect on the economy. It can thus be seen that many factors have to be considered. Why does the Government not consider them?

Mr IP Kwok-him said earlier that the public thought civil servants were privileged. I think we should not focus on undercutting one another. They may enjoy greater job security but what is wrong with this? When we see a group of people living in stability and the plights we are facing, it does not mean that we have to make them even more miserable than we are. I think society should aspire for a positive direction. It is never the intention of the CTU to cause divisions or sow jealousy among wage earners. We are of the view that all wage earners in society are employees subjected to exploitation. Therefore, we should all change for the better instead of undercutting one another. We should by no means be jealous. President, given the numerous factors, I consider it impossible to support the pay cut proposed by the Government this time.

Finally, I call on Members to oppose the resumption of Second Reading of the Bill. If Honourable Members all oppose it, there will be no need to conduct separate voting. If there are enough votes, the problem can be solved already. Certainly, if, in the end, my opposition fails, I will still support the relevant amendments. However, it is also very difficult for those amendments to be passed due to the separate voting system. Members all know that given the functional constituencies, it is all the more difficult for those amendments to be passed. For this reason, for Members who support the amendments, they may as well oppose the resumption of Second Reading of the Bill. This is an even more straightforward approach that stands a better chance of success. I do not know which Members will support the amendments later but I implore them to simply oppose the resumption of Second Reading of the Bill. In that case, it would not be necessary to carry out separate voting. Under this unfair system in which

seats returned by functional constituencies account for half of the seats of this Council, it will not be possible to get a relatively reasonable result. Here, I urge Members to voice their opposition in the debate on the resumption of Second Reading of the Bill because it is a more straightforward approach.

Thank you, President.

MS LI FUNG-YING (in Cantonese): President, today, once again, the Legislative Council has to assume a responsibility that does not rest with it, that is, to arbitrate between the Government and civil servants on their pay arrangements. What criteria should Legislative Council Members adopt when deciding whether to support or oppose the Bill? Should we follow the so-called established mechanism as suggested by the Government or listen to the views of civil service unions? Or, should we choose the third alternative, that is, synthesizing the opinions of both sides and proposing a middle-of-the-road amendment? All these are the issues that Honourable Members should deal with today.

On following the established mechanism, as proposed by the Government, the Government's mechanism is also in itself highly flexible. Take the pay cut proposal this time around as an example, based on the results of the pay trend survey (PTS), the pay for civil servants in the upper salary band should be reduced by 5.38%, 1.98% for civil servants in the middle salary band and 0.96% for civil servants in the lower salary band. However, in the end, the Government decided to cut the pay of civil servants in the upper salary band and to freeze the pay of civil servants in the lower and middle salary bands. This decision will lead to divisions and contradictions within the Civil Service. If we consider the views of civil service unions, it is beyond reproach for them to safeguard their own interests. To achieve a civil service pay cut with the consent of civil service unions, there must first be a negotiation mechanism acceptable to both the management and staff sides. Otherwise, just as is the case today, Members will have to propose amendments, that is, a third alternative, in the hope that the differences between the Government and civil servants can be resolved. Even though Honourable Members propose amendments out of good intentions, no matter from what angle, it is undesirable for the differences between the Government and civil servants arising from pay adjustment to be referred to the Legislative Council for arbitration or resolved through the amendments proposed by Honourable Members each and every time.

As a matter of fact, at the meetings of the Bills Committee, quite a number of members have repeatedly conveyed to the Government their view that they do not want a civil service pay reduction to be implemented through legislation every time as there should be a general enabling legislation to specify a legal framework under which civil service pay can be adjusted both upward and downward. Nevertheless, citing the ground that civil service staff-side representatives unanimously objected to the proposal, the Government refused to consider the relevant proposal. Yet, why should the staff sides object to an enabling proposal? In the final analysis, this is because under the current civil service pay adjustment mechanism, civil servants do not have equal power to have a dialogue with the Government about pay adjustment. Civil service unions worry that if an enabling proposal is implemented, the Government would only act wilfully in connection with civil service pay adjustment in the future and as the common saying goes, the Government will "crush crabs with big stones" and civil servants will not have any bargaining power. I understand the worries of civil service unions. If the Government really has sincerity in rationalizing the civil service pay adjustment mechanism, it should not refer the issues between the Government and civil servants to the Legislative Council for action under the pretext that civil service union representatives objected to taking a one-off enabling measure. Instead, on the one hand, it should formulate a legal framework for civil service pay adjustment; on the other, under a collective bargaining mechanism, civil service group representatives should reach binding agreements with the Government on pay adjustment, so as to dispel the concerns of civil service unions.

Before establishing the above mechanism, in line with the current practice, the Legislative Council should intervene in the divergence between the Government and the civil service management and staff sides. After the announcement of the Government's pay cut proposal, quite a few civil service unions have pointed out that since only senior civil servants will take pay cuts in line with the PTS results, this will cause divisions in the Civil Service and breed discontent. As I have observed, with the passage of time and changes in the economic environment, the grievances in the Civil Service against the Government's pay cut proposal have only increased rather than decreased. I am not saying that all civil servants in the upper, middle and lower salary bands should take pay cuts according to the PTS results; nevertheless, in putting forward a different approach, the Government should give sufficient reasons to convince civil servants and the public to support it. Nonetheless, what the Government is now doing evidently cannot convince the Civil Service and the public.

Another controversial point about this civil service pay cut is that the PTS itself could not secure the endorsement of civil service unions, thus undermining the credibility of the survey data. Civil service unions and the Government have differing views on the survey methodology. In that case, I think that it is basically difficult to obtain survey results that can secure the endorsement of both parties. I hope that the Government and civil service unions would both learn from this matter relating to the PTS mechanism, so that communication between the management and staff sides can be enhanced and the differences reduced in future PTS surveys.

President, I must also point out the impact of the Bill on subvented bodies. As the Government has indicated to the Bills Committee, it is not involved in the determination or adjustment of pay for staff in subvented bodies but it has admitted that the majority of organizations receiving recurrent subventions from the Government will be affected by this civil service pay adjustment. In saying so, the Government has shifted the responsibility of making pay cuts to the managements of subvented bodies. Not only is it being irresponsible but it has also heightened the contradiction between the management and staff of subvented bodies.

President, as the largest employer in Hong Kong, the Government manages the Civil Service comprising nearly 160 000 members and it should establish an image of being a good employer. Yet, the behaviour of the Government in introducing a civil service pay cut is undoubtedly far removed from the ideal of a good employer. I find the Government's approach on this occasion highly regrettable. Thank you, President.

DR MARGARET NG (in Cantonese): President, today, the Civic Party opposes the resumption of Second Reading of the Bill. First of all, we think that implementing a civil service pay cut by legislation violates the principles and abuses the legislative process.

President, when the Government resorted to implementing pay reductions by legislation for the first time in 2002, this was already my position. At that time, I told the Government clearly that in fact, it had enough power to implement the civil service pay cut by varying the contracts of employment. It could do so if it was intent on reducing civil service pay. Nevertheless, why did the

Government resort to implementing a civil service pay cut by legislation at that time? The Government disagreed with me, believing that enacting legislation to implement a civil service pay cut was the most reliable approach. This matter was eventually dealt with by the Court and of course, the Court told the Government that civil service pay reductions could be implemented by varying the employment contracts.

President, at the time, many civil service unions were very worried about setting a precedent for implementing civil service pay cuts by legislation. The associations representing senior government officers and middle-ranking civil servants told us that they were willing to accept a pay cut but believed that an existing mechanism, that is, arbitration, could be adopted. They told us in a meeting of this Council that if the result of the arbitration was a pay cut, they were willing to accept it but the Government was unwilling to take this course of action. Hence, the then Secretary Joseph WONG remarked that the Bill was one-off legislation about a one-off pay reduction and that the Government was doing so because there were no alternatives. After the adjudication by the Court, the Government proposed a pay reduction by legislation for the second time in July 2003, and it told us once again that it would be a piece of one-off legislation for pay reductions in 2004 and 2005. I also commented at that time that this was an abuse of the legislative process but the Secretary still said that it would be a one-off pay reduction.

However, the situation this time is even worse. It has been explicitly stated in meetings of the Bills Committee that the legislative process this time only seeks to reduce the pay of 18 000 public officers. As Mr LEE Cheuk-yan has just explained, following the grade structure review for the disciplined services grades, the number of civil servants affected will decrease to 12 700. Enacting a piece of legislation for reducing the pay of 12 700 public officers for three months is definitely inconsistent with the legislative spirit. Therefore, the Government's action abuses the legislative process, so it is not possible for the Civic Party to give its support.

President, years ago, when the Government proposed the implementation of a civil service pay cut by legislation for the first time, I already said that civil servants had never had a pay cut before. Certainly, this matter can be traced back to the time when Donald TSANG was the Financial Secretary. He

increased civil service pay on one occasion for no apparent reason, so subsequently, a pay cut had to be made. Furthermore, later, when Anthony LEUNG became the Financial Secretary, before a pay trend survey (PTS) had been conducted, he announced when delivering his Budget that he expected a civil service pay cut to be necessary. Therefore, for political reasons, a pay cut had to be made. All these were bad precedents. I already pointed out in 2002 that if it was really necessary to make the first pay cut and if the Government believed that there had to be a legal basis for the pay cut, the Government should enact legislation to specify that civil service pay could be adjusted both upward and downward, the circumstances in which civil service pay could be adjusted and the negotiation and arbitration mechanisms to be introduced. Then, each pay cut can be made according to this mechanism.

What did Joseph WONG say at that time? During the debate on the Second Reading of the Bill in 2002, he said: "If there is a consensus amongst the Legislative Council, the community and the Civil Service, a consensus that it is worth enacting a piece of legislation on pay cuts in general, or to be precise, on a general mechanism allowing both upward and downward pay adjustments, we will proceed to explore such a proposal as soon as we have finished with the civil service pay adjustments this year. We will also proceed to draft the relevant law and submit it to the Legislative Council for scrutiny.". He made these remarks in this Council in 2002.

Subsequently, Secretary Joseph WONG told us again in 2003 that he was working on the development of an improved pay adjustment mechanism. Let me quote from his speech: "we aim to complete the preparation of any necessary legislation for implementing both upward and downward civil service pay adjustments for consultation within the Civil Service in the fourth quarter of 2004 and to introduce any such necessary draft legislation into the Legislative Council in the second quarter of 2005.". I wonder where the relevant bill is. In other words, when the Bureau asked us to pass the bill on a one-off civil service pay cut by legislation, he promised to formulate a comprehensive mechanism but after the passage of the legislation, nothing followed. Therefore, this time, I asked the Secretary where the mechanism was. The Secretary told me that it was because civil servants were unwilling. In view of this, I asked the associations representing senior civil servants why they were unwilling. They told me that it was not true they were unwilling, only that they found the proposal made by the

Bureau unacceptable. President, I really have a lot of doubt about the sincerity shown by Government in this Council. The Government forgets about its promises and does not translate them into action. Regardless of what it promises when lobbying us to pass a bill, it would go back on its word after the passage of the bill.

President, this time, we oppose this Bill because we think that this practice of implementing a civil service pay cut by legislation is really to politicize the issue of civil service pay but nobody's pay should be politicized in this way. If civil servants do not reduce their pay of their own accord or accept the pay cut, they will do a disservice to the public. Why is it that the pay for all of us cannot be politicized but that of civil servants can be intentionally politicized, with the result that the lack of unity and stability within the Government is revealed to the public? President, I remember that when civil service union representatives attended a meeting of this Council in 2002 to express their views, they showed great restraint and gentleness. They felt ill at ease and wondered why they had to discuss such matters publicly. However, today, we can see that civil service union representatives are very angry and there is a very obvious rift.

In this pay cut incident, the Civic Party received invitations to meet with some associations representing senior civil servants that wanted to lobby us for support only at a late stage. They told us that they actually did not want to do so. They think that as senior public officers and professionals, they should not do so and internal discussions should be held instead. Nevertheless, they found the situation had gone astray. They found that if they took to the streets and join a rally, resort to threatening actions or obstructed the road with a big lorry, they did not need to take a pay cut and may even get a pay rise instead. However, if they did not take such political actions, they would become scapegoats as they could be bullied easily by a government that bullies the good and honest and fears the villain. Hence, they thought that lobbying was necessary even though they may not have too much confidence in the Civic Party. However, they still wanted to take action and discuss with the Civic Party.

President, civil servants who were originally very neutral were compelled to take politicized measures. I think the situation is deteriorating. At a time when the Government needs internal unity to give the public the impression that it has credibility, it has taken such a measure that makes the public lose confidence in it.

President, implementing civil service pay cut by legislation this time around is even more unfair and it can be said that the Government is reducing civil service pay for the sake of doing so. It was said that the pay cut in 2002 could help the Government save \$1.2 billion; concerning the one in 2003, the Government told us that \$7 billion could be saved, including allocations to subvented bodies. As for the pay cut this time, as an Honourable Member said earlier on, perhaps only \$500 million can be saved. Worse still, as we were facing the prospect of years of fiscal deficits and deflation at that time, it was an inevitable move. However, the Financial Secretary and other officials have already said that the current economic situation does not pose any major problem, so the Government is going to reduce civil service pay for the sake of doing so because it has to keep its word. At the meetings of the Bills Committee, what the Government talked about most frequently was the need to follow the mechanism. In fact, many Honourable colleagues have pointed out that the mechanism allows flexibility and that the Executive Council can decide on a partial pay cut, a complete pay cut or a pay freeze in view of the differences between the public and private sectors. Yet, this time, the Government proposes to exempt civil servants in the lower and middle salary bands but a full pay cut of 5.38% for all civil servants in the upper salary band. In this connection, we could not get an answer even though we asked questions repeatedly.

President, the third point is about affordability. As some Honourable colleagues said just now, although civil servants remunerated on MPS 34 to 44 are referred to as "senior" public officers, in fact, they are also those who have just established their families. President, none of us can budget our family expenses in such a way that we can have a lot of money to spare, nevertheless, the Government wants to reduce the pay for civil servants without allowing them to make preparations. Therefore, we have all along held that if a pay freeze is introduced, these people can at least foresee that there will not be any pay rise in the next few years, so they can live within their means and cut expenses. Nonetheless, their existing expenses cannot be reduced all of a sudden. Mr IP Kwok-him said he believed that they could cope even if they were paid a few hundred dollars less but how can he be so sure? Every family has its own hard nut to crack and we all know that every family has a budget. Those who own properties have to make mortgage repayments, those with schooling children have to pay tuition fees and their expenses cannot be reduced by 5.38% all of a sudden. When TUNG Chee-hwa was the Chief Executive, he proposed a 6% pay cut but it was introduced in two years. However, the Government proposes

a 5.38% pay cut this time and civil service pay will be reduced at one stroke, thus creating practical difficulties. They are called senior civil servants but they are just ordinary people. They have family budgets and family burdens. How can they be treated this way just because the word "senior" is applied to them?

President, lastly, the Civic Party does not totally object to a civil service pay cut, nor are we saying that the difference between civil service pay and the relevant pay in the private sector cannot be too great. We are concerned the most about the mechanism. We think that for the sake of the unity and stability among civil servants and within the Government, a pay cut is a step that should not be taken unless it is the last resort. As Mr LEE Cheuk-yan suggested just now, the Government can put the amounts on record. If civil service pay has far outstripped private sector pay, it may take such measures as freezing civil service pay in the next few years. President, some people also asked why, since other wage earners have to take pay cuts, civil servants could enjoy exceptional privilege and be exempted from pay cuts. They enjoy this exceptional privilege because their employer also enjoys it. As a matter of fact, many employers in the private sector may not want to reduce their employees' pay or lay them off when they are battered by the economic conditions. Some of the employees may be long-serving employees whom their employers would like to retain. Nonetheless, their employers have no alternative since they do not have enough capital flow to meet the need, so they must reduce expenses and lay off staff members. However, this is not the case for the Government as it can have greater flexibility. Why does the Government have to cut civil service pay for political reasons when it is clearly not essential to do so?

As such, President, this is an unfair move from whatever perspective. Therefore, I hope Honourable colleagues can successfully oppose the Second Reading of the Bill later on. Even if the motion that the Bill be read the Second time is passed, I will propose an amendment at the Committee Stage, so that the pay reduction rate will not be so unfair.

President, I will explain in greater detail my reasons at the Committee Stage. I have put a letter on the desk of each Honourable colleague explaining the amendment to be proposed later on.

Thank you, President.

DR PAN PEY-CHYOU (in Cantonese): President, before making my remarks, I have to declare my interests first. I am a consultant doctor working with the Hospital Authority (HA). A few months ago, the Human Resources Department of the HA issued a notice telling us that if the legislation to implement a civil service pay cut for senior civil servants is passed and put into effect, colleagues in the corresponding ranks in the HA, including me, will have to take a pay cut at the same rate following the commencement of the Bill. Therefore, in the civil service pay cut by legislation on this occasion, my family members and I have all fallen victims. This underlines the fact that the rate of pay reduction this time around, at more than 5%, is relatively high. Although we often say that the party affected by this pay cut is civil servants, in fact, a very large number of people will be affected. They include the family members of civil servants' and many people working in large and small non-government public organizations, such as the HA, subsidized schools, tertiary institutions and some of the employees in countless social service groups and their dependants. The Hong Kong Federation of Trade Unions (FTU) objects to the Government's motion to force civil servants to accept a pay cut. In particular, we are of the view that whereas civil servants in the lower and middle salary bands can have their pay frozen, the pay of civil servants in the upper salary band and above has to be reduced by 5.38%, and even the net pay trend indicator of -1.98% for lower and middle-ranking civil servants cannot be deducted from their pay. In fact, this measure will deal a heavy blow to the morale of civil servants and is quite unfair to senior civil servants.

In recent years, Hong Kong people have set increasingly high standards for public services. Actually, this is only natural as a city develops and makes progress and also something desirable. I believe that all colleagues working in public organizations do not mind this and are willing to work even harder to do a better job. In order to provide quality public services, the some 100 000 civil servants in Hong Kong and colleagues working in other public organizations are coping with their onerous workloads in an unswerving manner. I contact various trade unions frequently and many of them are the unions of public organizations and civil servants, so I deeply understand that the work pressure borne by professionals in various ranks and grades are increasing constantly. During the period from 2000 to 2007, the Government suspended civil service recruitment. As a result, the work pressure of its employees keeps increasing. In the meantime, as a result of restructuring, the workloads of employees in many public organizations are also on the increase. Take the HA with which I am working as an example, due to the Enhanced Productivity Programme, the

objective of which is to take care of more patients and perform more operations at the same operating costs, the work pressure of employees is constantly on the increase.

Of course, this pressure is jointly borne by colleagues in various ranks. However, a large group of so-called senior civil servants sandwiched in the middle actually belong to the sandwich class and it can be said that they are under fairly great pressure. Whenever we hear people refer to senior civil servants, we may think that they are senior officials but in fact, those who are directorate staff account for only a small number of them and the great majority can at best only be called middle-ranking staff, only that on account of their pay scale, they are unfortunately delineated as positioned above the demarcation line and cannot get a pay freeze. Therefore, they have to bear a 5.38% pay cut as the Government wants them to. Many of them are professionals earning a monthly salary between \$40,000 and \$50,000 and some of them are doctors or engineers. Quite a number of them are young people who have graduated from universities not long ago and they are still repaying the loans they borrowed when studying in universities. There are also many who have just attained the professional qualifications in their professions. If Honourable colleagues think over this carefully, they will know that they are very different from the senior officials in the minds of the public who occupy prominent positions, taking orders from just one person but in command of tens of thousands of people. On one hand, they have to complement the policies formulated by their superiors; on the other, they have to manage the relationships among their subordinates. As a matter of fact, most of them are just like the middle management in some private organizations or companies, so we can say that they are subjected to pressure from both sides. While they have to cope with challenges in various areas, just like ordinary people in Hong Kong, they have to meet household and personal expenses day after day, for example, many of them are making mortgage and car loan repayments, some are planning to get married and some have to raise children and provide for their education. This pay reduction of over 5% will deal a heavy blow to no matter which family. As everybody in Hong Kong can imagine, if one's salary is reduced by over 5% all of a sudden, what is one going to do? Although some people may say that they have higher incomes than people in general, all of us in Hong Kong understand that we choose our way of life on the basis of our incomes, so it is actually not easy to adapt to such a major change in income.

Over the past few months, I have continually contacted the representatives of many labour unions (including the staff unions of government employees and

public sector organizations) and they all told me the difficulties they encountered in their work and within their grades. As a member of the FTU and a Legislative Council Member representing the labour sector, all along, I have a good understanding of their difficulties. In view of this, we think that we must help them as they have to put up with such great pressure and have to face such a substantial pay cut. For this reason, we do not support a pay cut.

Therefore, we will vote against the Second Reading of the Bill. However, as some Honourable colleagues said, the Secretary may have already found upon counting that there will be enough votes. We are afraid that the Bill will most likely pass its Second Reading. Nevertheless, after the Bill has passed the Second Reading, we know that Mrs Regina IP, Dr Margaret NG and Dr Raymond HO will propose amendments to reduce the pay adjustment rate from 5.38% to 3.4% or 2.91%. As a trade union member, my established position and principle is that I definitely will not support any unilateral pay cuts proposed by employers. However, the day before yesterday, we received — I believe so did many other Honourable colleagues — letters from the chairmen of 22 civil service unions of professional grades and doctors' unions imploring the Legislative Council to support the aforesaid amendments as they think that these amendments can strike a balance between the demands of the public and civil servants. After prudent consideration, the FTU thinks that in view of the request of these unions, we will respect their views. If the government motion passes the Second Reading, we will also support these amendments. Furthermore, the FTU expects that it is likely that this Bill on a pay cut will pass the Third Reading. In that case, the rate of civil service pay adjustment will exceed 5%. However, if the amendments are passed, the rate of civil service pay adjustment will become lower. In these circumstances, we think that we should choose the lesser of two evils, so we will support these amendments. President, it appears that the Bill will mostly likely receive its Second Reading and if it does, we will support the relevant amendments.

I so submit.

MR ALBERT CHAN (in Cantonese): President, before I stood up to speak, I found that President looks a bit tired today, and more so than before. I wish you a happy marriage, President.

President, the League of Social Democrats (the League) resolutely opposes the motion today. Mr LEE Cheuk-yan said just now that he opposed it both in principle and practice. Not only does the League oppose it in principle and practice, mentally and physically, we even oppose it to the utmost in action. This is because according to legal principles — Dr Margaret NG has comprehensively and thoroughly explained that just now — the Government is actually adopting a "lose-hit, win-take" approach. There are obviously agreements and contracts and the employment arrangements were made decades ago. However, since certain powers are not prescribed under the agreements, a pay cut will be implemented by introducing a piece of legislation into the Legislative Council now. Would it not even be better to disapprove of the appointment of or dismiss all Directors of Bureaux by legislation? If such a bill is introduced into the Legislative Council, the League will support it immediately.

Therefore, such an action can be described as one of the tyrannical acts of the Government in recent years. It does whatever it likes by means of legislation, abuses the legislative process and it is practically bulldozing its way through, just like what Secretary TSANG Tak-shing is doing. When he disliked a certain social worker, he talked to the board of directors and eventually, the social worker concerned was dismissed. At present, the Government is abusing its administrative and legislative powers in various areas to achieve administrative hegemony. This is an expression of such hegemony and it arouses great indignation.

President, let us now consider the practical problems. The impact of a pay cut is arguably enormous. Dr PAN Pey-chyou has just talked about the impact on himself but a pay cut not only affects individual staff members who take the pay cut or their family members, it also has great impact on two other areas. The first area is the pay in the private market. In view of a civil service pay cut, the private sector would surely be 10 times more vicious, would it not? In that event, those obese people who cannot even bend down to put their socks on and tycoons will certainly be more vicious. Since even civil service pay can be reduced by such a percentage, it will be even harder for employees to ask for a pay rise. These chain reactions and domino effects can by no means be anticipated when the Government seeks to implement a civil service pay cut by legislation.

I firmly believe and advise all employees in Hong Kong that they should tell various political parties in the Legislative Council as soon as possible if their employers freeze or slightly reduce their pay cut or even ask them to take no-pay leave under the pretext that civil servants have taken a pay. The League is absolutely open and all these employees and labour unions are welcome to contact us. We must collect these actual examples as ammunition to let the Government know that it has caused collateral damage. The Government thinks that it is merely imitating the bad deeds of the former administration or some former Directors of Bureaux but if it does a poor job in this, it will bring about chain reactions and problems and the impact on the pay in the private market will be absolutely disastrous. In my opinion, the likelihood of many employees in many organizations, in particular, those in the middle and senior ranks, of getting a pay freeze or cut in the coming year will definitely be greatly affected on account of the passage of this piece of vicious legislation by the Legislative Council today.

The second type of chain reactions, President, is the effect on the consumer market and our economy. Due to deflation or the assessment of a downward adjustment in private market pay, the Government is going to give senior civil servants a pay cut, which will involve more than \$500 million this time. To the private market or spending power or the consumer markets for particular classes or targets, this \$500 million may give rise to tremendous adverse effects whereas some of the effects may be relatively minor. However, we cannot rule out the possibility that it may have a disastrous impact on certain markets. When the Government decided upon a pay cut it did not conduct comprehensive analyses and assessments, so we may say that the decision is extremely crude. It is precisely because it is overbearing and self-willed that it did not assess other chain reactions and effects in any way. Hence, the disastrous repercussions of this kind of overbearing behaviour will be never-ending.

President, the logic is also seriously flawed. Of course, I understand that when the Government initially conducted an assessment, it intended to reduce the pay of senior civil servants as well as the pay of those in the lower salary bands. However, owing to political pressure or the excessively complicated administrative arrangements involved, in the end, the Government decided to reduce the pay for senior civil servants only. The Government always emphasizes being equitable, so why is it so selective this time around? Since it considers the assessment mechanism so reasonable, fair and authoritative, it

should cut pay across the board. Now that the pay is cut selectively, this is untenable in terms of logic, theory and principle. As civil servants in the lower salary bands are exempted from that pay cut of more than 1%, senior civil servants should not get a pay cut either. Hence, the Government's action fully exposes its overbearing aspect. It wants to win, to be in charge and to have its own way. This totally exposes the mode of operation of the entire senior level of the Government.

Another point is that, President, in a rare gesture, Mrs Regina IP described herself as a powerless Legislative Council Member. Her comment evoked a lot of thoughts and feelings in my mind. Nevertheless, this Council is really powerless because the Government is overbearing and high-handed. Several Honourable Members also mentioned just now that more than 20 labour unions had written to them. I would like to make an appeal for the last time: There is still a chance. It is rare for the Hong Kong Federation of Trade Unions (FTU), the League, the Civic Party and Mrs Regina IP to adopt the same position. This is unprecedented and can be considered historical. Even Prof Patrick LAU seems to support our views and opposes a pay cut. Hence, we are only short of the support of several large political parties. Basically, small and weak political parties all oppose the motion. Perhaps the Government has already reached an agreement with large political parties and their senior members have already been awarded the Silver Bauhinia Star or other medals. Now, it may again be necessary for the Government to "buy" their support with medals, as is the case each time. Whenever a material policy decision of the Government has been endorsed, the senior members of some political parties will be awarded the Bauhinia Star in the following year.

For this reason, I call on those large political parties to consider this issue because in terms of logic, theories and value judgment, the minority in various groups — Mrs Regina IP understands civil servants well and she has a lot of contacts in this regard; the Civic Party has pointed out some problems from the legal perspective; the FTU has raised objections from the standpoint of labour unions while the League firmly opposes the motion from the standpoint of the interests of the grassroots — so this motion is being opposed from four quarters, that is, the interests of the grassroots, the position and interests of labour unions, the legal perspective and the civil service system. May I ask why the large political parties support the Government? Are they betraying the interests of the labour unions? Are they betraying the interests of the grassroots? Have they

violated the concept of the rule of law? Have they gone against the will of civil servants? For this reason, supporting the Government is tantamount to four violations and I call upon these large political parties to desist before it is too late — I cannot recall clearly how SZETO Wah was praised on a certain day in a radio programme in Shenzhen, to the effect that repentance was salvation, and the like.

I call on various large political parties to look at this issue very carefully because it involves very important points of view. I do not wish to see political parties make mistakes, then regret only when it is too late. It is very strange that the FTU opposes the motion but the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) supports it. Many members of the DAB are core members of the FTU and most DAB members were elected Legislative Council Members thanks to the canvassing by the FTU. Thus, I must call upon FTU members to take a clear look at the nature of the DAB. The nature of the DAB is a royalist party and it does not represent the interests of the working class. Some DAB members have put on the cap of the FTU but their caps have been thrown away by the Government and are nowhere to be seen.

President, lastly, I wish to talk about the impact of a pay cut on the economy again. As a matter of fact, to some extent, the pay cut will hit our economy in the wake of a downturn. According to some people, the economy is beginning to recover but we can see that many members of the grassroots are still living in hardship. In view of this, a pay cut will practically rub salt into their wounds and it may even adversely affect our economic recovery.

For this reason, President, lastly, I call upon Honourable colleagues, especially independent Honourable Members, to take a really good look. There must certainly be good grounds for the four major groups mentioned by me just now to join hands in raising objections.

Thank you, President.

PROF PATRICK LAU (in Cantonese): President, it is true that I also oppose this. Mr Albert CHAN pointed out just now that several groups all believed that there were problems, so I hope the Government can withdraw the Bill. If it cannot do so, I can only oppose the Bill.

President, Dr Margaret NG has stated very clearly earlier on that the Legislative Council has convened countless meetings on this issue and spent a lot of time discussing it. I remember that Dr Margaret NG put forward her legal viewpoints at an early stage and as she stated clearly just now, according to past experience, it is problematic for the Government to implement civil service pay cut by legislation time and again. Why? The reason is very simple and labour unions have written to us, querying how the legislative process can be used to compel us to play the role of an arbitrator or even that of the Court? I find it problematic for us to handle both legislative and judicial matters because after all, this matter is only about the contracts between an employer and employees, so why should the issue involve the enactment of legislation?

Being a representative of professionals, I must convey what they truly think. President, I would like to make a declaration of interests. When I was a professor, many university students asked me whether they should join the Government or the private sector. I explained to them that the greatest advantage of being a civil servant is a stable life. However, problems have now occurred. Many professional civil servants belonging to the middle class who work hard, quietly and devotedly and earn a monthly salary of \$40,000 to \$50,000 in the past are now subjected to the threat of a pay cut. Are we not talking frequently about the loss of talents? They can find greener pastures as there are many job opportunities nowadays. There are also the 10 major infrastructure projects and everything else, are there not? So, this is a major problem that will affect the Government's administration.

In addition, as they need to manage a large number of contract staff, their workloads have increased substantially. They also told me that in the past, they were not required to explain any design in the District Councils or give explanations in the Legislative Council and rarely did they have to work under such immense pressure, so their work had become increasingly different. Therefore, they think that a pay cut will deal a heavy blow to the morale of the entire grade and even that of civil servants and public officers.

President, I also watched the East Asian Games football match the other day and found that morale is actually the most important thing for anything. I have asked the Government the same thing time and again at our meetings and it indicated in its replies that it would take morale into consideration when determining the rate of pay reduction. How much emphasis has it placed on

morale? Had it not been for morale, basically, it would have been impossible for Hong Kong to clinch the championship on that day and the team would not have won the gold medal. If the Government thinks that morale is unimportant, this is nonsense. If the Government does not take into account the morale of employees, it is hard to say what the consequences will be.

Just now, Mr Albert CHAN and many Honourable colleagues remarked that a pay cut would affect our economic recovery and pay adjustment in the human resources market. Will the impact be very great? In addition, all subvented bodies will also be caught in all this, so the authorities must first consider the implications. For this reason, I really hope that the Government would think twice.

As we all know, the pay-related surveys in the private sector indicate that a pay rise can be expected next year. Just imagine: How many months are left? A pay cut will be implemented in January next year and only three months will be left in this financial year, so will this make the public feel very confused? There will be a pay rise soon after a pay cut and I think that the aforesaid problems can hardly be solved in this way.

Most importantly, the Government has written a number of letters explaining that civil servants in the middle salary band would be exempted and their pay would be frozen but civil servants whose pay is more or less the same as theirs cannot get any sympathy and they are forced to accept unfair treatment. This is another reason but the Government did not give any explanation on this. I hope that the Secretary will later explain why this is so. Actually, we have repeatedly asked the Government this question in the legislature and spent a lot of time today expressing our views.

I hope that the Government can really consider carefully. Even though it has cited various reasons to explain how civil servants will be made to accept the pay cut, I think that the most important point is that the Government is in great need of the support from civil servants. There are many problems at present. Apart from managing many civil servants recruited on temporary terms we have also discussed in Panel meetings the increase of manpower and the fact that we need additional manpower for all posts every day. Since we need so much additional manpower, why do we not make good use of the existing staff to do the job properly? This is the most important thing. Although we need so much

additional manpower, when job applicants learn that the Government is going to give them a pay cut, will they consider joining the Government? Can the Government recruit sufficient manpower? These are the problems. For this reason, I hope that Honourable Members can analyse this matter clearly: Is it worthwhile to give civil servants a pay cut for a short period of time, as if staging a show, then give them a pay rise subsequently?

I so submit, President. Thank you, President.

DR PRISCILLA LEUNG (in Cantonese): President, today, we discuss the issue of pay cut for civil servants. In the past few years, there has been a lot of hassle on the issue of pay reduction for the staff of public organizations and civil servants. A prolonged lawsuit was also carried out on this question of pay cut for civil servants. I think that with respect to this issue, no one can pretend to mind his or her own business and neglect other people.

First of all, I would like to talk a little bit about history. I also wish to declare my interest. I work in a university. I remember that a few years ago, when universities were forced to delink from the civil service pay scales, there was strong opposition from university staff unions and many staff members of these universities. In the end, of course, the attempt at opposition failed, so the civil service system and remuneration were delinked from those of the universities. I remember that at that time, many of my colleagues in the universities stated that as a matter of fact, they were willing to tie their pay with civil servants, that is, when civil servants had a pay rise, they would get one too and while civil servants had a pay cut, they would have a pay cut as well. They hoped that the kind of spirit of civil servants, which placed an emphasis on stability, could be upheld in the universities. They did not want to see wholesale privatization in the universities and universities being placed at the mercy of market forces, so that the spirit and ideal of a university and education were sacrificed in the name of commercial considerations. Therefore, I also took part in putting up opposition but we did not succeed.

In about two weeks ago, people from the Hong Kong Senior Government Officers Association called me and they hoped that a meeting could be arranged with the staff unions of the universities as soon as possible. They also asked if the universities were planning to effect a pay cut. We heard rumours of a pay

cut but there were somewhat different answers from the universities. However, Members can also see that there are times when the universities would like to have some flexibility and want to go by commercial principles. In times of pay cuts, the universities would also think about if civil service pay cuts would have any bearing on them or not. This is some historical background and it is related to what is happening today.

Therefore, I can say very clearly that to propose this motion for Second Reading is actually not necessary. I would oppose it. Had this happened during the time of the financial tsunami and had the Government effected a pay cut immediately, that would be fine. I recall that back in 2003, during the SARS outbreak, colleagues in the universities and the staff unions immediately declared that a pay freeze should be introduced. That is what we would do out of our own will and it had the support of all the staff. That was what we were willing to do.

But as for today, first, I think that the efficiency in implementation is too low and the move can no longer keep abreast of the present conditions. About the financial tsunami, now we are already talking about the exorbitant prices of flats, whether or not the Hong Kong dollar is depreciating, and so on. Actually, we all have hesitations and cannot see a clear picture. Second, legislating to effect a pay cut is not the method I would agree to all along. In Hong Kong, it is actually a very good thing to be civil servants. I would talk about that in the end. If they can be persuaded, back then, some consensus could have been reached between them and the Government very quickly in the form of, say, a temporary pay freeze or pay cut. Had that happened, I think that all the people of Hong Kong would have cheered and they would have given credit to the civil servants.

But now the best time is over. We had deflation last year, but now there is inflation. To be frank, at the time of the financial tsunami last year, when I met the boss of a small-and-medium enterprise which I used to have some say in, I told him repeatedly that he should not resort to a pay cut and he should wait for a year to see if the company could tide over the difficulties. If he resorts to cutting the pay of those wage earners right away, their morale would be affected. On top of that, the market situation was bad enough. In fact, we should encourage the public to spend and it is only when they have a normal income that they can afford to spend.

This also comes down to the mindset of employers. If they think that cutting the pay of their staff amounts to an increase in income, this is not a healthy way of thinking. Moreover, there is no need to do so now. After passing through the cumbersome bureaucratic system and all the legislative procedures, the salary level may already be detached from the cost of living index in the market. Would this give rise to some great impact? I think it is true to say that each person will only mind his own business. As I have said, even if the pay levels of universities and civil servants are not coupled, the universities would take into consideration the pay indicators of the civil service right away and private organizations will also do likewise. I have no idea how many bosses would still want to raise the pay of their staff when civil servants are having their pay cut. Of course, such a possibility always exists because there is keen competition in the market for talents. Talents are badly needed as new opportunities arise in Hong Kong and at times, no suitable person can be hired and pay has to be increased to attract them. Now we are talking about pay increases but the procedures have already been cleared for a pay cut in the civil service. The Government should have been more flexible in handling this matter and had some compromise been made, there would have been no need to undergo what we are having today. I think many Members would oppose putting up this Bill for Second Reading at this moment in time.

With respect to the Police Force, there has already been some great pain suffered by both the Police Force and people not belonging to the disciplined services. Throughout last year, civil servants endured that great pain. It seems that things have just returned to normal but now, they are hit by another pain. I think that this pain is unnecessary because it is not just civil servants who will experienced this pain but by the staff of other public bodies, welfare organizations, subvented organizations, and so on. Moreover, I do not think this happens only in the universities, it happens in private organizations as well.

On the other hand, I think that what our society should focus on is not that we should be jealous of senior civil servants because of their high pay and that people in the lower ranks do not have to take a pay cut. In fact, we should not look at it this way. As far as I know, those who make more money will spend more. The question to ask is whether or not they are worth it and whether or not they can do their part, not how much their pay is. In the establishment, if a certain salary is set for a certain grade and if it is thought that officers of that grade do not deserve that salary, a review should be conducted of the

establishment. I do not think that that this should be done simply because those who are higher up get a high pay and those who are lower down get a low pay. I do not think we should look at this matter in such a light.

Recently, many civil service unions made an appeal that amendments might as well be introduced. Originally, I opposed to all of them. But Dr Raymond HO looked me up and said that he would put up an amendment and that there were many expectations from civil service unions. I think the Government should appreciate its civil service team, including the police, for what they do. I think they are very considerate, that is, they take into account the public role they play. All along, they are very mindful of their public image and they do not want to insist that there should not be a pay cut or pay freeze for them when everybody is having a difficult time. My colleagues at the university also sensed this need, so they announced immediately that there should be a pay freeze.

However, first of all, there is no need for that now. Second, as a matter of fact, I guess that civil servants have also considered having their pay cut somewhat, so that this would show their spirit of compromise and maintaining harmony can be as well as their desire not to be involved in confrontation. So civil servants call upon us to accept a middle-of-the-road proposal.

After talking about these, with respect to the disputes relating to civil servants on a number of occasions and on the issue of their pay rise or pay cut, I think that the Civil Service does have something commendable. This is particularly so because recently, we got letters from civil servants asking us to accept some of the amendments. I hope that the Government would not do certain things because for example, would it be the case that the motion would not be passed this time? Many people are saying that it has got enough votes but this I do not know. Actually, I do not have to discuss with anyone as I have already decided on my position in this matter.

I oppose the Second Reading. Thank you.

MR LEUNG YIU-CHUNG (in Cantonese): President, after the public had learnt that a pay cut would be given to civil servants, some people said to me, "LEUNG Yiu-chung, you must support a pay cut for senior civil servants.". When I asked

them why, they said to me, "Of course, you must support it because we do not know what this group of civil servants is doing; their incomes are so high but we only have meager incomes, so how can this be fair? Why not reduce their pay?"

President, this answer reflects two problems: First, ordinary people may have the erroneous understanding that most of the policies implemented by the Government are formulated by senior civil servants but these policies are usually not in line with their wishes, or put them in very unfavourable circumstances. Therefore, in the face of these policies that are not people-oriented, they tend to blame senior civil servants. Of course, in fact, these policies are not formulated by senior civil servants. They may have only offered advice and these policies are ultimately formulated by the governing team. Since people do not understand the situation in this regard, they have a lot of grievances. Therefore, this point is important, that is, it is in such areas that one can see whether or not the policies formulated by the Government are in line with people's wishes.

However, their comment that senior civil servants' incomes are so high while they only earn meager incomes also reflects another issue, that is, a very serious problem has occurred in Hong Kong, namely, the problem of wealth disparity. If the problem of wealth disparity is not serious, they will not give such a response. Actually, we also mentioned when meeting the Financial Secretary yesterday that there was a very serious wealth disparity. The present wealth disparity in Hong Kong is very great. In particular, among developed regions or countries, the situation in Hong Kong is the worst. We rank first in this regard and our Gini coefficient is 0.53. When these people find that the salaries of senior civil servants are so high but their salaries are so low, since they know very well that they are incapable of earning higher incomes, they think that it would be fairer if senior civil servants could be given a pay cut. They are looking at this issue with such a mentality. Of course, I think this approach is not very desirable but I also fully understand their way of thinking. As a matter of fact, if we support a pay cut for senior civil servants today, I think it will do even greater harm to ordinary people. Why? Because if we agree to a pay cut for senior civil servants, I am really worried that other private organizations, especially some unscrupulous employers, will follow the example of the biggest employer in Hong Kong and tell workers, "Now that civil servants have to take a pay cut, what about you?"

President, I understand fully that according to the Employment Ordinance, if an employer reduces employees' salaries unilaterally, this is tantamount to dismissal and it is unreasonable and illegal to do so. Yet, many a time, particularly given the high unemployment rate at present, what can employees say? What can employees say when employers tell them, "Other people are going to have a pay cut, so what about you?" They will definitely be under pressure and what alternatives do they have? They can only resign but if they do so, will they have the ability and confidence to find another job in the private sector? They have to take this into consideration. Otherwise, they can only comply with their bosses' requests for a pay cut or accept a pay freeze. In that event, the impact on the grassroots is huge. In fact, if we agree that employers can make pay cuts, they can do so either today or in the future, so this will pose a big problem. Instances like this will occur frequently because we have low bargaining powers, especially when the conditions for collective bargaining do not exist in Hong Kong. Hence, I think that we cannot promote such an undesirable tendency and we must get rid of it. For this reason, I object to a pay cut.

Another point is that the pay cut this time makes us feel indignant because it is a selective pay cut, that is, there will be a pay cut for civil servants in the upper salary band but a pay freeze for those in the lower and middle salary bands. As a result, civil servants will be resentful of one another, eventually leading to division. Why should the upper, lower and middle salary bands be treated differently? Actually, I think we should now tell the Government that apart from creating this unfair situation, it is also unfair even when making a pay rise. In percentage terms, the rate of pay rise for senior civil servants is higher and the rates of pay rise for civil servants in the lower and middle salary bands are lower. This will also cause polarization. When the Government makes another pay adjustment in the future, I hope that it will increase the rates of pay adjustment for civil servants in the lower and middle salary bands and avoid creating a substantial difference because this will create unfairness and inequality in the civil service team and cause divisions and mutual suspicions. In this connection, I hope the Government can give them equal treatment. When adjusting their pay in the future, even if it is a pay rise, I hope such a phenomenon would not occur.

The third point is that, as many Honourable colleagues have mentioned, if the pay is successfully frozen, I am worried that a situation may occur. As a matter of fact, a certain phenomenon has already occurred, that is, many private organizations, especially large organizations, have indicated that even if there will be a pay rise next year, the rate will be very low. For instance, Cathay Pacific has announced a pay rise of only 1.8%, which is really something to be ashamed of because this is more or less the same as a pay freeze. If the Government takes the lead in reducing pay, it will only make other employers — even if they are not going to reduce pay — give only a small pay rise in the future in view of the civil service pay reduction effected by the Government, so how can employees ask for a pay rise? Even if a pay rise is given, a nominal pay rise will already be regarded as very favourable. This will give employers an excuse. Nevertheless, Honourable colleagues should think about another phenomenon that will be simultaneously created. Certainly, we are not sure how accurate the predictions on future economic development made by some economists or experts are but all of us can foresee that future economic development will definitely lead to inflation. Some people have even predicted that there will be a high inflation rate of several percentage points. If that is the case, now that we are at the end of the year, if employers take this opportunity to give neither a pay rise nor pay cut, or just to freeze the pay or only to increase the pay slightly, workers will have difficulties in coping with inflation in the future. If the Government cuts the pay successfully on this occasion, it is going to create great chain reactions, so for this reason, I still disagree with a civil service pay cut.

Some Honourable colleagues, for example, Mrs Regina IP, Dr Margaret NG and Dr Raymond HO have said that they might as well propose amendments to make corresponding changes to the rate of adjustment. In this connection, although they are going to adjust the rate of pay cut, I think doing so still cannot address a matter of principle. As Dr Margaret NG said earlier, implementing civil service pay cut by legislation involved matters of principle, so it should not be allowed. This is the major premise and no matter what the rate of pay cut is, even if the rate of 5.38% is going to be reduced by 1.98% to a rate of slightly more than 3%, the problem is that Honourable colleagues will have agreed to implementing a civil service pay cut by legislation. On this point, I really do not know how a balance can be struck because although we oppose implementing a civil service pay cut by legislation, we are at the same time willing to accept this rate of pay cut. I really find this unacceptable, so I cannot support the rates of adjustment to be proposed by Honourable colleagues later on.

I wish to emphasize that I agree very much with the views expressed by Dr Margaret NG just now. She believes that in implementing a civil service pay cut by legislation, the Government is being high-handed and "crushing crabs with big stones". Since this is a piece of legislation, we can say nothing. What sort of relationship can be established between employers and employees? The Government often talks about the need for harmony. If a policy is enforced high-handedly through legislation, how can harmony be achieved? When others are not willing, the Government rides roughshod over them and forces them to do something through legislation. Since I cannot accept such high-handed and unjust action, I definitely cannot give my support. I object to the resumption of Second Reading on this Bill and I cannot support the amendments to be proposed later on either.

I call upon the Government once again to understand one thing, that is, there is really a serious wealth disparity these days. We hope that the standard of living of the grassroots could be improved and that these people could break away from poverty; nevertheless, the Government's measures for alleviating poverty are really inadequate. Regarding the future Budgets, we hope that more measures for alleviating poverty could be taken to allay people's discontent with having low incomes. I hope that the Government would be able to help them adjust their standard of living, so that there will not be so much discontent in the community. This is the most important point.

When we discuss the issue of civil service pay today, as I have just said, I also hope that when there is a chance to make pay adjustments in the future, there would be a higher rate of adjustment for low-ranking civil servants, and the Government should not create substantial differences between civil servants in the upper salary band and those in the lower and middle salary bands, as a result of which harmony and unity could not be achieved.

President, I oppose the motion that the Bill be read the Second time and other amendments. Thank you.

MR WONG YUK-MAN (in Cantonese): President, I love reading history, for the fact that by looking at past events I can better understand the present and that

history is a mirror that enables us to learn about failures and achievements. Ever since the reunification, there has been a cut in the salary of civil servants on a number of occasions and this is not the first time that legislation is enacted to effect a pay cut. It can be seen that this is a worse situation than in the days of British Hong Kong administration. Under British rule, civil servants in Hong Kong were treated better. But after Hong Kong was returned to the Motherland, civil servants are subjected to merciless moves made by the SAR Government.

On 24 and 31 May 1999, civil servants took to the streets in protest of civil service reform. On 10 July 2000, civil servants took to the streets again in protest of privatization and the contracting out of government services. The largest march took place on 7 July 2002. That the march was not made on 1 July was intended to avoid a clash with the march on 1 July, but 7 July was the birthday of TUNG Chee-hwa and it was also the day that marked the Marco Polo Bridge incident and the Japanese invasion of China.

Mrs Regina IP, who is sitting here today, was the Secretary for Security in those days. At that time, some 30 000 civil servants took to the streets and she was naturally very nervous. She had a meeting with the police and other people, in the hope that the protest would be conducted in an orderly manner and that the face of the Government could be saved. But deep in her heart, she was supportive of the civil servants, is that right, Secretary? (Mr WONG faced Mrs Regina IP as he spoke.) At that time, as an accountable Director of Bureau, she could do nothing and she could not say no when TUNG Chee-hwa wanted to legislate to effect a pay cut. She appeared to be respectful and submissive but she was in fact not in agreement with TUNG. She could not take that breath, so to speak. Now seven years afterwards, she was elected to the Legislative Council and she can actually air her grievances. She has not talked about that and I would like to do that for her.

I remember clearly that in July 2002, in the radio programme I was hosting, I lashed out at the TUNG administration almost everyday, saying that it was making a move against the will of the people and he was lacking in benevolence and righteousness in legislating on a pay cut. We had a lot of justifications for making that attack. Miss Denise YUE, I talked about that issue for more than 10 days. At that time, Secretary Joseph WONG was racking his brains for a solution. Then, despite the fact that some tens of thousands of people marched

on the streets, the Government still forced legislation for a pay cut through the legislature. At that time the situation was rather interesting: The press was watching closely who among Members of the Council would make a U-turn and how they would vote. The situation today is even worse. The Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) is co-operating with the Democratic Party and I can tell Members that the Second Reading will certainly be passed. That sounds pretty weird.

On 10 July 2002, Mr CHEUNG Man-kwong of the Democratic Party said in the resumption of the Second Reading debate of a Bill with a similar name that the Bill "is a draconian law" and that "Mr TUNG Chee-hwa always insists on reforms that have destructive effects." We all know that CHEUNG Man-kwong is very eloquent in his speeches and it can be said that he is my match. He said, "He has not only cleaned up the stain of the SAR purple sand teapot but also smashed the teapot into small pieces. Now, even civil servants who used to be faithful to the Government are opposed to the Government. Even though Mr TUNG Chee-hwa may not be a commander without soldiers, he would become a hollow Chief Executive and he has severed one arm for his failure to get the support of civil servants." This is what Mr CHEUNG Man-kwong of the Democratic Party said in this Chamber on 10 July 2002 and at that time, he opposed the Second Reading of the Civil Service Pay Adjustment Bill.

Now the caucus convenor of the DAB is Mr IP Kwok-him and they are really royalists from first to last. Albert CHAN has just said that they have something to do with the Hong Kong Federation of Trade Unions — actually the two organizations have parted ways a long time ago, so sometimes, Albert CHAN I would talk to him about that. Do you know that at times, he is not quite sure about certain things? These people have long been royalists, right? IP Kwok-him says that it is only by legislating that the decision to cut the salary can be put into practice, or else the move would invite public discontent and make foreign investors query the determination of the Government in reducing the fiscal deficits. He also says that legislating to effect a pay cut does not contravene with the Basic Law and it is only a move made out of utter reluctance and it is believed that civil servants will accept the decision once they understand this.

For me, I like to say these things for there are some students sitting in the public gallery. I want to tell them some history, or else they would get very confused about what we are talking. We can see that there are some maverick politicians who are only trying to stir trouble and are wreaking havoc. They are not like us, who are constant and always stick to our beliefs. I will definitely oppose, for the fact that I am a member of the League of Social Democrats and we belong to the left wing. President, am I right? You know what is meant by the left wing. When anyone says that the pay of the wage earners is to be slashed, naturally I will voice my opposition. Buddy, ideologically, I will oppose it and in terms of value judgment, I will oppose it too. So it is easier to guard against people like us than those people.

Margaret NG has just said that some civil service unions contacted them, lobbied them and that they tried to lobby them no matter if they would support it or not. But no one came to lobby us.

MR LEUNG KWOK-HUNG (in Cantonese): Yes, there were.

MR WONG YUK-MAN (in Cantonese): They came to you. Okay. "Long Hair" has just made a correction. But the Government did not lobby us.

MR LEUNG KWOK-HUNG (in Cantonese): No.

MR WONG YUK-MAN (in Cantonese): How is the Government going to lobby us? How can it manage to get the three votes from us cast in its favour? Earlier on, the Secretary for the Civil Service came across me during the meal time earlier and I had already said to her, "Sorry, Secretary, I will definitely vote against it. Our position is clear enough."

Dr Margaret NG is also a Member who proposes an amendment today. She firmly opposed legislating to reduce the salary of civil servants in 2002. She and her party, the Civic Party, have been unwavering throughout. Many

people do not understand why the League of Social Democrats will co-operate with the Civic Party. There are actually some reasons for that.

MR LEUNG KWOK-HUNG (in Cantonese): Constant and consistent.

MR WONG YUK-MAN (in Cantonese): Constant and consistent. We mean yes when we say yes and we mean no when we say no. We are very clear about right and wrong, are we not? If a policy is to be formulated or revised, considering the time and persons involved, the priority would be: timeliness will be placed as the first priority. It means the right time and now, there is a problem with the time and it is not right. Why all this fanfare for legislating in order to reduce the pay for a few months? This is causing disturbance to the people, right? The right measures should be formulated at the right time. Is it worthwhile to do that? It is not worthwhile at all. Oh, it turns out that for the Government, it thinks that it is formulating some right measures for some people. It is dividing civil servants into classes and causing division among them and battering their morale. This is trying to formulate some right measures for some people. And we should give quotation marks to the word right. Formulating the right measures at the right time means at the most opportune time. Doing the right things refer to matters and doing the right thing for some people places an emphasis on persons. But this is not right and it is unsuitable. So the word should be put in quotation marks. With respect to this kind of moves made by the Hong Kong Government, it makes people think that the people of Hong Kong are pitiful. Why are the people of Hong Kong so pitiful, in that they have a government like that? Why is our government like that? It would sometimes have a breakdown in the brain, sometimes a loss of intellect and sometimes a loss of memory — in much the same way as an old person who says that he does not want to recall things, or that he fails to remember anything and he forgets the things that he has said.

By the same argument, those of us who read history are best able to understand the truth that history will always repeat itself. If you do not learn the lesson from history, you will likewise pay a heavy price. You can look back at what happened in 2002, all the documents are here. In order that I can speak on the subject today, I have instructed my assistant to look up the related information. And I found an article in the newspaper on 9 July 2002, that is, the

day before the Second Reading of the bill to cut civil service pay on the last occasion. At that time, I was the publisher of Sing Pao and I have a column called in effect Yuk-man Writes. The article published on 9 July talks about the question of the Government's attempt to legislate in order to reduce the salary of the civil servants. There are only a few hundred words to that article and since I have a speaking time of 15 minutes, I may as well read it out aloud to the Secretary:

"The five Members of the Breakfast Group of the Legislative Council have made their stand known that they will support the Government's attempt to legislate to effect a pay cut " The Breakfast Group was led by Eric LI at that time and he was rebuked by people on that occasion. Raymond HO, do you remember that? At that time, you opposed it. Raymond HO is here. I do not think the predecessor of the Professionals Forum was the Breakfast Group, but some members including you and Abraham SHEK, and so on, were in the Breakfast Group at that time. Now a beautiful lady has joined and she uses expensive handbags. This Professionals Forum opposes the legislative attempt of the Government on this occasion. We think that it is a very interesting thing. At that time, the Breakfast Group reached some agreement with the Government and hence the Government secured enough votes. Do you recall that? Now I return to the article: "The five Members of the Breakfast Group of the Legislative Council have made their stand known that they will support the Government's attempt to legislate to effect a pay cut. Now it is certain that the Public Officers Pay Adjustment Bill will be passed. But has the SAR Government won?

The answer is obvious: No!

Some 30 000 civil servants, including members of the disciplined services, took to the streets to stage a protest against this attempt to legislate to effect a pay cut. It has made history and shown that the Government's prestige is shattered and that the civil servants are detached and alienated from the Government. This is not what LEUNG Chun-ying, member of the Executive Council, branded as entanglement but it shows that those in power are not taking the matter seriously. They say that civil servants have fully aired their views, but that does not mean that the conflict between the Government and civil servants is resolved.

When legislating to effect a pay cut has succeeded, does it mean that the Government can put its mind at ease?

Legislating to effect a pay cut can enable the Government to avoid losing a lawsuit, but will civil servants not become losers in return? This is no zero-sum game.

Both parties do not win and it can be said that they are both losers.

Things could have been a win-win situation, if only one party would give in or if they can tide over the hard times together and solve their differences by negotiation. Then things will be fine. Public opinion is in support of reducing the pay of civil servants and civil servants would not like to brave the opposition of the whole community by rejecting the proposal to cut their pay. But the crucial difference is whether legislation should be enacted for this purpose. There are quite a few of those in power who want to confuse and deceive, trading right for wrong. They adopt a specious argument and label civil servants as enemies of the people. And so there is no room for manoeuvre in this matter. These people should be condemned.

It will be a fact that legislation will be enacted to effect a pay cut. Civil service groups plan to sue the Government and it looks like they will lose. If that happens, the rift between the Government and civil servants will only widen and it is the people who will suffer!"

This is a short article with just three or four hundred words, and it has not lost its historical significance after the passage of seven years. Secretary, am I right about this? Of course, the atmosphere fostered by the Government at that time and the economic conditions then were terrible and at that time, public opinion sided with the proposal to give civil servants a pay cut. But Secretary, is public opinion today like what was before? So this policy I think that it is most absurd for this Bill to be read the Second time here in this Council. The League of Social Democrats will not support it.

As for the amendment moved by Margaret NG and the amendment moved by Regina IP, I think it would be very difficult for us to support them given the principles we hold. But the question is, they are well-intentioned. That is to say, if there is really a pay cut, a balance should be struck in view of the level of pay reduction for those so-called low-pay civil servants, which is some 3%. I think this is somewhat better than the original proposal of the Government as

found in the Bill, but it seems that it is also very difficult for us from the League of Social Democrats to support this amendment too. Besides, the amendment moved by Raymond HO proposes a reduction by a greater extent by taking away the inflation factor. This makes us feel more difficult to lend it our support. So there is no way about it. May be the pay will be reduced by a lesser extent? It is true that the extent of pay cut will somewhat be less. I am sorry to say that this amendment is similar in meaning to the other two. But there is one difference in Dr HO's amendment and that is, the current inflation factor will be reflected in the pay trend survey for next year. I think this suggestion to remove the inflation factor is not a very desirable one to make. Of course, I am very much in support of the goodwill shown by the three Members in their amendments, but the proposal made by the Government will surely get passed. The amendments will be voted down in the concerted action of the huge voting team.

I still have a minute or so. I would like to say it once more that this Government is not one elected by me but by a small circle of 800 people. Of these 800 people, some 600 of them cast their votes in favour of Donald TSANG. They represent the interest groups and they cannot reflect public opinion. That the Government can act in contravention of the will of the people today is because it is domineering in administration. The fact that it can be so domineering in administration is because this Government is not formed by universal suffrage and the Chief Executive is not selected by one person, one vote. So President, I hope our young people must remember that they must fight for the selection of the Chief Executive by one person, one vote and they should also fight for the forming of the Legislative Council with all its 60 seats returned by one person, one vote. Therefore, we must lend our support to the resignation *en masse* of the five geographical constituencies, a plebiscite and dual universal suffrage in 2012. Thank you, President.

MR CHEUNG MAN-KWONG (in Cantonese): President, the Democratic Party has now come up with the following position after detailed and careful consideration.

First, the pay assessment mechanism, which includes the pay trend survey and the pay level survey, must refer to normal practice in a sustainable and stable manner and this well-established mechanism must be followed and no deviation

from it is permitted without major justification given, such that the results of the pay surveys are not to be complied with. If there is really any need for change in that mechanism, such change must be made only after discussion made between the civil service unions and the Government. For example, questions like whether or not management staff whose monthly salary is less than \$100,000 should be regarded as senior officers should be handled and agreement on these should be reached before such surveys and action are taken in accordance with the agreement reached. Furthermore, the pay trend survey as it is in place was confirmed in 1989 and has been in force ever since. Apart from civil servants, findings of the survey also affect the staff of subvented organizations whose salary is pegged with that of the civil servants. Such a survey mechanism should be respected in a reasonable manner and the contractual spirit should be upheld. This will protect all staff affected by the mechanism, including civil servants and staff of the related subvented organizations, and any decision made with respect to the adjustment of their pay will not be affected by any political factors or other factors. For if not, it will only lead to greater instability and disputes.

Second, we and civil servants understand that there is inevitably some time lag with respect to market surveys on civil service pay. This is because all the findings of surveys are to be compared with the pay trend in the community a year ago. Hence it is a fact that there is some time lag in the civil service pay adjustment mechanism and this is also an objective reality which civil servants are well aware of. If results of a survey show that a pay rise is needed, even if it turns out that the economy for that year is not faring well, the Finance Committee of the Legislative Council will endorse such a proposal and the pay rise will take effect retrospectively starting from April of that year. Such a situation has happened before and that is, when people in society are beginning to have their wages cut, but as civil service pay survey is linked with indicators of last year, so a pay rise will take place out of people's expectation. We had our pay rise at that time too. We even needed to explain to the public that this is a mechanism with a time lag and we could do nothing about it. Such is the mechanism we have. But if the survey recommends a pay cut and legislation has to be enacted for that purpose as it is now, the law can certainly not be enacted to take retrospective effect. In the present circumstances, even if the Bill is passed, it can only take its effect for up to three or four months and so the real impact of a pay cut is actually reduced to a minimum.

I wish to make a response by saying that we have actually had pay cuts after the reunification. On one occasion of a pay cut, it was at the time of the financial turmoil and the pay levels of employees across the community fell sharply. At that time, the Legislative Council agreed to adopt the "0-3-3" pay cut package. And that package with its levels of pay cuts was put into force later on. At that time, the Legislative Council was criticized for agreeing to implement pay cuts in that way. This was because there was no automatic mechanism for pay rises and pay cuts. Therefore, such an automatic mechanism should be introduced and this will ensure that although a time lag still exists for civil service pay adjustments, civil service pay is still linked with the pay trend in society and that the two are coupled and a mechanism does exist. This mechanism will protect all the people who work and live under it and it will ensure fairness. It will be fair to taxpayers, civil servants, society and also public money. Under the present circumstances, I believe when we use this mechanism to handle the issue of civil service pay cut now, we can also use it to handle the issue of civil service pay rise next year. This is possible because the mechanism is independent and neutral.

Third, with respect to civil service pay cut this year, the Government will make different decisions together with the Executive Council according to the three levels of civil servants, that is, those belonging to the senior rank, the middle rank and the lower rank. Such decisions are also part of the mechanism. In the words of the Government, these decisions will take into account the ability of the three categories of civil servants to absorb the impact of the pay cut. But as I have always understood it, after findings of the civil service pay adjustment mechanism are released, civil servants of the middle rank will have their salary reduced by 1.98%, the pay for those in the lower rank is reduced by less than 1%, but the senior officers will have a pay cut of 5.38%.

At that time, society as a whole, including the political parties and groups of the Legislative Council, was asking for the adoption of a compassionate approach to civil servants of the middle and lower ranks for the following reasons: First, the amount of their salary reduced would be comparatively low. Second, their salary was actually on the low side. Therefore, we put up the above demand. But at that time, the political parties and groups were not able to make any suggestions Although the findings of the survey recommend a drastic cut in the salary of the senior civil servants by 5.38%, the compassionate approach was still adopted. Had the Government adopted such a recommendation, the problem would not have been great at all. But that was not

the case. The compassionate approach was adopted by the Executive Council and the final outcome was that middle and lower-ranking civil servants did not have to experience a pay cut and only a freeze was imposed on their salary. We agreed with such a move and that public opinion favoured the adoption of a compassionate approach for the middle and lower-ranking civil servants. But if that approach was used on civil servants other than those in the middle and lower ranks, the community might not agree that it was a kind of compassionate approach. As a result, the credibility of the mechanism would be at stake. When similar things happen in future, will the Government take a similar compassionate approach to middle and lower-ranking civil servants? And when the economy does not fare well, will these middle and lower-ranking civil servants not be required to have their salary reduced and will a pay freeze be imposed on them instead? This is an unknown. This practice will in the long run not just affect the mechanism but also the power to protect those civil servants of the middle and lower ranks and also the ability of society to strive for the adoption of a compassionate approach for them. This is what we mean when we say that for any pay trend adjustment, we should not consider it just for one year but a sustainable approach should also be used, and any policy devised on compassionate grounds should also be sustainable.

Fourth, over these few months, the Democratic Party has heard the views aired by many people from the ranks of senior civil servants. They are sandwiched between those at the top and those below. Their workload is great and so is their pressure. We understand this perfectly well. We would think that with respect to this question, the Government must find a solution with respect to their duties. However, we must mention that the core value which should be protected is the pay adjustment mechanism, which has been in place for 20 years. Earlier on, some Honourable colleagues have said that this mechanism is a clumsy one and if that is so, it can be changed. This may include a fresh classification of the ranks in the civil service, such as whether or not senior officers should include those with a monthly salary of less than \$100,000 and whether or not there should be three or four classes of civil servants, or even five classes. But such changes should be made beforehand and once the system is confirmed, any change of it or deviation from it afterwards will affect the mechanism. And no one can be sure if the Government will not deviate from it. If that happens, the mechanism will cease to exist. So when we agree that considerations of an automatic pay increase or reduction mechanism may be put in place after 2002, actually, for the year 2002 Before the reunification, all

matters related to civil service pay were only those of pay rises and no pay cut had ever occurred. This is a situation we must try to cope with. The Democratic Party thinks that it is important to have a mechanism which is independent, one which allows negotiations and one which is recognized by the three parties of civil servants, staff unions and the Government. We support the idea that civil servants should reach an agreement with the Government and adopt its mechanism — this would include the mechanism which is improved and with an element of collective bargaining — for the purpose of reaching a decision on a pay rise or pay cut. Such a mechanism does not require any involvement of the Legislative Council. As a matter of fact, you will see that when the Legislative Council wants to handle such matters, it is really dragged into the political struggle between civil servants and the Government and it is not desirable.

President, I so submit.

MR PAUL CHAN (in Cantonese): President, I came from the grassroots and I had worked for more than 10 years before I started my own business. Most of my friends and relatives are also wage earners. I understand very well that wage earners do not in the least like to have their salary slashed. I was also a civil servant before and I also worked in a subvented organization for a few years. Therefore, I know how the some 10 000 civil servants and a sizable number of employees in subvented organizations would feel. Furthermore, there are a large number of friends from the accounting sector in the Government and in the subvented organizations. There are also friends not belonging to the accounting sector which are also affected by this proposed pay cut.

President, although I have not joined the Bills Committee to study the Public Officers Pay Adjustment Bill, I have all along been mindful of views put up by civil servants and subvented organizations. Actually, I have also received many of their letters lobbying for my support in that issue and with respect to the views and arguments they have put forward, I have studied them carefully and to a certain extent, I sympathize with those affected. I know that the pay cut will create impacts of various extents in many aspects for them. But to be honest, I cannot accept some of the arguments they have put up and after pondering over these, I think that a pay cut is necessary, though it is a move made under most reluctant circumstances.

I am a Member of the Legislative Council and although I come from the accounting sector and I am concerned about the interest of my voters, in considering government policies, legislative proposals or funding applications and such like matters where public interest is at stake, my first and foremost duty is to approach the issue from the overall interest of Hong Kong. On this occasion, the Government proposes that the salary of directorate staff and senior civil servants will be reduced by 5.38%. My concern is whether or not the Government is acting according to some established mechanism, whether or not the procedures involved are fair and just and whether all factors that should be considered under the mechanism are considered. I would also take into account whether or not there has been any deviation from common sense when these factors are considered in the process of policy-making, such that the results would not be acceptable.

The existing civil service pay adjustment mechanism includes a feature and that is a regular pay trend survey. This pay trend survey system has been in place since 1974 and surveys are conducted each year with authorization from the independent Pay Trend Survey Committee with members from three parties. These are: Ten representatives from the staff side representing the four central consultative councils, three representatives from the management, that is, the Government, and three members from the two advisory bodies on civil service pay and terms of service. Results of the pay trend surveys will be listed according to the ranks of civil servants, that is, senior, middle and lower levels which are classified according to their pay. The gross pay indicators for each salary group after deducting the relevant expenses in civil service salary increments will be the net indicators for the pay trend.

President, I think that since the civil service pay adjustment mechanism has been set up for a very long period of time and has been in use and never been replaced, we should act according to this mechanism. Unless there are very special reasons for adjustment, we should not deviate from this mechanism.

Information over the past 10 years show that there are indeed a number of years in which civil service pay adjustments differed from the net indicators of the pay trend, for example, in 1999-2000 and 2000-2001, the net indicators registered some negative figures (-0.13 to -1.97%) and a slightly positive figure (0.84%). In these years, in accordance with the mechanism, the authorities

decided on a pay freeze after considering all the factors and no adjustment was made.

So with respect to the pay adjustment proposal made by the Government this time around, after considering the net pay trend indicators for lower and middle level civil servants, only a slight reduction of less than 1% and under 2% were recorded and so a pay freeze was proposed. I think that this shows some sympathy for civil servants receiving a lower pay, this has precedents and can well be understood.

As for the rate of reduction in the salary of senior civil servants, which is as high as 5.38%, the level was determined in accordance with the pay trend survey mechanism, plus the six factors which the Chief Executive-in-Council had considered. Such a level of reduction is rather large and for those affected, it is true to say that the effect is quite devastating. But as I have said before, when dealing with public affairs, my concern is whether or not the Government has acted according to the mechanism, whether or not the procedures are fair and just and whether or not all the factors that need to be considered are considered according to the mechanism, and whether or not when a decision is made according to these factors, any deviation from common sense has appeared such that the conclusion so reached is not acceptable. In considering whether or not that the resumption of the Second Reading of this Bill should be supported, I have pondered over the question and I fail to see that there are any irregularities when all the above aspects are handled. Therefore, I think that action must be taken according to the mechanism and we must not reject it because it does not conform to our expectations.

During the discussions in this Council on legislating to effect a pay cut, the view that I have heard most of all is that a civil service pay cut will affect morale. With respect to this argument, I must say that I find it rather objectionable.

The financial tsunami dealt a serious blow to the territory at the end of last year and economic conditions were gloomy. Employees of private organizations were under great pressure as their income was reduced by various degrees and in various forms. It has been one year since that has happened. The situation in the private sector is reflected in the pay trend survey on this occasion and that is, there is a need for a pay cut. In the face of this economic

decline, civil servants should tide over the difficult times with the public and they should not stand aloof. Compared with the employees of private organizations whose salary has already been slashed at the end of last year or at the beginning of this year, civil servants are very lucky. The idea of a so-called negative impact on morale is not just unacceptable to me but to many members of the public. We are not jealous of civil servants and it is not because we suffer and are under pressure that we want civil servants to experience the same hardship. It is because our consideration is that when dealing with public affairs, we must consider the relevant mechanism.

Earlier on, in the legislature, when we debated on other motions, some Members pointed out that the competitive edge which Hong Kong enjoys is the soft power. President, the soft power of Hong Kong lies in the fact that things are done according to the law and according to mechanisms and there is no deviation from such practice for reason of convenience's sake or yielding to any pressure.

On top of that, the civil service pay adjustment mechanism is advantageous to civil servants. All along, civil service pay increase has a retrospective period while any pay cut does not have any retrospective period and it can only be put into effect with endorsement from this Council in the form of a law enacted. The effect can be said to be quick in making increases and slow in making reductions. Even if the Council endorses a piece of legislation to reduce civil service pay, the effective date at the soonest is the first day of the first month after the passage of the Bill, that is, the first day of the following month. However, three months after that will be the time for the regular pay trend survey. If the net pay trend indicators turn out to be positive, civil servants may have their salary increased again after having a pay cut of three months, and the salary increase will take retrospective effect starting from next April.

As for views that the pay cut should be effected a long time ago if such a pay cut is needed and the time for the pay cut should not be left to this moment and there is no timeliness when a pay cut is to take place now because the economy of Hong Kong has turned better, so no reduction in salary should be made, the fact is that this Bill to effect a pay cut was introduced to this Council in June, but why should it be sitting idle until today, when we are to debate whether

there is any need for a Second Reading? President, I think this is a question we must contemplate. I think that since Hong Kong is a place which cherishes the rule of law and where mechanisms and rules are respected, even if a pay cut is to last for two or three months, if this is what we think should be done, then we should go ahead and do it. We must respect the rules of the game that we have agreed on and we must not neglect principles and mechanisms for the sake of our convenience. For if not, what is the point of having mechanisms?

President, there are some groups that think that the Government should base its actions on the latest and most accurate data and rethink the pay adjustment proposal for senior civil servants. May I ask in return if, should this become a precedent, when the economy turns bad later, we shall allow the Government to consider the latest data at any time and readjust civil service pay in order to effect a pay cut in line with the latest economic conditions?

President, I would think that people who have joined the civil service are persons with commitment and they are sensible. It could well be the fact that many of them would agree that it is in line with the overall interest of Hong Kong to act according to principles and mechanisms.

President, I notice that earlier on, Dr Margaret NG pointed out in her speech that legislating to effect a pay cut was not the best option. The Government has promised that a review would be conducted and I think that the Government should take concrete steps to follow up and respond. Some Honourable colleagues have asked whether or not moneys could be entered into the account books as a freeze in pay instead of resorting to a pay reduction. There are also Honourable colleagues

DR MARGARET NG (in Cantonese): I wish to clarify the speech I have just made.

PRESIDENT (in Cantonese): You can only make a clarification after Mr Paul CHAN has finished his speech.

MR PAUL CHAN (in Cantonese): Thank you, President. I will continue.

Some other Honourable colleagues have suggested whether or not civil servants could be classified into four categories instead of three according to their remuneration. I think that all these can be considered. But before a review is complete and before any new mechanism is in place, we can only handle matters according to the existing mechanism.

President, I so submit in support of the resumption of the Second Reading of this Bill.

DR MARGARET NG (in Cantonese): President, I only wish to make a clarification of what Mr Paul CHAN has said in his speech. He said that I pointed out in my speech that legislating to effect a pay cut was not the best option. What I said in my speech was that legislating to effect a pay cut was an abuse of procedures and a contravention of the relevant principles. It is not an acceptable option. Thank you, President.

MR LEUNG KWOK-HUNG (in Cantonese): President, the debate today is about systems. How should a system be set up? Now we do have a system but I am put under the constraints of that system. On 8 July this year, I received a document from Mr Eammon MORAN, Law Draftsman at the Department of Justice in which it was mentioned that the Bill which I drafted on the reduction of principal officials' pay, that is, the Proposed Members' Bill on Principal Officials Pay Reduction Bill, was confirmed by him to be in order. That is to say, this is a piece of ordinary legislation and it could well be that no irregularities are found. Then I got a letter from the Clerk to the Legislative Council, that is to say, the President instructed the Clerk to the Legislative Council to write me a letter which is in effect as follows: "Mr LEUNG, the President of the Legislative Council has received your letter dated 17 September 2009 requesting the President to respond to your request to introduce the abovementioned Bill as soon as possible. The President has instructed me to reply to your letter. I have written to you on 24 July 2009, relaying the response from the Administration to the abovementioned Bill." What is the response? It turns out that my Bill has implications on government policy and also how the territory is to be governed.

This is because a pay reduction will not incur any expenses and there will not be any so-called financial implications. The Secretary is in attendance now.

Ladies and gentlemen, there are many people who indulge in exaggeration. These include CHEUNG Man-kwong, who says that the system is a good one. We have a new system and it is an illegal structure. This is because in 1997, there was no such system under the Basic Law. Even if TUNG Chee-hwa was bringing disasters and miseries to Hong Kong, he would not dare set up such a system. At first he only talked about an accountability system. We have a chap called Donald TSANG and he said that the accountability system should be further strengthened. How was that to be carried out? This was to hand out more money, hire more retired civil servants or those whom he favoured, or members of political parties which were close to him. Right? This is a system marked by cronyism. The son of a former Member of this Council, Mr YOUNG, was picked and he got that lucrative position. There are also people from the DAB and that is the fellow who gave his name card away. Colleagues in the Government asked him some questions about tax matters and he gave his name card to show that he is a Deputy Director of Bureau. I would not be surprised to hear this because people in the Inland Revenue Department and the Immigration Department do not know about that, they know nothing about Deputy Directors of Bureaux and like I say, such a state of affairs is like an appendix and must be removed, for it will get decayed.

As Members of this Council, we should act according to the system. Actually, the Government has forced its way by adding an illegal structure in politics on us. This illegal structure is called Deputy Directors of Bureaux and Political Assistants. These people have an outrageously high salary. Many of them are civil servants and when they retire, they have nothing to do, so they come back and take up the post of a Deputy Director of Bureau. I have talked about the issue many times and the situation is, when some civil servant reaches retirement age, someone will say to him, "Buddy, get another job after you have retired, change another seat." That person may have performed well when he was a civil servant or maybe due to some other reasons, he is awarded the post of a Deputy Director of Bureau. What kind of a system is that? Under such a system, the person got a job with a salary that he did not deserve when he worked as a civil servant and he cannot possibly fetch such a salary outside. Then what is that fuss about pay trend survey? Buddy, the Government is taking the lead in doing something unjust and it is differentiating between those who are close to it

or distant from it. It is indulging in favouritism and cronyism. It is not qualified to talk about mechanisms with civil servants. The Government says that it is doing these to save money for the people. Who will believe in such nonsense? Ladies and gentlemen, I am now constrained by this system and I cannot do anything to reduce the pay of this bunch of people — the Deputy Directors of Bureaux, Political Assistants and the Secretaries of Departments and Directors of Bureaux.

Ladies and gentlemen, Mr Paul CHAN has left this Chamber, many CEOs and CFOs became heavily in debt as a result of the financial tsunami and they even plunged to their death from buildings. But I have never seen you people plunge to your death from buildings. You have given the victims of the Lehman Brothers minibonds such a bad time. This gentleman Joseph YAM is retired with all the glamour and honours. He is awarded the Grand Bauhinia Medal. What kind of a system is that? Had he been working in the private sector, he would have been fired a long time ago. Why are all these lousy talks about justice and working according to market rates?

Ladies and gentlemen, the private sector market does not have any bargaining power because once after the reunification, the SAR Government under TUNG Chee-hwa made use of the Members of the Provisional Legislative Council who were not returned by election and they axed this right to collective bargaining. Such laws were enacted by the former Legislative Council, were they not? What kind of law did they invoke to do such things? And they even dared to say that they were acting according to the law.

It is only with collective bargaining rights that there can be a fair platform for both parties to engage in negotiations. This Government condones all sorts of misdeeds in the private sector, things like lavish pay cuts, layoffs, contracting out services, and so on, leading to a great drop in labour prices and a drastic fall in the pay of professionals as well. And it is saying that it is looking at market prices on that basis. For those who are so fat that they cannot even put on their socks, why has nothing been done to measure the value of their assets, which has grown to such indecent proportions?

Let me say once more, now it is not a question of civil servants getting a pay that is too high but it is one of the working people in the private sector who get such a deplorably low pay. The Government knows well that this is the

result of its policies. The protection given to workers in the labour laws of Hong Kong is tantamount to nothing. We used to have the right to collective bargaining, but now it is cut. Those who join labour unions used to be free from discrimination and unfair dismissal, but this right is cut and is no more. People who go on a strike can be dismissed at any time. One often hears leaders of strikes get fired. The Government is making use of this system and the effect is that workers who used to be in a very unfavourable position in their bargaining power are now seeing their wages fall and dwindle. The Government says to its employees, "The situation outside is so terrible, can you make do a bit?" Why do Members not say to the employers in the private sector that their employees are in a miserable situation and they should be given some pay rise? Doing that is like pumping water from a worn out boat and that prevents it from getting stranded.

But the Government has not done that. It is not doing that. It is joining hands with these people by first suppressing wages in the private sector and imposing long working hours. Then it asks civil servants to accept a lower salary and work longer hours. Secretary, I also work in a government building. Do you know civil servants look so tired when they walk out from their office? When I go to my office in the evening, it is the time when they go out. Do you know how dog-tired they are? Do you know that there are no traffic jams in Central when it is five o'clock in the afternoon? And one could sit back cosily and cross his legs in the MTR and read a newspaper.

In the private sector, the working hours of grass-roots workers are not regulated and there is no protection in the form of a minimum wage and wages fall all the time. The white collar workers are facing a similar situation with these grass-roots workers. But now the Secretary is saying on the contrary that the economic conditions outside are so bad and civil servants cannot pretend to see nothing and be immune. This is actually a distortion, like what is seen in front of a laughing glass. In the case of Dr LEUNG Ka-lau, he says that if doctors do not get any paid leave, they should go to the Court. But the Government is saying that no allowance will be paid. Ladies and gentlemen, this is an act of an unscrupulous employer. All that this Bill of mine is trying to do is to vent some grievances of the public by slashing the pay of all top officials by 25%. Do they not dare face up to this? My Bill is rejected by the Chief Executive and I am not allowed to introduce it and no voting will be held in this Council for that Bill. So this talk about paying respect to the mechanism is only

like seeing trees but not the forest. Or it can be said the other way round. This is really an unreasonable system.

Ladies and gentlemen, I wish to be enlightened by Honourable colleagues who support the idea of invoking this mechanism to effect a pay cut. In private enterprises, where the bargaining powers are in such great disparity, when employees of private enterprises know that civil servants are forced to accept a pay cut despite their large numbers, just think how great the impact is on the private market. I am very surprised to see that CHEUNG Man-kwong will say these things although he is a trade union leader. What kind of position was he taking when he said such things? Ladies and gentlemen, I read from the newspaper that the staff of the British Airways will stage a strike in Christmas because their salary is slashed by the company and they are dismissed for no good reason. I do not know what Members will think of that. Will Mr CHEUNG Man-kwong oppose their going on a strike?

Ladies and gentlemen, I now show you a photo and it is a photo I took with a group of civil servants when I was released from jail in July 2000. They said that they hated the Government for contracting out government services and they were forced to have a pay cut because of that. At that time I was very thin and now I have put on some weight. Now nine years have passed, and the Government resorts to using this dirty trick again. But our public coffers are now inundated with surplus. Our capitalists are still standing strong after the turmoil and the tsunami. Norman CHAN has said in public that there will be asset bubbles because of this huge inflow of liquidity. But at that time the Government was saying that it was short of funds and a deficit was feared. What were its justifications for saying that?

Now the rich people have more money than those caught and drowned in the financial turmoil of 1999. And they are gambling in far crazier ways. People in society say that they have not earned enough money and Hong Kong should be made on par with the international market, so workers have to be paid less. So civil servants have to be paid less. The working class is to be paid less. This is the crux of the problem. Even if there is a system, it has to be broken. On the other hand, can employees share the growth in GDP? Can they enjoy that portion of wealth? If they cannot, what kind of a society is this? This is the reason why Hong Kong is rated as the place with the most glaringly wide wealth gap. Today, there are Members who support the Government for

taking the lead in imposing a pay cut on civil servants. What comes next is a drop in the wages in the private sector. Members like these do not deserve to be unionists and they are not qualified to talk about social justice. They should be public officers instead. CHEUNG Man-kwong should take the place of Michael SUEN.

MR WONG YUK-MAN (in Cantonese): This is exactly what he wants.

MR LEUNG KWOK-HUNG (in Cantonese): Ladies and gentlemen, I will never agree to this matter. I only hope to achieve one thing: That there should be universal suffrage in Hong Kong, that there should be a massive resignation of Members of the five geographical constituencies, and a referendum. All these are done in the hope of having a platform like this. Now Members are sitting separately here. Those royalists do not want to have this platform. All the civil servants in Hong Kong should support this massive resignation of Members of the five geographical constituencies and a referendum in order that this Government be taught a real good lesson. Let us all come out and join the march and voice our opposition to this Government! Let us come out and join the march on 1 January!

DR RAYMOND HO (in Cantonese): President, first of all, in the course of scrutinizing this Bill, I hoped the Government would withdraw it. However, the Government was not willing to withdraw its proposal, nor did it accept the proposal of implementing a comprehensive pay freeze.

The Civil Service of Hong Kong has always been renowned for being clean and efficient, and this excellent team also provided a significant stabilizing force during the process of the return of Hong Kong's sovereignty to China. Over the past decade or so, the economy of Hong Kong sustained many blows. Like most people of Hong Kong, public officers were also under tremendous pressure, including (a) the streamlining of organizational structure to reduce manpower and expenses incurred by government departments or public organizations — since the return of sovereignty, the number of civil servants has been reduced from almost 190 000 to 160 000 at present; (b) the outsourcing of work processes — the manpower of many government departments has been significantly reduced;

and (c) the implementation of pay reductions by legislation — such as the implementation of pay reductions by legislation in 2002, which was the first instance.

Regarding the pay of public officers, my stance has always been very clear and consistent. In 2002, the Government unilaterally implemented pay reductions by legislation, disregarding the opposition of public officers. I considered the Government's proposal improper and unfair and in violation of the contractual spirit. There is an employment contractual relationship between the Government and public officers, and public officers' terms of services should be protected by the relevant contractual provisions. Therefore, I was strongly opposed to the Government's proposal back then and this was not in line with the view of the then Breakfast Group — this is a response to Mr WONG Yuk-man but he is not present now — over the years, I have repeatedly urged the Government to maintain communication and carry out active negotiation with public officers and civil servants on the issue of pay levels and avoid repeating the same mistakes. However, it is indeed very disappointing that the Government has insisted on implementing pay reductions by legislation again without thoroughly considering the views of public officers.

To my understanding, public officers' opposition to the Government's present pay reduction decision is well-founded. First of all, in making this pay reduction decision, the Government, being the biggest employer in Hong Kong, did not observe the principle of according fair treatment to all. Although the Government has decided to freeze the pay of public officers at the lower level, it has proposed to reduce the pay of public officers at the middle level and above by legislation. This move has greatly undermined the team spirit of public officers, which has been good all along. Besides, it has also put these public officers in a very embarrassing position. If they put up a strong case for opposing the proposed pay reduction, they may easily be in conflict or even in confrontation with the public, which will greatly undermine social harmony. If they compromise and accept the proposal, the morale of public officers will inevitably be impacted on or seriously affected, which will also create an adverse effect on the society. As the biggest employer, the Government will set a very bad example if it adopts an approach which will have a divisive effect on its employees. How can it attract outstanding talents to join the Civil Service in the future?

According to the Government's pay reduction proposal, most public officers affected are skeleton staff and young professional staff in the middle salary band, such as engineers and teachers, all of whom are important pillars in the daily operation of the Government and conscientious middle band civil servants providing quality public services to the community. Take the pay of government engineers as an example, the starting pay point of engineers with professional qualifications is point 32 on the Master Pay Scale (MPS). After two years of service, their pay will reach MPS 34, which will already bring them under the scope of the so-called "upper band public officers" for pay reduction purpose. Actually, these medium-paid public officers are not those "high-ranking officials" perceived by the public. Like the middle class of Hong Kong, they are already under a tremendous financial burden. The proposed 5.38% would mean a substantial pay cut, which already represents a reduction of over one-twentieth of the salaries of the public officers concerned and will create a great impact on them. They generally have to support their families and meet regular monthly expenses, such as mortgage payments and their children's educational expenses. The blow dealt by the proposed pay reduction to them should not be neglected and it will definitely lower their living standard.

The approach adopted by the Government in implementing the pay reduction proposal is also open to question. Shortly after the release of the pay trend survey (PTS) findings, the Government attempted to exert pressure on the public officers affected in this pay reduction exercise by announcing that a pay reduction of 5.38% would likewise be implemented on politically appointed officials. The pay of politically appointed officials and public officers are different both in structure and level, and the PTS is definitely not applicable to politically appointed officials. A direct comparison between them is actually inappropriate. However, causally announcing the pay reduction of 5.38% for politically appointed officials without adequately considering other factors under the pay adjustment mechanism, the authorities have cast doubts on whether they have other political considerations and whether they were trying to win public favour at the expense of the interests of public officers, in particular public officers in the middle salary band.

In making decisions on the public officer pay adjustment, the Government has all along stressed that the net pay trend indicators (PTIs) are not the sole decisive factor, and other considerations include the state of the economy, changes in the cost of living, the Government's fiscal position, the pay claims of

the staff sides and the state of the civil service morale. Insofar as the economy of Hong Kong is concerned, although it is not yet entirely free from the adverse effects of the global financial turmoil last year, the situation is still better than expected. This is also why the pressure on the Government's finances is not as great as expected. Given these positive developments, the Government needs to reconsider the necessity of adjusting the pay of public officers. Besides, the pay reduction will have limited effect on improving the Government's fiscal position. According to figures provided by the Government, the proposed pay reduction will achieve an annual savings of about \$2.1 billion for the Government. As the Government's annual pay adjustment for the coming year will take effect in April, even if this Bill is passed by this Council and the pay reduction will take effect on 1 January next year, that is, next month, it will only be implemented for about three months, and will achieve a savings of only \$529 million in the end. It is arguably very unwise for the Government to disregard the negative impact of the pay reduction exercise on the entire Civil Service and society just for such a small savings. As the operative date is 1 April, only a very small savings will be achieved, thus resulting in more loss than gain. It is expected that the pay of public officers will continue to be the media focus in the coming few months. With reports sometimes on pay reductions and sometimes on a new round of pay adjustment, the public will easily be confused and misled into thinking that there are problems in the Government's ability of governance.

Recently, a number of large organizations have decided to offer pay rises or terminate their temporary pay reduction measures for this year; and results of surveys on private sector pay levels have also indicated that there should be opportunities for pay rises in the coming year. The Government's successful implementation of a pay reduction for public officers may send a wrong message to subvented organizations and the private sector and bring about a vicious circle of pay cut, thereby creating a negative impact on the economy, which has just begun to pick up.

President, for these reasons, I oppose the subsequent Second Reading. Thank you, President.

MR TOMMY CHEUNG (in Cantonese): President, last year, the financial tsunami triggered by the Lehman Brothers incident dealt a severe blow to the global economy and the economy of Hong Kong. A spate of business closures

and the plunge in the gross value of domestic export have brought about another major crisis to the industrial and commercial sectors, particularly small and medium enterprises, and naturally, the labour market cannot avoid being affected.

Actually, the unemployment rate has begun to rise gradually since the third quarter last year, and it has risen rapidly from 3.3% in July to September to 5.4% at its peak in April to June this year, with an increase of 74 000 in the number of unemployed. Many workers who were spared from redundancies still have to face reductions in salaries, commissions and benefits, thus resulting in a considerable reduction in their income.

Therefore, the Civil Service Pay Trend Survey (PTS) this year has inevitably reflected the impact of the financial tsunami on the employment market of Hong Kong, and negative net pay trend indicators (PTIs) have been recorded for the upper, middle and lower bands as a result.

As the PTIs recorded for civil servants in the middle and lower bands were only slightly negative, which were specifically -1.98% and -0.96%, the Government indicated that in view of the slightly negative net PTIs, coupled with such factors as the mild inflationary environment and the state of the civil service morale, only a pay freeze instead of a pay cut would be proposed for civil servants in the middle and lower bands. The Liberal Party considers that this will be helpful in cushioning the some 136 000 civil servants in the lower levels against financial pressure. Therefore, we support this decision.

As for upper band civil servants, the net PTI recorded was -5.38%. The Government proposed to act in accordance with the mechanism, that is, to implement a pay cut only on those whose monthly salary is about \$50,000 or above, which will involve a total of some 18 000 upper band civil servants and directorate officers.

President, no one would like a pay cut. Therefore, I am well aware of and understand the feeling of upper band civil servants facing a pay cut, and I also understand their discontent. Actually, if this pay reduction proposal is passed, my wife will also have a pay cut. Strangely enough, when she was teaching at university, she also experienced a number of pay cuts, just that this time she has made a special request. One day, when I suggested eating out, she asked me whether I was very well-off. She said as she would have a pay cut, we had

better make up the amount of pay to be reduced by the money spent on eating out. She had never had any reaction like this before, but this time she suddenly did. Therefore, I understand that not only civil servants dislike a pay cut, the catering industry will be dealt a severe blow as well. I am very concerned that starting from next month, I will have to eat at home and will not be able to eat out for a few months, and will therefore be unable to support my industry. Certainly, all of us from the Liberal Party, whether representatives of the retail industry or the catering industry, understand that the first thing civil servants or staff in the private sector will do after the implementation of the pay reduction is to cut unnecessary expenses, such as eating out or buying clothing. Having said that, however, we still think if even civil servants do not act in accordance with the mechanism, the public will think they enjoy special privileges and can hold only those cards to their advantage and act without adhering to the mechanism.

Actually, it is already 16 December 2009 today, and many Honourable colleagues have mentioned that this is the last meeting day of this Council this year. As civil service pay reductions do not have retrospective effect, even if the Public Officers Pay Adjustment Bill is passed today and a pay reduction is to be implemented, it will only take effect at the beginning of next year, and a PTS for a new year will commence in a few months. As the market has been picking up gradually, many organizations have indicated that they will implement pay adjustments. If positive PTIs are recorded in the PTS next year, the relevant pay adjustments will take retrospective effect from April next year, that is, the pay reduction will actually be implemented for only three months. Therefore, I very much hope civil servants will tide over the short-term difficulties with the public with the greatest of endurance.

Besides, the Finance Committee has just endorsed the pay adjustment levels in the Grade Structure Review (GSR). Among the some 18 000 upper band civil servants, including the civilian grades and disciplined services grades, about over 30%, representing about over 6 000 staff, will have a pay rise of 3% to 5% with retrospective effect from 1 April this year. In other words, they may have a pay rise before a pay cut, and their actual pay will not be substantially reduced, or may even be slightly increased.

Therefore, regarding the amendments proposed by Dr Margaret NG, Mrs Regina IP and Dr Raymond HO separately requesting the lowering of the pay reduction rates to 3.4% and 2.91%, as they would mean a departure from the

mechanism, the Liberal Party is unable to support them, and it also hopes the relevant civil service staff associations will understand this.

Certainly, if Members consider that there are problems in the existing pay adjustment mechanism or this mechanism can be improved or even adjusted in some ways, they may bring them up later for consideration by the authorities.

President, I so submit.

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

(No other Member indicated a wish to speak)

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

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): President, first of all, I am very grateful to Members who have expressed their views just now, and I am also very grateful to Mr IP Kwok-him, Chairman of the Bills Committee on Public Officers Pay Adjustment Bill (Bills Committee) and other members of the Bills Committee for their valuable opinions expressed during the scrutiny of the Public Officers Pay Adjustment Bill (the Bill), which have made the successful scrutiny of the Bill possible.

The Civil Service, with a large number of staff, is huge. Its annual pay adjustment concerns the benefits of over 150 000 civil servants and affect, to varying degrees, the amount of subvention for Government subvented organizations. Besides, as expenditures on civil service emoluments and subvention for subvented organizations are met from public funds, which come from the public, it is vitally important to implement in concrete terms an established, generally-recognized and credible mechanism, thereby promoting the stability of the Civil Service and the winning of public support.

The existing annual pay adjustment mechanism for the Civil Service has been in place for over two decades. It has witnessed pay increases, pay freezes

and pay reductions, and has been operating well and accepted by the society and colleagues in the Civil Service. Under the existing mechanism, non-directorate civil servants are grouped into three salary bands according to their pay points, that is, the upper, middle and lower salary bands, and there are also directorate grade officers. Every year, the Chief Executive-in-Council, having regard to six factors, namely, the net pay trend indicators (PTIs) obtained in the annual pay trend survey (PTS), changes in the cost of living, the Government's fiscal position, the state of the economy, the pay claims of the staff sides and the state of the civil service morale, will make decisions on the pay adjustments for civil servants in the three salary bands and directorate civil servants.

As in the past, the decision on the 2009-2010 civil service pay adjustment was made in strict accordance with the mechanism mentioned just now. In June this year, the Chief Executive-in-Council, having regard to the factors set out under the mechanism, decided to freeze the pay of civil servants in the lower and middle salary bands and adjust downward the pay of civil servants in the upper salary band and above (that is, civil servants with a monthly pay of more than \$48,400) by 5.38%. To implement the Government's decision, we introduced the Bill to the Legislative Council for scrutiny on 8 July this year.

The reason for effecting pay reductions by legislation is that the employment contracts of the vast majority of civil servants do not expressly authorize the review of the pay scales according to the annual pay adjustments, including pay reductions. According to legal advice, at common law, a party to a contract shall not unilaterally vary the terms of the contract. Therefore, without the employee's consent or in the absence of any express provision in the contract to retain this power for the employer, the employer shall not unilaterally adjust the employee's pay downward. Therefore, effecting the downward adjustment of the civil service pay by legislation is the only proper approach at present.

Just now, quite a lot of Members mentioned that the Government should formulate a mechanism which would allow for upward and downward pay adjustments. Actually, the Government has all along been committed to communicating with the staff sides in this respect. Since my assumption of the office of the Secretary at the beginning of 2006, I have repeatedly discussed this issue with the staff side representatives. At a recent meeting, the staff side representatives still maintained that they were not inclined to effecting civil

service pay reductions by introducing a general enabling legislation. They opined that if there was a need to reduce the pay of civil servants, resorting to a one-off legislation, such as the Bill being scrutinized at this meeting this afternoon, would be a better alternative. However, we will continue to discuss this issue and negotiate with the staff side representatives.

Given the present economic recovery, some Members also queried the necessity of legislating for pay reductions for civil servants in the upper salary band or above at the present stage. I would like to point out that under the existing mechanism, the PTS based on pay movements in the market is one of the considerations. Unavoidably, findings of the PTS only reflect the statistics on the pay movements in the market over the previous year. Therefore, the annual civil service pay adjustment is bound to lag behind rather than stay ahead of the market. This time lag will exist in both pay increases and reductions.

In 2001, the Government decided to increase the pay of civil servants due to pay movements in the market and other considerations. However, before the implementation of the pay rise, the economy of Hong Kong experienced a downturn. At that time, some people opined that the Government should exercise flexibility and deal with the issue in a timely and appropriate manner by abandoning the decision concerning the civil service pay increase. However, the Government considered this inappropriate. We had to adjust civil service pay upward according to the decision made in accordance with the established mechanism. The economic downturn would be reflected in the PTS in the subsequent year and would be reflected in the Government's decision as to whether or not and how the civil service pay should be adjusted in the subsequent year.

Certainly, the time lag between the annual civil service pay adjustment and the market conditions is more obvious in times of pay reductions. Why? Because pay reductions have to be effected by legislation, and the enactment of legislation has to go through an established scrutiny process.

President, we are glad to see that the present economic condition of Hong Kong has changed and improved compared with that in June this year, when the Government made the decision to reduce the pay of civil servants in the upper salary band and above. However, those who consider that the Government

should withdraw the pay reduction decision on this ground are indeed very short-sighted because they are actually encouraging the Government to depart from the established mechanism. Once this precedent is set, should the Government exercise flexibility by immediately changing or withdrawing its pay rise decision when the economy experiences a downturn before its decision to adjust the civil service pay upward is implemented? Or when the magnitude of the economic downturn turns out to be greater than when the pay cut decision was made, should the Government flexibly increase the pay reduction rate already decided? Requesting the Government to deal with the issue with flexibility is actually requesting it to depart from the established mechanism and the timetable, and alter the civil service pay adjustment rate which has already been decided. This will deal a very severe blow to the existing system and will also have a significant adverse effect on the credibility of the system, the stability of the Civil Service and the acceptability to the Civil Service and the public of the annual civil service pay adjustment mechanism.

Just now, some Members and members of the public have criticized the civil service pay reduction exercise this year for being late and queried why the pay reduction does not have any retrospective effect. I would like to point out that, according to legal advice, having regard to the provisions under the Basic Law, civil service pay reduction legislation may only come into effect on a prospective date and pay reductions shall not take retrospective effect because this is illegal. From a practical point of view, we think the affected staff will need some time to make appropriate financial arrangements before the pay reduction is effected. Besides, it is inappropriate for the Government to recover from the affected staff the salary which they have already received and are entitled to according to the terms of services applicable on the day of service provision. Therefore, it is legal and reasonable for the pay reduction to be implemented without retrospective effect.

Some Members also opined that as the pay reduction would only be implemented for three months, that is, from January to March next year, it should be shelved. This remark is made on the basis of two assumptions: First, it is assumed that the civil service pay will be adjusted upward again in 2010-2011; and second, the upward adjustment will take retrospective effect from April 2010 as usual. At the present stage, the Government is unable to predict the result of the civil service pay adjustment for the coming year. However, I would like to

point out that the duration of the pay reduction is not a consideration in our decision of whether or not a pay reduction should be implemented. Therefore, the fact that the pay reduction would only be implemented for a few months shall not constitute a justification for not implementing a pay reduction because this will not only amount to a failure to adhere to the mechanism but will also undermine the credibility of the existing mechanism.

Some Members also queried why the Government made different decisions on pay adjustments for civil servants in the upper salary band and those in the middle and lower salary bands after taking into account the same set of six factors, and they also considered this arrangement unfair. Other Members said the authorities' present decision was not made in strict accordance with the net PTIs and is thus at variance with the established adjustment mechanism. I have to make it clear that the existing annual civil service pay adjustment mechanism does not require a mechanical adjustment of the civil service pay according to the relevant net PTIs because there are also other factors under the mechanism, each of which may have varying effect on civil servants in different salary bands. Actually, if the Government decides to adjust civil service pay according to the net PTIs in certain years, it should not be taken as giving no regard to the other five factors; on the other hand, if the Government does not adjust the civil service pay according to the relevant net PTIs in certain years, it should not be taken as not having included the relevant net PTIs as one of the factors for consideration.

Actually, in 1998, after taking into account various related factors, the Government did not increase the pay of directorate civil servants remunerated at point 3 or above of the directorate pay scale according to the net PTI, and a pay freeze was imposed on this group of civil servants when all other civil servants had their pay increased.

President, I would like to reiterate that the Government has decided to implement a pay freeze on civil servants in the lower and middle salary bands in 2009-2010 in accordance with the mechanism which has been working well. This decision was made having regard to various factors, including the net PTIs of -0.96% and -1.98% applicable to the respective groups, the mild inflationary environment, the affordability of the civil servants concerned and the impact on the civil service morale. I am afraid that adamantly applying the same arrangement on civil servants in the upper salary band and above will hardly be acceptable to the public. We understand that among the 2 million households in

Hong Kong, those with a monthly income of over \$40,000 account for only about 17% of the total number of households in Hong Kong.

The Government attaches great importance to the morale of the Civil Service as a whole and acknowledges the efforts made by colleagues in the Civil Service in times of challenges. We understand that like ordinary workers, civil servants do not like to see any pay reduction proposal, and the authorities totally understand how they feel. However, we think it is equally important to uphold the consistency, acceptability and credibility of the pay adjustment mechanism.

President, this pay adjustment decision is made by the Government after thorough consideration and balancing all relevant factors under the established mechanism, and is supported by society. After the Government's announcement of its pay adjustment decision in mid-June this year, I noticed that there were many press reports that the public had clear expectation of the civil service pay system, that is, the system must reflect the pay movements in the private market, and the civil service pay must allow for upward and downward adjustments and there must be a system to follow. Neither the management side nor the staff sides should hold only those cards to their advantage. Findings of the PTS indicated that the pay of civil servants in the upper band should be reduced by over 5%, which represents an amount that is not small. If it turned out that only a pay freeze would be implemented in the end, we could hardly account for this to the public. This will also cause the civil service pay system to become one which allows only for upward adjustments or pay freezes but not downward adjustments, which is tantamount to completely destroying a mechanism which was established with the strenuous effort made over several decades simply for the sake of momentary political convenience.

President, I hope Members will support the resumption of the Second Reading debate of the Bill. I will move the Government's amendments at the Committee Stage later. I will also express the Government's opposition to the amendments of Dr Margaret NG, Mrs Regina IP and Dr Raymond HO, and will present the justifications for the opposition.

Thank you, President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Public Officers Pay Adjustment Bill be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Dr Margaret NG rose to claim a division.

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

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

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

Mr Albert HO, Mr Fred LI, Mr CHEUNG Man-kwong, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr WONG Yung-kan, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Ms Emily LAU, Mr Andrew CHENG, Mr Timothy FOK, Mr TAM Yiu-chung, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Vincent FANG, Mr LEE Wing-tat, Dr Joseph LEE, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr KAM Nai-wai, Ms Starry LEE, Dr LAM Tai-fai, Mr CHAN Hak-kan, Mr Paul CHAN, Mr CHAN Kin-por, Mr WONG Sing-chi and Mr IP Kwok-him voted for the motion.

Dr Raymond HO, Mr LEE Cheuk-yan, Dr Margaret NG, Mr LEUNG Yiu-chung, Ms LI Fung-ying, Mr Albert CHAN, Mr Frederick FUNG, Ms Audrey EU, Mr WONG Kwok-hing, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr Ronny TONG, Prof Patrick LAU, Ms Cyd HO, Miss Tanya CHAN, Dr Priscilla LEUNG, Dr LEUNG Ka-lau, Mr CHEUNG Kwok-che, Mr WONG Kwok-kin,

Mr WONG Yuk-man, Mr IP Wai-ming, Mrs Regina IP and Dr PAN Pey-chyou voted against the motion.

Mr Paul TSE abstained.

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

THE PRESIDENT announced that there were 54 Members present, 29 were in favour of the motion, 23 against it and one abstained. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

CLERK (in Cantonese): Public Officers Pay Adjustment Bill.

Council went into Committee.

Committee Stage

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

PUBLIC OFFICERS PAY ADJUSTMENT BILL

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Public Officers Pay Adjustment Bill.

CLERK (in Cantonese): Clauses 1, 2, 4 and 8 to 13.

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

(No member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clauses 1, 2, 4 and 8 to 13 stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

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

CLERK (in Cantonese): Clauses 3, 5, 6 and 7.

CHAIRMAN (in Cantonese): Dr Margaret NG, Mrs Regina IP and Dr Raymond HO have separately given notice to move amendments to clauses 5, 6 and 7. Dr Raymond HO will also propose a consequential amendment to clause 3.

CHAIRMAN (in Cantonese): As amendments to clauses 5, 6 and 7 by Dr Margaret NG, Mrs Regina IP and Dr Raymond HO relate to the same text, I shall therefore follow the established practice and deal with Dr Margaret NG's, Mrs Regina IP's and Dr Raymond HO's amendments in the order in which their notices were given.

The wording of the amendments of Dr Margaret NG and Mrs Regina IP are substantially the same, I shall only invite Dr Margaret NG to move her amendments. Irrespective of whether Dr Margaret NG's amendments are passed or not, Mrs Regina IP may not move her amendments. In addition, if Dr Margaret NG's amendments are passed, Dr Raymond HO may not move his amendments which are inconsistent with the decision already taken. If Dr

Margaret NG's amendments are negatived, Dr Raymond HO may move his amendments.

CHAIRMAN (in Cantonese): Members may now have a joint debate on the original provisions and Dr Margaret NG's, Mrs Regina IP's as well as Dr Raymond HO's amendments. I shall call upon Dr Margaret NG to speak first, to be followed by Mrs Regina IP and Dr Raymond HO; but no amendments are to be moved at this stage.

DR MARGARET NG (in Cantonese): Chairman, my amendment is very simple. The reduction rates stated in clauses 5, 6(1) and 7(1) are 5.38%, and my amendment seeks to lower these pay reduction rates to 3.4%.

Chairman, regarding this amendment, how was this figure arrived at? We are of the view that even if a pay reduction is to be implemented, equal treatment should be accorded to all. If the Executive Council can exempt the pay reduction of 1.98% for the middle band civil servants, it should accord equal treatment to upper band civil servants, and the difference of the two figures is 3.4%.

Chairman, why did we propose this amendment? Because lowering the reduction rate can reduce the impact of pay reduction on the livelihood of some civil servants. Chairman, in the debate just now, many Members said they supported this pay reduction exercise because of the need to act in accordance with the established mechanism. Actually, what is the so-called established mechanism? After the announcement of the findings of the pay trend survey (PTS), the discrepancy between the civil service pay levels and the market pay levels will be worked out. Then, the Executive Council will decide whether to implement a pay reduction, a pay increase or a pay freeze; and it will also decide the reduction rate if a pay reduction is to be implemented. This is the so-called established mechanism. As the Executive Council has the flexibility to implement a pay reduction according to the survey findings or with moderation, even if we act according to the established mechanism, we do not necessarily have to implement a pay reduction according to the difference between the civil service pay levels and the market pay levels as shown in the survey without moderation. Therefore, even if Members have expressed support for the

established mechanism during the Second Reading debate just now, they can also support my present amendments.

Chairman, I would like to explain whether there is any inconsistency between these amendments by the Civic Party and our stance adopted in the Second Reading debate. Chairman, the situation was when we initially discussed the issue with civil servants, we told them we did not support implementing these pay reductions by legislation. We asked them whether they would like us to propose any amendment as a compromise if our opposition to legislating for pay reductions turned out to be futile. At that time, they expressed a strong wish for us to do so. Initially, we hoped to seek greater consensus and secure the support of the majority of Members to pass these amendments, so that even if we were unable to act in strict accordance with our principles, the harm would be reduced. Now, however, it seems our efforts are futile. Although we have proposed this compromise on behalf of the upper band civil servants, it seems this compromise is only wishful thinking and is unable to secure a consensus. Nevertheless, we still think we should propose it for the upper band civil servants in order to do them justice because they also wish the Executive Council to accord them equal treatment with the middle and lower band civil servants insofar as the approach and principles are concerned. I hope even those Members who have expressed support for resuming the Second Reading debate of this Bill just now and consider that we should act in accordance with the principles under the mechanism will also support my amendments. Thank you, Chairman.

MRS REGINA IP (in Cantonese): Chairman, the amendment I proposed is the same as that proposed by Dr Margaret NG. Dr Margaret NG has already given a clear account of how the reduction rate was worked out. I proposed these amendments simply because I hope the Government of the Hong Kong Special Administrative Region (SAR) will be compassionate to civil servants. As the pay reduction of 0.96% for the lower band civil servants can be exempted, and that of 1.98% for the middle band can also be exempted, why cannot the Government also be compassionate to the upper band civil servants and alleviate their hardship by deducting 1.98% from the original 5.38%, resulting in a reduction rate of 3.4%? Actually, 3.4% already represents a very substantial reduction. Some Honourable colleagues have just said this pay reduction may only be implemented for three months and there may be a pay rise in the future

but this reduction for three months may also affect the amount of pension receivable by some civil servants and also the base level of their future pay rises.

Despite the grand and high-sounding explanation given by the Secretary just now, there is no way to conceal the fact that the present selective pay reduction is a political decision. The Government simply wants to target the pay cut at the upper band civil servants who are most vulnerable to bullies to avoid arousing an outrage among the public who may think that civil servants can always be assured of stable and well-paid jobs. If civil servants are to tide over the difficult times with the public in line with the principle of the so-called equality of misery, that is, when members of the community are in misery, civil servants also have to be in misery, then the authorities have to target the pay cut at the so-called upper band civil servants.

Actually, this is even a worse scenario than before. I remember that at the time when TUNG Chee-hwa was Chief Executive, at least the accountability officials initiated a pay reduction of 10% for themselves, which had forestalled grievances and complaints from the upper band civil servants with a monthly salary of \$40,000 to \$50,000 because those who held higher ranks had to take a greater pay cut. Now, civil servants earning a monthly salary ranging from \$40,000 to \$50,000 to over \$200,000 are all regarded as within the upper band, and are subject to the same rate of reduction, which has made them consider this unfair.

Therefore, I urge Honourable colleagues, notwithstanding their support for the resumption of the Second Reading of the Bill, to be compassionate to civil servants in the lower end of the upper band, the vast majority of whom have a monthly salary of \$40,000 to \$50,000, and support lowering the pay reduction rate to 3.4%.

I would also like to take this opportunity to request the Civil Service Bureau to make a clarification because during the course of my lobbying, some Honourable colleagues told me they had accepted the lobbying of the Civil Service Bureau. The Government told them that supporting this lower rate of reduction would give rise to a constitutional crisis and the Government would even withdraw this Bill if the lower rate of reduction was passed, and thus the civil service pay would not be reduced and the public would be let down. I do

not know whether I had heard it wrong. I certainly do not hope the Government would treat its own employees this way. It is indeed deplorable if the Government has to use constitutional crisis as an excuse to ensure the successful imposition of a pay reduction on the some 10 000 people. I hope the Secretary will give a response on this later. Thank you, Chairman.

DR RAYMOND HO (in Cantonese): Chairman, I move amendments to clauses 3, 5, 6 and 7 to lower the reduction rate for the civil service pay adjustment proposed by the SAR Government from 5.38% to 2.91%. This reduction rate is worked out by deducting the inflation rate of 2.47% during the same period from the Government's proposed reduction rate of 5.38%, that is, 2.91% is obtained by subtracting 2.47% from 5.38%, which is very simple.

I have made it very clear in the debate just now. I think the Government has to make various considerations. The Government said it has taken into account six factors, including morale in particular. According to what we have heard, among the few dozen civil service staff associations attending the hearings, not a single one of them supported the Government's proposal. Then, how did the Government take the civil service morale into account? Actually, this approach, that is, imposing a pay cut on some civil servants and a pay freeze on others, is a divisive move, which I think is very regrettable.

In the voting of the Second Reading of the Bill just now, the Government only won by six votes, with the support of only three members of the Bills Committee. So this was only a thin victory. That is to say, this Council did not show a clear and obvious support for the Government's proposal. The Government should really give consideration to thoroughly reviewing this approach instead of exerting pressure on certain civil service staff associations. If the situation was really as what Mrs Regina IP has described just now, it would really be regrettable.

Some Honourable colleagues may have supported the Second Reading of the Bill just now but my amendments actually include a simple calculation method, which may perhaps become a basis for consideration in the future. Perhaps the Government will not insist on adopting the previous rigid and

inflexible approach in the future in order to maintain the civil service morale. I hope Members will support my amendments. Thank you.

MR LEE CHEUK-YAN (in Cantonese): During the Second Reading of the Bill just now, I said I opposed implementing pay reductions by legislation in principle and in reality. Regarding this amendment, I oppose it in principle but have to support it in reality — (*Laughter*) which has almost made me schizophrenic. I do so only in order to reduce the damage and exercise damage control.

I have listened to the remarks made by Dr Margret NG, Mrs Regina IP and Dr Raymond HO just now, and I would like to raise one more point. Members kept referring to the mechanism. Actually, instead of consisting only of pay trend indicators (PTIs), the mechanism consists of six factors, with PTIs being one of them. What are the roles of the other factors? Actually, no statistics are available. As no statistics are available, Members may consider them in greater detail. Dr Raymond HO said he took the factor of inflation into account, and Mrs Regina IP and Dr Margaret NG took into account the differential treatment and fairness to the upper and middle band civil servants, and thus proposed that both groups should be given the exemption of 1.98%. Actually, there may be a wide spectrum of considerations. When referring to the mechanism, Members must bear in mind that this mechanism is all inclusive. When we put this question to the Government, it dared not say that the pay trend was the only consideration under this mechanism. The Government also said it had taken a host of factors into account. However, after consideration, it still proposed a reduction of 5.38%. In response to our question of why it did not take morale and other aspects into account, it said it had already done so. Just let it fabricate as it would. Members who would like to support it may actually do so by saying that they have already taken everything into account.

However, just now, I heard Mrs Regina IP say if the Government elevates this issue to the constitutional level, it may involve the relationship between the executive and the legislature and will unnecessarily cause this relationship to become tense. However, I also welcome the Government's approach, that is, to withdraw the Bill if Members' amendments are passed. Therefore, I have to support them. So the situation has become one in which I will support the amendments in principle in order that the Government will withdraw the Bill. Therefore, it depends on what the Government will say.

On the whole, however, I find such a remark of the Government very offensive because this would mean that it will withdraw any legislation or bill every time our amendments are passed. This is already not the first time I heard such a remark. We have heard this plenty of times and this is a very serious matter of principle. I hope Members will uphold their right to move amendments. If every time Members' amendments are passed but just forget it, the amendments will not be passed because they will be negated in the group voting. As a matter of principle, however, I think there is no reason to compel Members to support the Bill by threatening them with a constitutional crisis. Therefore, if Members have been threatened, they should support the amendments on purpose to see whether the Government would dare take such a move. Thank you, Chairman.

DR LEUNG KA-LAU (in Cantonese): I have to declare that I am an employee of the Hospital Authority and will be affected by the pay cut.

My speech will be very short and simple. I heard the Government and Members of the Democratic Party stress one point, that is, the mechanism. After thinking about it repeatedly, I am still unable to understand it. I think the passage of this Bill by this Council is part of the mechanism, and Members' amendments are also part of the mechanism. Therefore, the passage of Members' amendments is actually an act in accordance with this mechanism. I support these amendments.

Besides, I would like to tell Mrs Regina IP that those who are most vulnerable to bullies are actually not the high band civil servants. She has overstated it a bit because directorate civil servants already had a pay rise in the previous grade structure review. Therefore, those who are most vulnerable to bullies are the non-directorate middle band civil servants. This is all I have to say.

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

MR LEUNG YIU-CHUNG (in Cantonese): I will oppose these three amendments mainly because if we agree with them and the amendments are

passed — they certainly will not be passed — if the amendments are passed, it would mean that implementing pay reductions by legislation is allowed. I find this difficult to accept in principle.

Just now, many Honourable colleagues kept pointing out that during the previous stage of discussion, Members indicated disagreement with implementing pay reductions by legislation, considering that this would be detrimental to the good employer-employee relationship because a harmonious communication mechanism should be established between the employer and the employees. Therefore, I consider legislating for this purpose infeasible, and legislating for pay reductions will even deprive some people of their rights. How can we accept this approach? Although it has been pointed out that pay reductions have to be imposed as there is not any other alternative — this was what they were told by civil service staff associations. Chairman, I have to reiterate that I oppose it not because civil service staff associations have not approached me. Actually, I think I have to oppose these amendments whether or not they have approached me because they will give rise to an undesirable effect of allowing or acknowledging the existence of a mechanism to implement pay reductions by legislation, which is a point I cannot accept. This is a matter of principle, irrespective of the amount of pay reduction involved. Therefore, I cannot accept it.

MR LEUNG KWOK-HUNG (in Cantonese): Chairman, the League of Social Democrats (the League) will abstain from voting.

I was lobbied by some high-ranking civil servants. Actually, the officer who monitored my compliance with my community service order was a high-ranking civil servant. He aired lots of grievances to me — Buddy, there is no way to find out his identity as this is personal privacy, so do not be silly — I think the problem is if the Government is allowed to implement pay reductions on civil servants by legislation, dire consequences would arise because the Government may use this means to control this Council and achieve its purposes. This will set a very bad precedent. I have to set a precedent. I am drafting a bill to reduce the pay of those "illegal political structures" and the "three corpses and 12 lives". I have no choice but to do so.

This Bill concerns the benefits of more than 100 000 civil servants. Together with the employees of subvented bodies with similar remuneration packages and terms of services, the Government is making use of this Council to reduce the pay of a few hundreds of thousand of people. How will a civil war not be triggered? Actually, many people said the League is the friend of those who believe in populism. I would like to tell them, with all respect, to go back and do some research. Italian Fascism upholds arbitration and its rise is attributable to arbitration. MUSSOLINI said the king was ineffective and the country had to be run by him. More than ten arbitration institutions were established under Fascism, and all of them were preordained by MUSSOLINI. All sorts of cases could be referred to these arbitration institutions. There were religious arbitration institutions for religious matters, labour arbitration institutions for labour matters, and populism was one of the arbitration institutions under Fascism.

The League has been accused repeatedly for upholding populism. The Government is now taking the direction of populism, just that it has even used this respected legislature as an arbitration institution. Yet, such an unscrupulous approach is supported, and even by those who have rebuked the League at great length for promoting populism. Therefore, the unscrupulousness of academics in the political scene of Hong Kong can be said to be unprecedented and unparalleled. While firing off rebukes at people upholding populism, they even support the Government's exercise of populism and they even use the rubber stamp under the constitution to exercise populism. I hope those who have reproved us will reflect on such conduct. Although I am too lazy to write about it, you cannot "frame" me. I now censure these people again. I think such conduct, by staff associations in particular, should never be allowed. That staff association should be "dissolved", dismantled and slashed.

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

(No other Member indicated a wish to speak)

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Chairman, I understand the three Members proposed amendments to lower the pay adjustment rate for civil servants in the upper salary band or above after taking into account

views received from various civil service staff associations and their own independent thoughts. I agree they did so out of good intention. Nevertheless, in my speech at the resumption of the Second Reading debate, I still pointed out that the Government opposed the amendments proposed by Dr Margaret NG, Mrs Regina IP and Dr Raymond HO.

The rationale behind the amendments proposed by Dr Margaret NG and Mrs Regina IP is that as the Government decided to implement a pay freeze for civil servants in the middle salary band, or is compassionate to civil servants in the middle salary band, as Mrs Regina IP put it in her speech just now, although a net pay trend indicator (PTI) of -1.98% was recorded in the pay trend survey (PTS), why cannot the Government also be compassionate to civil servants in the upper salary band and deduct 1.98% from their pay reduction rate to obtain a lower pay reduction rate of 3.4%?

We cannot accept this viewpoint. The decision of implementing a pay freeze on civil servants in the lower and middle salary bands and a pay reduction of 5.38% on civil servants in the upper salary band is made by the Government after giving careful consideration to all relevant factors. I have already pointed out clearly in my speech just now that each factor may have a different degree of impact on civil servants in different salary bands. Therefore, the decision of implementing a pay freeze on civil servants in the lower and middle salary bands may not necessarily be applicable to or ought to be extended to civil servants in the upper salary band and above. In the entire Civil Service with 157 000 staff, about 12%, that is, 18 000 civil servants, are civil servants in the upper salary band or above. Whether civil servants with a monthly income of \$48,400 or above are high-paid or low-paid is a subjective judgment. Objectively speaking, according to the statistics of the Census and Statistics Department, the current median monthly household income in Hong Kong is \$17,250. We certainly understand that civil servants in the upper salary band may be under a varying degree of burden in different aspects of life. I also understand that a pay cut may make it necessary for the affected civil servants to adjust their household expenses.

Actually, those who are under the financial burden arising from the expenses on accommodation and education for their children are not confined to civil servants and civil servants in the upper salary band. After the onslaught of the financial tsunami, according to press reports, quite a number of employees in

the private sector have already been laid off, and according to the PTS in 2009, those private organization employees who managed to stay in employment in the private sector earning a monthly income of \$48,400 or above have already experienced an average pay cut of almost 5%. As the management, we would definitely consider the impact of a pay cut on the affected civil servants and their affordability. However, we also have to constantly remind ourselves that the pay of civil servants is met from public funds, which comes from members of the community. When members of the community are under the impact of the financial tsunami, should we freeze the pay of the entire Civil Service? We have to give careful consideration to and balance various aspects. Logically speaking, when we are compassionate to civil servants in the upper salary band and thus deduct 1.96% from their pay reduction rate, do we also need to consider the situation of civil servants in the lower salary band? As the net PTI of civil servants in the lower salary band is only -0.98%, should we also increase their pay by 0.98% on compassionate ground instead of imposing a pay freeze on them? These are the issues that we have to consider. (Appendix 1)

I noticed that Mrs Regina IP pointed out just now, if I did not hear her wrong, that this pay reduction decision would also have a negative effect on the pension calculation of affected pensionable civil servants in the upper band. Here, I can tell Members that it will not have any effect on the pension calculation of civil servants because under our pension legislation, the amount of pension is calculated on the basis of civil servants' highest substantive salaries before leaving service.

Dr Raymond HO proposed deducting the inflation rate from the net PTI of civil servants in the upper salary band before determining their pay reduction rate. Actually, under the existing mechanism, the Government has already taken into account the inflationary environment, that is, changes in the cost of living, which is one of the items under the mechanism, in determining the pay for civil servants in different salary bands. Therefore, we cannot accept using the inflation rate as a ground again for further lowering the pay adjustment rate. Besides, the determination of the civil service pay adjustment is definitely not a mechanical task. As a matter of principle and according to the mechanism, we cannot accept mechanically deducting the inflation rate from the net PTIs to determine the percentages of civil service pay adjustment. Logically speaking, if we accept this approach, we must increase the pay of civil servants in the lower and middle salary bands in 2009-2010. Why? Because the inflation rate is 2.41%,

and now a pay freeze is proposed on compassionate ground. Although their net PTIs are -0.98% and -1.98%, these rates are still lower than the inflation rate of 2.41% (Appendix 1). Therefore, according to Dr Raymond HO's proposal, do we have to increase the pay of civil servants in the lower and middle salary bands? We think this approach can hardly win the approval of the public, and neither is it the request made by the civil service staff side representatives.

Finally, Chairman, there is no way for me to find out how Mrs Regina IP came to know about the constitutional issue, but I can make it clear to this Council that I have never said whether or not the Second Reading of this Bill can be resumed and the voting results of the three amendments proposed by Members will give rise to constitutional issues. I have never ever said anything like this to anyone. I very much hope Members will clarify with me first if they hear anything like this in the future, so that I can give Members a full account of the situation.

Last of all, Chairman, I implore Members to oppose the amendments proposed by Dr Margaret NG, Mrs Regina IP and Dr Raymond HO. Thank you, Chairman.

CHAIRMAN (in Cantonese): Mrs Regina IP, do you wish to speak again?

(Mrs Regina IP shook her head to indicate that she did not wish to speak again)

CHAIRMAN (in Cantonese): Dr Raymond HO, do you wish to speak again?

(Dr Raymond HO shook his head to indicate that he did not wish to speak again)

CHAIRMAN (in Cantonese): Dr Margaret NG, do you wish to speak again?

DR MARGARET NG (in Cantonese): Chairman, I would like to respond briefly to the remarks of Mr LEUNG Yiu-chung and the Secretary.

Chairman, Mr LEUNG Yiu-chung pointed out that he opposed implementing pay reductions by legislation in principle and thus he considered that even though the amount involved in the pay reduction to be effected by legislation would be small, this approach is in violation of the principle. As I highly respect people of principle, I would like to respond to him. According to legislative procedures, as our opposition raised during the Second Reading debate of the Bill had failed, the Second Reading of the Bill has resumed. In principle, this Council has accepted implementing a pay reduction by legislation. How we would vote during the Third Reading later is another issue, but at the Committee Stage, what we should do and can do, without violating the relevant principle, is to reduce the damage to be brought about by the Bill upon passage.

Chairman, we have always been doing this. For example, the bill concerning interception of communications in the last term met with strong opposition from many Members because it violated people's basic rights and also the Basic Law. However, when our opposition turned out to be futile, we made every effort to propose some amendments during the Committee Stage in order to reduce the damage to be brought about after the passage of the bill.

The amendments I proposed today are also in line with the established legislative procedures and principles. Chairman, during the Second Reading debate, I have pointed out that there are three justifications for my opposition. First, I opposed in principle implementing pay reductions by legislation, but on the other hand, I also pointed out that the reduction rate was unfair. Regarding the unfairness of the reduction rate, I have pointed out two reasons. First, the Executive Council could obviously have considered not reducing the pay by 5.38% in one go but it still decided to effect this substantial pay cut, failing to understand that some high-ranking civil servants will encounter great difficulties because of this sudden and substantial pay cut. Besides, compared with middle and low-ranking civil servants, as the Executive Council could be compassionate to this group of civil servants, it should also be compassionate to high-ranking civil servants to the same extent. Therefore, although my amendments are already unable to address the justification for not implementing pay reductions by legislation, they can address the other two justifications, and are thus in line with the principle I have mentioned just now.

Chairman, I would like to respond briefly to the remarks made by the Secretary for the Civil Service. Chairman, all the Secretary for the Civil Service talked about was the mechanism. She only said the Executive Council had taken

this factor into account, so such an approach was adopted. Chairman, unless the so-called mechanism was whatever the Executive Council would say it was and the Legislative Council could only stamp its permission as if it were a rubber stamp, otherwise our amendments proposing the lowering of the pay reduction rate are definitely in compliance with the mechanism. A Member also mentioned this point just now.

The Secretary also cited some examples, pointing out that regarding the comparison in the pay trend survey (PTS), the Executive Council will not necessarily adopt a mechanical approach by increasing the pay of civil servants by the rate which equals its discrepancy with the private sector pay levels, or *vice versa*. She said this was not a mechanical process. Besides, there was also a real case in which the Executive Council decided not to implement a pay rise although there was obviously room to do so.

I am adopting the same approach today. The Executive Council has this flexibility. However, Chairman, up to this moment today, we have not been told what justification the Executive Council had in proposing a reduction of 5.38% without moderation, or on what basis or based on which one of the six factors it did so, or what relevance these factors had with this issue; unless the Secretary meant that she did not take this factor into consideration because she was unable to think of any way to do so.

Chairman, the basic principle of any public administration, which is also a basic principle of judicial review which we often mention, is that the arbitrary exercise of power shall not be allowed. In making any decision which may affect certain individuals, justifications are required. However, since the scrutiny of the Bill, we have not been told the justifications of the Executive Council. On the contrary, we have put forward plenty of justifications. Chairman, although our amendments were proposed by civil service staff associations, which hoped we would support them, we do not support these amendments indiscriminately just because somebody has proposed them. We moved these amendments after taking into consideration that they are in line with our views and are reasonable.

Finally, the Secretary pointed out that the public have put up a request. They are suffering because they have experienced sudden pay cuts and their families are also suffering because of the unexpected pay cuts. Therefore, we might as well make civil servants suffer together with them. I consider this

justification very ridiculous. The Secretary is a highly professional civil servant, and the issue she is discussing now is pay levels, that is, whether the civil service pay levels have departed from the market levels, instead of whether civil servants should suffer the same hardship as the private sector, or whether they should suffer the same degree of hardship as the others.

Chairman, even the degrees of hardship faced by organizations in the private sector are different, depending on the situation of their employers. If the employers are not in great difficulties, they may spare their employees from suffering such a great hardship in one go and may not reduce their pay substantially. Besides, private organizations may adopt pay freezes, that is, they may not offer any pay rises this year, and if their business is profitable next year, they may offer a slight pay rise. These organizations are facing different degrees of hardship. Why did the Secretary say civil servants have to suffer the same hardship because some members of the public have to suffer such hardship? This is indeed a departure from the factors to be considered in the civil service pay adjustment.

Therefore, Chairman, for these reasons, I urge Members once again to support my amendments. I was very disappointed because I did not hear those Members who expressed support for the Government during the Second Reading debate just now express their support for my amendments, at least on the premise of not violating the mechanism. Thank you, Chairman.

CHAIRMAN (in Cantonese): Dr Margaret NG, you may move your amendments.

DR MARGARET NG (in Cantonese): Chairman, I move the amendments to clauses 5, 6 and 7.

Proposed amendments

Clause 5 (see Annex I)

Clause 6 (see Annex I)

Clause 7 (see Annex I)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by Dr Margaret NG be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mrs Regina IP rose to claim a division.

CHAIRMAN (in Cantonese): Mrs Regina IP has claimed a division. The division bell will ring for three minutes.

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

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

Functional Constituencies:

Dr Raymond HO, Dr Margaret NG, Ms LI Fung-ying, Prof Patrick LAU, Dr LEUNG Ka-lau, Mr CHEUNG Kwok-che, Mr IP Wai-ming and Dr PAN Pey-chyou voted for the amendments.

Mr CHEUNG Man-kwong, Mrs Sophie LEUNG, Mr WONG Yung-kan, Mr LAU Wong-fat, Ms Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Vincent FANG, Dr Joseph LEE, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr CHIM Pui-chung, Dr LAM Tai-fai, Mr Paul CHAN, Mr CHAN Kin-por and Mr IP Kwok-him voted against the amendments.

Mr Paul TSE abstained.

Geographical Constituencies:

Mr LEE Cheuk-yan, Ms Audrey EU, Mr WONG Kwok-hing, Mr Alan LEONG, Ms Cyd HO, Miss Tanya CHAN, Dr Priscilla LEUNG, Mr WONG Kwok-kin and Mrs Regina IP voted for the amendments.

Mr Albert HO, Mr Fred LI, Mr CHAN Kam-lam, Mr LEUNG Yiu-chung, Mr LAU Kong-wah, Ms Emily LAU, Mr Andrew CHENG, Mr TAM Yiu-chung, Mr LEE Wing-tat, Mr CHEUNG Hok-ming, Mr KAM Nai-wai, Ms Starry LEE, Mr CHAN Hak-kan and Mr WONG Sing-chi voted against the amendments.

Mr Albert CHAN, Mr LEUNG Kwok-hung and Mr WONG Yuk-man abstained.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 26 were present, eight were in favour of the amendments, 17 against them and one abstained; while among the Members returned by geographical constituencies through direct elections, 27 were present, nine were in favour of the amendments, 14 against them and three abstained. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendments were negatived.

CHAIRMAN (in Cantonese): As a decision has been made by the Committee on Dr Margaret NG's amendments, Mrs Regina IP may not move her amendments.

CHAIRMAN (in Cantonese): Dr Raymond HO, you may move your amendments.

DR RAYMOND HO (in Cantonese): Chairman, I move the amendments to clauses 3, 5, 6 and 7.

Proposed amendments

Clause 3 (see Annex I)

Clause 5 (see Annex I)

Clause 6 (see Annex I)

Clause 7 (see Annex I)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by Dr Raymond HO be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Dr Raymond HO rose to claim a division.

CHAIRMAN (in Cantonese): Dr Raymond HO has claimed a division. The division bell will ring for three minutes.

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

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

Functional Constituencies:

Dr Raymond HO, Dr Margaret NG, Ms LI Fung-ying, Prof Patrick LAU, Dr LEUNG Ka-lau, Mr CHEUNG Kwok-che, Mr IP Wai-ming and Dr PAN Pey-chyou voted for the amendments.

Mr CHEUNG Man-kwong, Mrs Sophie LEUNG, Mr WONG Yung-kan, Mr LAU Wong-fat, Ms Miriam LAU, Mr Timothy FOK, Mr Tommy CHEUNG, Mr Vincent FANG, Dr Joseph LEE, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr CHIM Pui-chung, Dr LAM Tai-fai, Mr Paul CHAN, Mr CHAN Kin-por and Mr IP Kwok-him voted against the amendments.

Mr Paul TSE abstained.

Geographical Constituencies:

Mr LEE Cheuk-yan, Ms Audrey EU, Mr WONG Kwok-hing, Mr Alan LEONG, Ms Cyd HO, Miss Tanya CHAN, Dr Priscilla LEUNG, Mr WONG Kwok-kin and Mrs Regina IP voted for the amendments.

Mr Albert HO, Mr Fred LI, Mr CHAN Kam-lam, Mr LEUNG Yiu-chung, Mr LAU Kong-wah, Ms Emily LAU, Mr Andrew CHENG, Mr TAM Yiu-chung, Mr LEE Wing-tat, Mr CHEUNG Hok-ming, Mr KAM Nai-wai, Ms Starry LEE, Mr CHAN Hak-kan and Mr WONG Sing-chi voted against the amendments.

Mr Albert CHAN, Mr LEUNG Kwok-hung and Mr WONG Yuk-man abstained.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 25 were present, eight were in favour of the amendments, 16

against them and one abstained; while among the Members returned by geographical constituencies through direct elections, 27 were present, nine were in favour of the amendments, 14 against them and three abstained. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendments were negatived.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clauses 3, 5, 6 and 7 stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedule.

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Chairman, I move the amendments to the Schedule as set out in the paper circularized to Members.

On 20 December this year, the Chief Executive-in-Council decided to accept a series of recommendations made by the relevant standing committee on salaries and conditions of service in relation to the Grade Structure Review and refine some of the recommendations. The relevant recommendations involve the pay points for the upper salary band and above specified in the Schedule to the Bill. The recommendations were endorsed by the Finance Committee of the Legislative Council at its meeting on 4th of this month and will take retrospective effect from 1 April this year.

Specifically, approval was given by the Legislative Council Finance Committee to delete points 9 and 10 on the Directorate Pay Scale and point 7 on the Directorate (Legal) Pay Scale and create a new point 39 on the General Disciplined Services (Officer) Pay Scale, with effect from 1 April 2009. As the above are structural changes to the pay points in the upper salary band and above, it is also necessary to make consequential changes to the pay points set out in the Schedule to the Bill, including creating a new point 39 on the General Disciplined Services (Officer) Pay Scale and substituting D10 and DL7 in the Schedule with D8 and DL6 respectively.

As the above amendments are technical in nature, and the current dollar value of the newly created point 39 on the General Disciplined Services (Officer) Pay Scale exceeds \$48,400, according to the decision of the Chief Executive-in-Council, this newly created pay point should be included in the present pay reduction exercise.

Chairman, I implore Members to support our amendments.

Proposed amendments

Schedule (see Annex I)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(Members raised their hands)

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

CLERK (in Cantonese): Schedule as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the schedule as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bills

PRESIDENT (in Cantonese): Bills: Third Reading.

PUBLIC OFFICERS PAY ADJUSTMENT BILL

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): President, the

Public Officers Pay Adjustment Bill

has passed through Committee with amendments. I move that this Bill be read the Third time and do pass.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Public Officers Pay Adjustment Bill be read the Third time and do pass.

Does any Member wish to speak?

MR ALBERT CHAN (in Cantonese): President, the basic logic has been put forth at the Second Reading debate of the Bill, and the views of various sectors have been expressed. I only want to make the final call. Though the Second Reading of the Bill has been passed earlier, the votes for and against the motion are very close. The voting decisions of certain Members seem to contradict the position they expressed in their speeches. Such behaviour is shameful. I urge the public to check the voting record. If the Third Reading of the Bill is negatived, the Government can no longer continue with its dictatorial administrative practice. I implore Members to reflect on their decision. I make a last-ditch effort to urge Members to vote against the Bill.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Public Officers Pay Adjustment Bill be read the Third time and do pass. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Dr Margaret NG rose to claim a division.

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

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

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

Mr Albert HO, Mr Fred LI, Mr CHEUNG Man-kwong, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr WONG Yung-kan, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Ms Emily LAU, Mr Andrew CHENG, Mr Timothy FOK, Mr TAM Yiu-chung, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Vincent FANG, Mr LEE Wing-tat, Dr Joseph LEE, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr KAM Nai-wai, Ms Starry LEE, Dr LAM Tai-fai, Mr CHAN Hak-kan, Mr Paul CHAN, Mr CHAN Kin-por, Mr WONG Sing-chi and Mr IP Kwok-him voted for the motion.

Dr Raymond HO, Mr LEE Cheuk-yan, Dr Margaret NG, Mr LEUNG Yiu-chung, Ms LI Fung-ying, Mr Albert CHAN, Ms Audrey EU, Mr WONG Kwok-hing, Mr Alan LEONG, Mr LEUNG Kwok-hung, Prof Patrick LAU, Ms Cyd HO, Miss Tanya CHAN, Dr Priscilla LEUNG, Dr LEUNG Ka-lau, Mr CHEUNG Kwok-che, Mr WONG Kwok-kin, Mr WONG Yuk-man, Mr IP Wai-ming, Mrs Regina IP and Dr PAN Pey-chyou voted against the motion.

Mr Paul TSE abstained.

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

THE PRESIDENT announced that there were 52 Members present, 29 were in favour of the motion, 21 against it and one abstained. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

CLERK (in Cantonese): Public Officers Pay Adjustment Bill.

Resumption of Second Reading Debate on Bills

PRESIDENT (in Cantonese): This Council now resumes the Second Reading debate on Domestic Violence (Amendment) Bill 2009.

DOMESTIC VIOLENCE (AMENDMENT) BILL 2009

Resumption of debate on Second Reading which was moved on 17 June 2009

PRESIDENT (in Cantonese): Mr LEE Cheuk-yan, Chairman of the Bills Committee on the above Bill, will now address the Council on the Committee's report.

MR LEE CHEUK-YAN (in Cantonese): President, in my capacity as Chairman of the Bills Committee on Domestic Violence (Amendment) Bill 2009 (the Bills Committee), I now report in gist the deliberations of the Bills Committee.

The Bill mainly seeks to amend the Domestic Violence Ordinance (DVO) to extend the scope of protection under the DVO to cover a cohabitation relationship between 2 persons (whether of the same sex or of the opposite sex) who live together as a couple in an intimate relationship. Members noted that

the proposal merely sought to protect same-sex cohabitants from being molested by their partners in response to the distinct and unique context of domestic violence.

The Bills Committee held six meetings with the Administration and received views from 40 deputations at one of these meetings. Members support the object of the Bill to extend the protection under the DVO to same-sex cohabitants. Deputations which have given views to the Bills Committee also express support for the spirit and the arrangement of the Bill in general.

The Bill proposes that a new definition of "cohabitation relationship" be included in the DVO. The Administration emphasized that the definition is gender neutral and is devoid of any references to, or linkages between "marriage", "spouse", "husband and wife", and same-sex cohabitation. Under the Bill, "cohabitation relationship" means a relationship between 2 persons who live together as a couple in an intimate relationship, and includes such a relationship that has come to an end. The Bills Committee held detailed discussion on the need for a new definition of "cohabitation relationship". Some members have questioned the need for introducing a new definition of "cohabitation relationship", given that "the cohabitation of a man and woman", to which the DVO has all along applied, is not defined under the DVO.

The Administration has explained to the Bills Committee that apart from "a party to a marriage", the DVO is also applicable to "the cohabitation of a man and a woman" as it applies to marriage. Therefore, "cohabitation of a man and a woman" needs no explicit definition under the DVO, as this concept has been widely applied in the common law and is well understood by the Court. There are established case laws to make reference to when determining whether such a relationship exists between a man and a woman. The case laws clearly rule out casual or transient relationships. The Administration has pointed out that this established standard of the eligibility threshold will continue to underpin the current legislative proposal to extend the scope of the DVO from covering only a man and a woman in cohabitation to persons in same-sex cohabitation. In addition, the proposed definition of "cohabitation relationship" is gender neutral and it sought to address the concerns raised in the community that the definition of "cohabitation relationship" should not have the effect of equating, or linking in any way, same-sex cohabitation with "marriage".

At the suggestion of the Bills Committee, the Administration has agreed to amend the proposed definition by adding the expression "whether of the same sex or of the opposite sex", so as to tally with the long title of the Bill.

Although members agree to introduce into the legislation the definition of "cohabitation relationship", some members have opined that the expression "as a couple" in the proposed definition is redundant.

The Administration has advised that the policy intent is to maintain, or at least to pitch the eligibility threshold for injunction applications under the amended DVO as close as possible to the established standard, that is, a relationship akin to that between a husband and wife. Therefore, the Administration considers the inclusion of the expression "as a couple" an essential and integral component to reflect the special qualities of the relationship to be covered under the amended DVO.

To provide guidance to the Court in determining whether two persons are in a cohabitation relationship, further provisions are also included in the Bill directing the Court to have regard to all the circumstances of each application. The eight signposts set out in the new section 3B(2) will help give guidance to the Court of the policy intent. Given that similar guidance has not been provided to the Court in determining whether a cohabitation relationship exists between a man and a woman, and the fact that there are established case laws on "cohabitation relationship", some members has doubted whether it is necessary to provide the signposts to the Court. In response, the Administration has indicated that under the new definition of "cohabitation relationship", the established case laws on "cohabitation of a man and woman" may not be readily applicable in the Court's future consideration of applications for injunctions by cohabitants. The factors spelt out in the new section 3B(2) are not exhaustive and only serve to provide guidance to the Court, and the Court shall have regard to all the circumstances of each particular case. These factors serve merely as pointers to assist the Court in determining the scope of applicability of the DVO to the parties concerned in accordance with the policy intent.

The Bills Committee also had in-depth discussions on whether or not the wording of the eight signposts will give rise to doubts or uncertainties. Members noted that the eight factors were drawn up with close reference to the rulings made by the Courts of England and Wales regarding the factors taken into

account by the Court in determining the existence of a cohabitation relationship. However, noting the case laws adopted by the Courts of other major common law jurisdictions, members suggested making reference to the approaches in Australia and New Zealand to present the factors in a user-friendly manner, for example, to amend the new section 3B(2)(f) to clarify that, regarding how they act towards each other's children, the Court shall have regard to whether the parties share the care and support of a specified minor. Having considered members' views, the Administration will amend new sections 3B(2)(f), (g) and (h). The amendments proposed by the Administration are supported by the Bills Committee.

The Bills Committee noted that Dr Margaret NG is of the view that it is unnecessary to make reference to the expression "as a couple in an intimate relationship" in the proposed definition of "cohabitation relationship" and she has given a prior notice that she would propose an amendment to the proposed definition of "cohabitation relationship". However, Dr NG did not invite the Bills Committee to consider her proposed amendment to the Bill. Therefore, the Bills Committee has not adopted any stance on Dr NG's proposed amendment.

Members support the resumption of the Second Reading debate on the Bill at the Council meeting and the Committee Stage amendments to be moved by the Administration. The Bills Committee also supports the commencement of the amended Ordinance on 1 January 2010 in order for the amended DVO to come into operation as early as practicable.

President, in the following part of my speech, I will give my personal views on the Bill.

President, in fact, this Bill has come late. The legislation will not commence until January 2010. In fact, this is far later than the timeframe we originally had in mind. We all remember that in the 2007-2008 session, when the last Legislative Council amended the DVO, there was a pledge to introduce an amendment to include same-sex cohabitation relationships in the legislation. At first, we thought that this matter could be resolved quickly. Unexpectedly, however, many deputations expressed their concern and reservation about the inclusion of same-sex cohabitation relationships within the scope of "the cohabitation of a man and a woman as it applies to marriage" mentioned just now. And, they also expressed reservation about regarding such relationships as family relationships and including them in the DVO.

In view of this, as mentioned by the Secretary, the Government has adopted the present approach of creating an additional partition. Hence, there will be three partitions — the first for husband and wife or a man and a woman in cohabitation, the second for closest family members, and the third for same-sex cohabitants. Surely, when speaking on this additional partition later on at this meeting, the Secretary will tell us that it is after thinking for a long time that he has come up with the idea. However, I think that in principle, there is no need to create an additional partition. But, well, I also understand that the Secretary's aim is to assuage the concern in society about the inclusion of same-sex cohabitation in the definition of the family.

I doubt the very necessity of creating an additional partition. With an additional partition, the problem of discrimination may arise, because when there is basically no need for an additional partition, the creation of one will only lead to distinction, and once there is distinction, there may be discrimination. In the whole process, what I find very disappointing is that society still looks at same-sex cohabitation with strong discrimination. Throughout the entire process of scrutinizing the Bill, there were also a lot of representations in this regard. I personally think that the inclusion of same-sex cohabitation relationships in the DVO is not actually meant to encourage same-sex cohabitation. All is just a personal choice, and we should not be so over-sensitive, as if to regard such relationships as family units will make all people establish a family of same-sex cohabitation. I do not think that there will be any such effect.

I think that whether we adopt the perspective of the Christian faith or that of a civilized society, we should invariably show greater tolerance and acceptance but less discrimination towards people who make different choices. For this reason, I will support the approach adopted in this Bill to create an additional partition. But in practice, I do not think that this is necessary. However, I know that in order to enact the Bill as soon as possible, Honourable Members have all made huge efforts. So, ultimately, I will accept the measure of creating an additional partition, so that the whole Bill can be passed and all the protection can also be approved as soon as possible.

During the scrutiny of the Bill, we were also concerned about one issue, an issue to be of immense significance in the future. This is the issue of law enforcement. The Police say that they will make preparations and prepare front-line officers for properly enforcing this piece of legislation. But given all the social discrimination against same-sex cohabitation, will there be any

discrimination when the police enforce the law? I hope that this will not be the case, and I also hope that the authorities will pay attention to this problem. It is particularly worth mentioning that since this piece of legislation is meant to be enforced after its passage, all those involved must show sensitivity towards same-sex cohabitation relationships, rather than allowing the deprivation of protection for such relationships in the course of front-line law enforcement despite the existence of statutory protection.

President, in the course of scrutinizing the Bill, another concern of ours was whether a specialized domestic violence court would be established. Of course, we understand the comment of the Bureau that the Judiciary does not deem it necessary to establish a domestic violence court. And, the authorities also said that they would provide more one-stop services to shorten the time needed for handling problems. However, I think that since victims of domestic violence have all suffered great trauma, there is really a need for them to receive immediate one-stop service. We will continue to lobby for a domestic violence court. Although we may not succeed in lobbying for one with such a name, we still hope that the authorities can actually establish one with the essence of a domestic violence court, so that victims can receive one-stop service.

President, lastly, I wish to comment on Dr Margaret NG's amendment. I am sorry that I will not support it because I think that the effect of her amendment is tantamount to saying "a cohabitation relationship is a cohabitation relationship". I think there is no need to be so concerned about the Chinese phrase "作為情侶"(literally, "as lovers"). I know that Dr Margaret NG does not oppose the word "couple" in the English version. But she thinks that it is difficult to define "情侶"(lovers), and that this is not an appropriate term. However, I think that before we can think of another term, a better description and an acceptable phrase should be "as a couple in an intimate relationship". For this reason, I will oppose the amendment proposed by Dr Margaret NG. Thank you, President.

MR TAM YIU-CHUNG (in Cantonese): President, during the discussions on the Domestic Violence (Amendment) Bill 2009 (the Bill) this time around, the DAB and I adhered to the fundamental principle of upholding the traditional family values and preventing any impacts on the legal status of the family in Hong Kong. During the scrutiny process, along with most Bills Committee members, we prudently examined the potential negative impacts of the amendments on the

existing institution of marriage. It can be said that we were extremely cautious every step along the way.

On the basis of not recognizing any same-sex relationships, the Government now proposes to provide additional legal protection to cohabitation relationships, including same-sex cohabitants, by making a basket of amendments to the Domestic Violence Ordinance (the Ordinance), including: (1) renaming the Ordinance as the Domestic and Cohabitation Relationships Violence Ordinance to differentiate "family" from "a cohabitation relationship" as two distinct concepts in response to the expansion in the coverage of the Ordinance; (2) defining "cohabitation relationship" as "relationship between 2 persons who live together as a couple in an intimate relationship" and (3) clearly delineating the three categories of protected persons, namely, "spouses and former spouses", "other relatives" and "cohabitants and former cohabitants", under separate provisions.

This shows the Government's clear intent to differentiate "family" and all associated concepts (such as marriage and spouses) from "cohabitation relationship" in the Bill. As evidenced by the discussions in the Bills Committee, in society and among concern groups, this approach is less controversial and more desirable.

The amendments proposed by the Secretary for Labour and Welfare today were discussed in detail by the Bills Committee in the course of its deliberation. In particular, the addition of "whether of the same sex or of the opposite sex" to the definition of "cohabitation relationship" can add to the clarity of the definition. In addition, regarding the factors for determining whether two persons are in a cohabitation relationship, the several amendments proposed after making reference to other common law jurisdictions have further improved the provisions in the original draft, and the language is also more comprehensible. In this regard, the DAB expresses its support for the amendments proposed by the Government.

However, we have reservations about the amendment proposed by Dr Margaret NG. The amendment changes the definition of "cohabitation relationship" in the original Bill. All along, this definition has been the basis and key issue in the discussions conducted by the Bills Committee and society on the present legislative amendments. However, it was only at the final stage of

the Bills Committee's scrutiny that Dr Margaret NG voiced her concern about the term "情侶" (lovers) in the Bill and proposed changes to the definition of "cohabitation relationship" in the Bill.

I believe Members all understand that there are lots of concerns and controversies" in society regarding this piece of amendment legislation. In the absence of any in-depth discussions by the Bills Committee and society, the potential risks of such a major amendment posed by Dr Margaret NG are indeed very worrying.

Dr Margaret NG defines "cohabitation relationship" as "'cohabitation relationship' includes a cohabitation relationship between 2 persons of the same sex and such a relationship that has come to an end". Obviously, this definition is not as clear and exact as the important factors of "couple", "intimate relationship", "living together" and "whether of the same sex or opposite sex" given by the Government in its Bill and amendments. Will such a relatively loose definition further enlarge the categories of protected persons and the scope covered by the provisions, to the extent of exceeding the original legislative intent? Will it lead to other negative implications? These important questions have not been discussed in depth by the Bills Committee or society, so I think this amendment is not proper.

Furthermore, if we try to interpret "'cohabitation relationship' includes a cohabitation relationship between 2 persons of the same sex and such a relationship that has come to an end" simply from the semantic perspective, can we tell what "such a relationship" at the end of the phrase refers to — "cohabitation relationship" at the beginning of the phrase or "a cohabitation relationship between two persons of the same sex" that follows? Semantically, this definition may lead to different interpretations, so I personally think that it is not very satisfactory. In contrast, in the Government's Bill, "such a relationship that has come to an end" is dealt with in another provision, and we think that this is clearer.

In view of the aforesaid points, we oppose the amendment proposed by Dr Margaret NG.

Here, I wish to add one point and hope that the Secretary can consider it further in the future. We notice that a sizeable proportion of heterosexual cohabitation relationships are *de facto* "marriages" and "husband and wife"

relationships. However, people married according to old Chinese marriage customs or on the Mainland or overseas may be unable to produce any evidence of marital relationship for various reasons, and as a result, their family relationships are disregarded. For this reason, we have reservation about equating the concept of "heterosexual cohabitation" with "same-sex cohabitation" in the Bill. Therefore, we propose that where it is in line with the public interest, the Government should give further thoughts to the provision of greater protection to this kind of "heterosexual cohabitants". This may also further differentiate "heterosexual cohabitation" from "same-sex cohabitation" on the basis of "family relationship".

I so submit. Thank you, President.

DR PRISCILLA LEUNG (in Cantonese): President, in May last year, at the request of some Members of the last Legislative Council, the Government undertook to introduce a Bill during this legislative session to expand the scope of the Domestic Violence Ordinance (the Ordinance) to cover same-sex cohabitants. And, this has since aroused lots of controversies in society. Various definition problems, especially those concerning whether the Ordinance should be applicable to same-sex cohabitation relationships "as it applies to marriage", and whether same-sex cohabitants should be regarded as "spouses" have produced huge reverberations in society.

After heated debates, the Government made amendments, and these amendments had my support. However, when some groups advocating sexual relationships of a more radical nature expressed their views, they demanded that the reference to "2 persons" in "a relationship between 2 persons who live together" in section 2(1)(a) of the Ordinance be amended, so that this provision can be extended to offer the same protection to intimate cohabitation relationships involving 2 or more persons. I think the Government is right in refusing to accept this proposal, because its refusal is in line with the monogamous marriage system upheld by the mainstream of Hong Kong society. Moreover, deleting the reference to "2 persons" as proposed may condone promiscuity involving many men and women, so I agree that the expression "2 persons" should be included in the new amendment.

In the original text of the Ordinance enacted in 1986, it is not expressly stated that the "cohabitation of a man and a woman" under the protection of the

Ordinance is limited to two persons only. This is basically a loophole in the law. The new amendment this time around states expressly that it must be "two persons who live together as a couple in an intimate relationship". This can plug a loophole that should be plugged. In addition, the Government was also questioned by homosexuals whether a homosexual relationship involving 3 persons would also be protected by this piece of legislation. I also remember that in the meetings, a member also asked whether bisexual acts and orgies involving 3 or 5 persons should also be covered. At that time, the response of the government representative was that basically, the Ordinance says that a person can apply for an injunction against two or more heterosexual cohabitation partners at the same time. He said that he of course did not believe that such an application would be successful, but it was up to the court to decide whether it was satisfied. I have some worries about this explanation. I believe that such an explanation will entail certain risks, the risks of leading some people to think that sex acts involving 3 or more persons also stand a chance of being protected by this piece of legislation.

In view of this, I requested the Legal Adviser to the Legislative Council to give an explanation on this issue. On 10 November this year, the Legal Adviser to the Legislative Council pointed out clearly in the advice he gave to me that concerning the provision relating to "2 persons", the court might not have a basis to entertain an application in respect of a cohabitation relationship involving more than two persons. Regarding the details of the legal advice, I will elaborate in greater detail when discussing the amendment proposed by Dr Margaret NG later. Since the Legal Adviser gave me such a clear explanation, I decided not to take forward my own proposed amendment.

To fulfil my duty as a Member, earlier on, through various channels, I asked the Government to give me more examples of past cases or other information, telling it that apart from Members and the legal sector, many members of the public were also concerned about this matter.

The matter dragged on for several months, and, at long last, Secretary Matthew CHEUNG made some amendments to the Bill in response to the demand of members of the public. Basically, the new provisions can address the concerns and views of various stakeholders. Seeing that the Government was prepared to listen to their advice, the various sides also made concessions in

response. I am pleased to see this. If the same thing can also happen to the constitutional reform proposal, I must congratulate the Government.

Many people think that the controversy over whether same-sex cohabitants should also be protected is only a dispute about moral standards. However, all along, I have held the view that this issue is not only about moral standards. Rather, I think there are indeed lots of ambiguities in the relevant provisions, and these may lead to many legal problems. And, it is certainly not a concern exclusive to religious extremists as claimed by some people. I believe that such a claim is insulting.

It was me who first referred to the original provisions of the Ordinance and pointed out that "this Ordinance shall apply to the cohabitation of a man and a woman as it applies to marriage " as stated in section 2(2) were marked by many grey areas which might lead same-sex cohabitants to apply for a judicial review, thus affecting the effects of other laws, such as those on the custody of children, the distribution of estate, and so on. In addition, I also pointed out that the name of the Ordinance was misleading and might in effect give the "green light" to same-sex marriage, as people might thus think that same-sex cohabitation was just like the unity of a husband and a wife in lawful matrimony. However, it must be pointed that a consensus on this issue has not been reached in Hong Kong.

Admittedly, in earlier discussions, Secretary Matthew CHEUNG stated time and again the Government's position of not recognizing same-sex marriage. But I must say that in case there is a judicial review, the judge will only consider the provisions of the legislation when making a ruling, rather than paying heed to any interpretation mentioned by any government officials at any time. For this reason, I maintain that if the relevant definition is not clarified, it will certainly become a time bomb.

The Government's present attempt to change the name of the Ordinance to "Domestic and Cohabitation Relationships Violence Ordinance" certainly represents a significant progress because it can differentiate "family" from "cohabitation" under the law. Henceforth, "cohabitation relationship" is defined as "a cohabitation relationship between 2 persons who live together as a couple in an intimate relationship". Terms such as "marriage", "spouse" and "husband and wife" are all avoided, and so is the possible confusion arising from homosexual relationships. In addition, the most controversial section 2(2), which provides

that "this Ordinance shall apply to the cohabitation of a man and a woman as it applies to marriage ", is also deleted.

Here, I wish to reiterate that the request for differentiating marriage from cohabitation is not in any way meant to discriminate against homosexuals. I have all along, maintained that like other people who live together under the same roof, homosexual cohabitants should also be protected by the Ordinance. It is admittedly not quite so satisfactory that this time around, the Government has still adamantly refused to expand the scope and offer protection against domestic violence to such people as elderly persons and co-tenants who have lived under the same roof for long periods of time without having any intimate relationships. But since the Government has accepted our proposals of changing the name of the Ordinance and deleting the phrase "as it applies to marriage", at this stage, I am willing to accept the new amendments proposed by the Government. Meanwhile, I also hope that the Government will still seriously consider giving legal protection to other categories of persons living together under the same roof.

The original amendment intended to include "same-sex cohabitation relationships" or "heterosexual cohabitation" within the possibility of "as it applies to marriage" and to regard them as "spouses" in the Ordinance. Maybe, apart from supporters of homosexuality, ordinary people will likewise interpret this as referring to a matrimonial relationship. In addition, from a legal point of view, the term "spouse" actually refers to the husband or the wife in a lawful marriage. In fact, "matrimonial home" can also be equated with the residence for a relationship of marriage. If it is necessary to distribute an estate in the future, how is this going to be dealt with under the law? All these are a series of grey areas in the law.

Precisely because of all these doubts of ours, we hoped that these issues could be clarified through discussions. However, in the process of lobbying for amendments to the Ordinance, many people and I came under very heavy pressure. An incident that I would never forget happened on 30 July this year. When I was attending a meeting in the Legislative Council to scrutinize the Ordinance, some groups supporting homosexuality suddenly presented me a male chastity belt, leveling many personal attacks, insulting remarks and sarcastic criticisms at me. One can imagine that if I were not a Legislative Council

Member but only an ordinary member of the public, it would be very difficult for me to fully and truthfully express my own beliefs in the Legislative Council.

At the meeting on 30 July, despite the unexpected attacks, I still calmly dealt with the several persons who gave me the "gift" because I was not angry with them. I even told them, "I know why you are so angry with me. But if I do not adhere to my convictions, such as my steadfast opposition to group sex and promiscuity, this piece of legislation will be passed smoothly and quickly without any discussions, without any discussions on all the grey areas."

The embarrassment of being given a male chastity belt really beggars any description. But I have kept this present very well because it represents what happened in the entire process of discussing the Ordinance. At that time, I knew clearly that although radicalism was on the rise in the Legislative Council, there should still be some Members in the Legislative Council to express the thinking and voices of the moderate and silent majority in society — the ordinary people, the Chinese people with typical and traditional thinking or the majority of the Hong Kong public. I said very clearly to these several persons that I did not agree to the inclusion of any "three-party" homosexual relationships in the Ordinance. I told them that even if they took actions of a more drastic nature, I must still bear in mind the well-being of the next generation of Hong Kong people and could not agree rashly to any amendments that would seriously undermine our social values.

I wish to say to Members that we have only been expressing views that we believe to be true, especially when we speak in this legislature. However, we are often ridiculed as "Taliban moralists" or ultra-rightists of the Protestant faith. These remarks are all highly insulting. Some people even accuse us of "wavering between the left and the right". Even during the discussions on family problems, people are still classified as leftists and rightists. I am afraid people who make these comments should really do some self-reflection. Do they really want to help our society forge a consensus? Or, they do not want to see any such consensus at all?

As far as I know, those people from the religious sector, social workers, friends in the legal sector, parents and representatives of socially disadvantaged groups who are labeled by homosexuals as coming out in high profile to oppose further amendments to the Ordinance do not actually discriminate against homosexuals. Quite the contrary, it is precisely because they are truly

concerned about and understand the misery of young homosexuals that they have insisted on opposing any amendment to the legislation in such a high profile. They simply do not wish to encourage more young people to go down this path.

Do Members know that a priest who has been insulted and attacked most frequently and criticized for discriminating against homosexuals is actually in charge of a church running an organization that has helped the greatest number of homosexuals seeking assistance? And, do Members know that this church was probably the first of all churches to hold funerals for young homosexuals? I believe that it is very difficult to tell how many homosexuals he has cared for and helped. Since he has witnessed first hand the many problems experienced by homosexuals, even though he is usually very low-key, he has still come forward to express his views this time around. The many young people, homosexuals or homosexual supporters who are still lambasting him will perhaps understand what kind of person he is in the future.

However, to tolerate, accept, assist and care for homosexuals does not mean that the door to the legalization of same-sex marriage in Hong Kong should be thrown open. Some people believe that this is only the view of a certain religion, saying that this is religious hegemony. I have to stress that the Protestant churches are the only ones who oppose the legalization of same-sex marriage or promiscuity. Many parents, educators and believers in other religions also oppose this very strongly. Nor is opposition limited to the right wing of the Protestant faith, as maintained by some people. I think this claim is nothing but an attempt to split up our society. I know many Buddhists and my most helpful assistant is also a devout Buddhist. He has repeatedly asked me to point out that Buddhism also upholds the protection of traditional family core values (that is, the system of one man and one wife) and does not support any legislation that would destroy this universal value.

Some people have even made socially divisive comments, saying that the Government only closes down Buddhist schools but not any Christian ones. This is an utterly groundless claim.

I wish to use the last 30 seconds to point out that what makes my heart ache even more is the fact that people who have made these comments against Christian groups only want to express their ideas, and many of them are just young people aged 13 or 14. I only wish to put one question to those adults who

encourage these young people to besiege, attack or criticize Christian groups. Aged only 13 or 14, can these youngsters understand what heterosexual relationships and homosexual relationships are? I hope adults can discuss these issues rationally. There is no need to stigmatize anyone or use such radical claims as "leftist", "centrist" or "rightists" to cause further the further division of society.

Thank you, President.

DR MARGARET NG (in Cantonese): President, I look at this Bill purely from a legal and legislative perspective. The Domestic Violence Ordinance (the Ordinance) is a very simple piece of legislation with very limited effect. The original legislation seeks to enable a man or a woman who are in a marriage relationship (that is, husband and wife), or a man and a woman who are not formally related as husband and wife but are cohabitants to apply to the Court for an injunction order in case the spouse or the party to the cohabitation resorts to violence or intimidation. The procedure concerned is very simple and can give them direct protection. Such protection also applies to cohabitants, husbands and wives or the children of a spouse. This means that children living in the same family are also protected. The Ordinance is just as simple as that. It really does not involve any homosexuality or marriage relationship.

When amending the legislation on the last occasion, Members and the public both found the Ordinance antiquated and too narrow in scope, with the result that many categories of persons were not protected. Because domestic violence was becoming more prevalent at the time, there emerged a demand for updating this simple piece of legislation to make it truly able to serve various purposes. One of the groups that made a lot of efforts to advocate amendments to the Ordinance is a committee under the Law Society of Hong Kong. It made a lot of efforts and offered some very practical legal advice.

President, this time, we are once again making amendments to the Ordinance, which was amended in the last Legislative Council. In fact, the objective is very simple. On the previous occasion, the amendments did not cover same-sex cohabitants. Some people expressed that it was also possible for instances of violence to occur when a same-sex cohabitation relationship ended. Therefore, it was requested at that time that the amended Ordinance should include same-sex cohabitants. However, it was already too late at that stage and

the Administration was also of the view that this was beyond the scope of the Bill at that time. Therefore, the amendment was deferred to the next occasion — that is, this occasion. Why was the Government willing to make the amendment? In fact, at that time, this issue was not free of controversy, because according to legal advice, if the Ordinance did not include same-sex cohabitants, it was likely that this would lead to criticisms relating to issues like sex discrimination. Therefore, the Government was willing to include same-sex cohabitants.

President, when we look at the explanatory memorandum of the blue bill, we can see how simple this Bill is. It seeks to amend the scope of cohabitation relationships and to provide that the meaning of cohabitation relationship can be either homosexual or heterosexual. After amendment, the Ordinance can apply to cohabitation relationships, including cohabitation relationships that have come to an end. This is what the Bill does and it is very simple. However, the scrutiny of the Bill this time around has turned out to be a very complicated affair. Perhaps let me respond to Mr TAM Yiu-chung's remarks first. He said that I raised the four words "作為情侶" only at the last minute. President, in fact, I already pointed this out at a very early stage, only that no one could spare the time to deal with this as there were many provisions awaiting scrutiny. For this reason, I reminded Members once again only at the end. Why was the process of scrutiny so complicated? Because members of the public and some Members were very worried that the inclusion of same-sex cohabitants in the Ordinance would indirectly give the "green light" to or pave the way for the legalization of same-sex marriages, so a great deal of caution was exercised. In fact, this is highly unnecessary.

In fact, the scopes of both the original and the amended Ordinance are very narrow. Why was the Government so concerned and wary? President, in fact, the Government has in a way courted the trouble itself because last time, when amending the Ordinance, it made things very complicated. They were afraid that the meaning of "domestic" might be misunderstood, so it regarded domestic violence as violence against relatives. Let us take a look at the existing Ordinance, that is, the Ordinance passed on the last occasion. A host of people eligible to apply for injunctions were added to section 3A of the Ordinance. If Members have this marked-up copy, they can see that the people that can be protected are set out from paragraphs (a) to (n) in section 3A. It is specified that the relatives under protection include the applicant's father, mother, grandfather

or grandmother (whether natural or adoptive); the applicant's step-father, step-mother, step-grandfather or spouse. President, I had better not go on to avoid boring anyone. In brief, it is about violence against relatives rather than family members. People who belong to this list of relatives can make applications but if they do not or if they do not fulfil the general definition, they cannot make any application. I wonder if, in the event of any violence, a victim would check the Ordinance to see if he or she is included in these kinships.

President, why did I say that this is to court trouble? Regarding the subject of domestic violence, in fact, the amendment this time has already changed the name of the Ordinance. In the English expression "domestic violence", the word "domestic" does not just refer to blood relationships or marriage relationships. If we look at the English expression, the unit is actually a household. If we put it in the Chinese language, it means one family, one household, that is, the meaning of "family" is one family, one household. According to Chinese tradition, "family" does not refer just to a husband and a wife or what is called a nuclear family. The family is not just a nuclear family, nor does it just include grandparents or siblings. Very often, a household includes some people who are not related in blood, such as some distant relatives. However, there is no knowing if these so-called distant relatives are really relatives. However, these are lasting relationships as all the people live in the same household, so it is necessary to assume responsibility for these people.

Therefore, whether from the perspective of a household — sometimes, an old servant is also a member of it — or from that of traditional Chinese concepts, a household is not considered in terms of blood relationships; rather, it is determined by how the persons concerned live together. Using relatives as the criterion will only serve to complicate the whole matter because if you are the applicant, you have to meet the definition of a relative. However, if the other side challenges your eligibility, saying that you are not qualified to make an application, you will have to prove that you are related in blood. However, in what way can you prove it?

Therefore, President, I think the Administration is reaping what it has sown. It has made the Ordinance extremely complicated because it has no confidence in the Chinese culture and the Chinese language, and it is only concerned about whether or not it is politically correct.

President, today, of course, I support the passage of the Bill as I think that its aim is very correct. Same-sex cohabitants should also be protected. As it was said just now, when domestic violence occurs, one would not refuse to provide protection merely because the relationship is a homosexual one and allow the violence to occur. Therefore, I support the main principle. However, today, I will move a very unpopular amendment.

The Bill gives the definition of "cohabitation relationship", which can be found in section 5, that is, it "means a relationship between 2 persons who live together as a couple in an intimate relationship" ("As a couple" is rendered as "作為(as)情侶(lovers)" in the Chinese version). President, I have never seen this term "作為 情侶" being used as a part of the law. When I told some senior members of the legal profession about this, they were all very shocked and considered using such words unseemly. Be it in the present Bill or in the existing laws of Hong Kong, there is no definition of "情侶". Therefore, the relationship characterizing "情侶" is matter of a subjective judgment. How can the Court decide whether or not two persons are in love? Regarding cohabitation relationships, President, my amendment actually seeks to delete "作為 情侶", and the rest of it are just some minor grammatical changes to make the amendment read more smoothly.

Regarding whether a relationship is a cohabitation relationship, detailed explanation is given in the other provisions of the Bill. We can look at section 3B of the Bill, which reads "Power of District Court to grant injunction: cohabitants and former cohabitants". Subsection (2) of this provision states that in determining whether or not two persons are in a cohabitation relationship, the Court shall have regard to a series of factors. Therefore, a cohabitation relationship does not fall beyond the scope and this scope only serves as a kind of indicator. We can further look at the factors set out in (a) to (h) of subsection (2) and will find that none of them states that they must be lovers. Whether or not two persons are lovers involves emotional factors.

The other reason for my proposing an amendment is that the Chinese version and the English version do not tally. According to the English version, the definition of cohabitation relationship is that it "means a relationship between two persons who live together as a couple in an intimate relationship". "As a couple" and "作為 情侶" do not correspond with each other in any way. "As a couple" cannot possibly be translated as "作為 情侶".

Therefore, President, based on the foregoing reasons, I think that, first, "as a couple" is a very inappropriate term; second, in law, this is an absolutely unnecessary phrase and third, the Chinese and the English versions of this phrase do not correspond. Therefore, I will propose an amendment at a later stage.

President, although I support the resumption of the Second Reading of the Bill and also support the entire Bill, I think that in it, there are far too many problems that we have created for ourselves. Bearing in mind the main objective and in order to reduce disputes, I do not ask that I must feel completely satisfied with everything. However, the four words "作為情侶" are really too much an eyesore, so I cannot but propose an amendment.

Thank you, President.

MS MIRIAM LAU (in Cantonese): President, domestic violence is a kind of behaviour that is despised by the general public, but in recent years, there has been a persistent trend of increase in the number of domestic violence cases in Hong Kong. And, and cases of the battered person sustaining serious physical injuries and even dying as a result can also be heard from time to time. This is a trend that must not be condoned. This Council also passed the Domestic Violence (Amendment) Bill 2007 last year to expand the coverage of the Domestic Violence Ordinance (the Ordinance) to former spouse/former cohabitant, other immediate and extended family members such as mother-in-law or daughter-in-law, siblings, grandparents, paternal grandchild or maternal grandchild. However, same-sex cohabitants are not included.

In fact, the same kind of special distribution of power and interaction characterizing heterosexual cohabitation relationships can also be found in intimate same-sex cohabitation relationships. The relationship in the case of the latter is also very sensitive. For this reason, the Liberal Party has all along agreed that people in same-sex relationships should receive the same degree of protection against violence and abuse as people in heterosexual relationships. Although most Members agreed to this view at that time, due to technical problems, when the relevant legislation was amended last year, it was not possible to cover same-sex cohabitants. At that time, in order to avoid causing unnecessary delay to the amendment proposals, we agreed to the Administration's proposal of enacting legislation in two phases by passing the amendments proposed last year first. The Administration has honoured its promise of

conducting the second-phase legislative work this year to bring same-sex cohabitants within the scope of the Ordinance. The Liberal Party supports this move.

We understand that some groups and people in society are really very concerned about whether the amendments proposed in the Domestic Violence (Amendment) Bill 2009 (the Bill) will impact the existing matrimonial system and family values. To address concerns in this regard, even though the Liberal Party does not consider it absolutely necessary to do so, it does not oppose amending the name of the Ordinance to read "Domestic and Cohabitation Relationships Violence Ordinance", so as to clearly reflect the position that "family" and "cohabitation relationships" are two different categories of relationships that must not be confused.

A new and gender-neutral definition of "cohabitation relationship" is introduced in the Bill to mean "a relationship between 2 persons who live together as a couple in an intimate relationship" and it includes "such a relationship that has come to an end". This definition is devoid of any references to, or linkages between "marriage", "spouse", "husband and wife", and "same-sex cohabitation relationship". This approach has addressed the concerns of some groups about the Bill, as pointed out by me earlier. In determining whether a relationship is a "cohabitation relationship", the Bill provides that the Court shall have regard to all the circumstances of each particular case, including the eight factors set out in section 3B(2). The eight factors provide clear guidance to the Court in determining whether the relationship in question has the essential qualities for satisfying the eligibility threshold required in the Ordinance.

Dr Margaret NG will later move a Committee Stage amendment to delete "who live together as a couple in an intimate relationship" from the long title of the Bill and delete the definition of "cohabitation relationship" and substitute with it " 'cohabitation relationship' (同居關係) includes a cohabitation relationship between 2 persons of the same sex and such a relationship that has come to an end". The Liberal Party does not agree to deleting such phrases as "作為情侶" from the definition. We think that obviously, the purpose of the amendment bill is to include cohabitants who are couples in an intimate relationship rather than simply cohabitants or people of the same sex who live together. Therefore, this must be clearly stated in the legislation to reflect the legislative intent.

I would like to say a few words of vindication for Dr Margaret NG. Mr TAM Yiu-chung criticized her for raising her concern about the term "情侶" only at the final stage of the scrutiny of the Bill by the Bills Committee. In fact, Dr Margaret NG raised her concern for the term "情侶" at the very beginning of the scrutiny of the Bill by the Bills Committee. Dr Margaret NG indicated at a meeting of the Bills Committee that if the term "情侶" was included in the definition of a "cohabitation relationship", when considering the application made by a party to the cohabitation for an injunction, the Court has to consider whether the two persons were in love and this will involve subjective judgment. Just now, Dr Margaret NG also reiterated this point.

However, we hold that in the procedure for applying for an injunction, the applicant must submit an affidavit stating in detail the relationship as lovers between the two cohabitants and also enclose some evidence. We believe that the Court will follow the usual practice of deciding whether to grant an injunction on the basis of such evidence, instead of disregarding the evidence produced and making its own speculation. Therefore, it is likely that no subjective judgment will be involved.

In addition, Dr NG's amendment does not give a specific and clear definition of "cohabitation relationship". As a result, the scope of "cohabitation relationship" covered by the Ordinance will be rendered unclear. This will likely give rise to legal disputes and litigation in the future. For example, some people may take a "cohabitation relationship" to literally mean a "living-together relationship". This situation is just like the relationship between "sworn sisters" or good friends living under the same roof, which is actually different from the intimate relationship of cohabitation as specified in the Ordinance. If the interpretation of the legislation is based on the divergent concepts of the public about a "cohabitation relationship", the legislation will become unclear and unsafe.

Of course, Dr NG may think that we can rely on the Court to decide whether or not an applicant fulfils the eligibility in accordance with the eight factors. However, I must point out that the definition of "cohabitation relationship", particularly the factor of "who live together as a couple in an intimate relationship" in the Bill, really provides a clear test and eligibility threshold for "cohabitation relationship". The original intent of the provision is to enable the Court to assess whether or not the relationship between two persons can satisfy the criterion for the test according to the eight factors. If the test

criterion, that is, if the factor of "情侶" does not exist in the definition of a "cohabitation relationship", it would be doubtful if the eight factors will still serve any purpose because the Court cannot possibly establish the intimate relationship stipulated in the Ordinance merely according to these factors. Therefore, the Liberal Party cannot support Dr NG's Committee Stage amendment.

President, I so submit. The Liberal Party supports the Bill.

MS CYD HO (in Cantonese): President, today, this amendment bill on the legislation relating to domestic violence and cohabitation relationships seeks to bring cohabitation relationships marked by different sexual orientations within the scope of protection. This is just a small step on the road of eliminating discrimination against different kinds of sexual orientations. However, this is the first time that a piece of legislation in Hong Kong provides a form of very basic protection to people with sexual orientations, and in fact, this step definitely has not come about easily. For this reason, to people who accept different sexual orientations and those who are against them, this amendment bill is of very great symbolic significance.

I fully understand that in the past, when society was not so open, there was a very unitary social perception of the definition and composition of the family, so the various social sectors cannot possibly change overnight and accept the formation of a family by two adults of the same sex. This I can understand. However, in fact, one's sexual orientation is inborn, and neither the law nor any policies can change it. On the other side of the coin, if our policies and laws cannot accommodate them, and if the situation is compounded by social discrimination, human nature will only be distorted. This is unfair to the people concerned, and will also produce great impacts on their family members and relatives. In view of this, I hope that after the passage of this amendment bill, people holding different views in society can continue to have interactions and seek to eliminate discrimination, in the hope that we can eventually accept the registration of homosexuals as lawful spouses, offer them equal protection under the law and make Hong Kong a truly tolerant society.

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

Ever since the amendment bill was proposed, there has been a great deal of controversy. Although many people agree that homosexuals should be entitled to protection from violence, there are also a lot of voices contending that two persons of the same sex should not be regarded as a family. No matter how equally firm and faithful their pledges to each other are when compared with partners in heterosexual relationships, they may not necessarily win the acceptance of all people. At one point, some homosexual groups, in a bid to secure basic protection from violence, even considered accepting a change of name for the legislation and giving up the reference to "family". Honestly, this kind of compromise in exchange for survival is very pathetic.

The desire to form families is human nature. All people hope that they can live with family support, and this is a real need. Deputy President, recently, two Members of the legislature have had their wedding celebrations and formed their families, and all of us are very happy. All of us, regardless of our political affiliations, have given them our heartfelt good wishes, precisely because all of us can see how happy it is to live with family support. All of us feel happy for the two Members concerned. No matter how the law is written, this need always exists and will continue to exist.

Every person was born to a family and parents. If he is unfortunately abandoned by his parents, society will only show its sympathy and render him support, providing adequate assistance to this orphan to make up for what he lacks. However, after he has grown up and when his sexual orientation starts to show, some people may deny his need for family life and object to his forming a family. Such behaviour of imposing one's wish on other people, such behaviour that affects other people's entitlement to fair protection under the law, is unjust. Both homosexuals and heterosexuals are all human beings and need family support. This is a need that exists all the time in one's childhood, adulthood and old age, and it cannot be ruled out by any legislation.

This time around, the authorities have to walk a tight rope in order to balance two opposite schools of opinions. The situation is very embarrassing. For this reason, many laughable instances have arisen in respect of the wording of the definition of "cohabitation relationship". I believe this is also the reason for Dr Margaret NG's proposing an amendment to delete the expression "情侶" (lovers). I support Dr Margaret NG's amendment because "情"(love) is frankly very much a matter of personal perception. Deputy President, originally, I

planned to say this to the President because he is very particular about the use of words. Anyway, this does not matter, because I believe he should be listening to us now. What is the structure of the Chinese character "情"? "情" denotes a heart ("心") which is green ("青"), meaning "with vitality and energy". However, only God and Devil will know whether the heart is green in a particular case, so how can any outsiders possibly gauge it? For this reason, it is indeed very embarrassing to include this word in the legislation. Some people hold that this embarrassing provision is not intended just for homosexuals, and that heterosexual cohabitation relationships are also covered by this provision. However, heterosexual cohabitants have a choice under the system in Hong Kong. When they can no longer put up with these provisions, they can choose to register as lawful husband and wife. However, the existing system in Hong Kong does not offer same-sex partners this choice. Whether the relevant legislative provisions of the law are written clearly, they must accept them all the same and in the future, they may fall victim to these unclear provisions. Deputy President, in fact, the legislation in New Zealand can serve as our reference. In New Zealand, so long as one can prove that a cohabitation relationship has existed for more than two years, both parties are immediately be conferred the rights and responsibilities of a registered marriage. In view of this, I hope that after this piece of legislation under discussion has come into effect, the authorities can reconsider this view when conducting a review.

Deputy President, lastly, I wish to talk about the culture of the police. It was not until very recently that the police turned more sensitive to domestic violence. In the past, people had the impression that the police did not care much about this kind of "wife-battering" cases. It was only after a number of recent family tragedies that the police heightened its vigilance against domestic violence. However, after the commencement of the legislation, can members of the police force immediately set aside their personal perception of people with different sexual orientations and faithfully discharge their duties of enforcing the law, so as to protect each and every member of the public? I am quite concerned about this point because all along, the culture of the police is heavily masculine, and when they enforce the law — I myself also witnessed personally how some police officers were particularly harsh to men who had womanly demeanors. For this reason, I am very concerned about whether, in the future, when the police receive a report from two men saying that there is the danger of domestic violence, the police officers on duty will only treat them as being involved in disorderly behaviour or fighting, and whether the police officers concerned will be able to set aside their personal opinions and faithfully discharge their duties of

enforcing the law. I hope the authorities will provide the relevant training as quickly as possible, so that after the passage of the legislation, the police can enforce the law effectively. No matter what the sexual orientations of members of the public are, they are entitled to the effective protection by law-enforcement agencies. Thank you, Deputy President.

MR WONG SING-CHI (in Cantonese): Deputy President, the current criminal law framework actually targets on acts of violence, which means that irrespective of the relationships between the abusers and the victims, and the places where the acts of violence occur, criminal proceedings can be instituted against the abusers under the Crimes Ordinance (Cap. 200) or the Offences Against the Person Ordinance (Cap. 212).

The objective of the existing Domestic Violence Ordinance (DVO) is to make up for the inadequacies of the criminal law framework and provide further remedies through the civil law framework, so as to provide additional protection for people who can easily become victims of violence due to family or certain relationships (such as spouses, or cohabitants who have established a long-standing relationship akin to that of a married couple), with a view to preventing the occurrence of violence. In such intimate relationships, the victims will generally refrain from reporting the acts of violence committed by their cohabiting partners to subject them to criminal sanctions. The DVO can therefore enable the victim to seek an injunction through civil proceedings for temporary separation from the abuser, so that he or she can avoid any further molestation by the abuser, and to seek legal protection through a quicker, easier and less expensive means. In this regard, the situation and needs of same-sex cohabitants are actually the same as those of heterosexual cohabitants or the spouses in a marriage. So, the Democratic Party considers it necessary to provide the same civil protection to them, and this is beyond doubt. Whether in the view of the Democratic Party or in my personal view, this is simply beyond doubt, and I think this is something that must be done. So, the Democratic Party urges the Government to extend the scope of protection to same-sex cohabitants, and we think that we must call on the Government to do so.

Since the Government introduced this amendment bill last year to include same-sex cohabitants, the fact that the original DVO is applicable to cohabitation relationship "as it applies to marriage" has aroused public concern. In this

connection, in the last Legislative Session when the DVO was discussed in December, more than 7 000 submissions were received from the public. More than 150 organizations and individuals attended the three public hearings held by the Panel on Welfare Services (the Panel) and the Bills Committee on Domestic Violence (Amendment) Bill 2009 (the Bills Committee), and the Panel and the Bills Committee also received as many as 500-odd submissions, most of which were supportive of the extension of protection to same-sex cohabitants while expressing grave concern about the impact on the family values in Hong Kong. People were uncompromising, and it seemed that they held diametrically opposing views, with both sides refusing to yield. I was labelled as a "Taliban moralist" and some even hurled such abuses as religious high-handedness at me, but it does not matter any more now because all this has passed. There is now not too much disagreement on the major principle of the proposed amendments this time around, that is, the further extension of the scope of protection to same-sex cohabitants. There is not a very big difference in opinions, and people do not have any strong objection.

Once a target of criticisms, I do have some deep feelings. Although some people were worried at first that some of the views proposed might cause divisions in society, today, however, we all agree to the proposed amendments, and we all hope that they can be passed as soon as possible to provide early protection to same-sex cohabitants (I also share this view). In fact, many studies have pointed out that same-sex cohabitants are more likely to face violence than heterosexual cohabitants, especially at the places where they live together. So, I think there is practically a greater need for them to be provided with protection. I have come to realize that no matter how different the views of both sides are, the matter can still be resolved very quickly as long as both sides can temporarily put aside some of their views.

The Democratic Party understands that the Labour and Welfare Bureau has made a lot of efforts and listened to many different voices in this amendment exercise, and it has done utmost to balance all the divergent views while extending the scope of protection. I hope that the Government can similarly do more in respect of constitutional reform, rather than just listening to the views of one side, namely, the pro-establishment camp and ignoring the views of the pan-democratic camp. It is now proposed that the short title of the DVO be amended as Domestic and Cohabitation Relationships Violence Ordinance, and a new definition of cohabitation relationship be included. The public generally

welcome these proposed amendments. The Bills Committee commenced its scrutiny of the Bill in June, and the work has now been completed.

After several months of discussions, members of the Bills Committee have put forward some views on the amendments, hoping to allay some of the concerns in the community and remove any grey area which can cause disputes.

Today, the Bill is tabled in the Legislative Council for Second Reading. The Democratic Party supports the amendments proposed by the Administration. However, some people are concerned that Dr Margaret NG's amendments may make the coverage of cohabitation relationship unclear. Because of this, and also the fact that we hope to see the passage of the Bill as soon as possible, the Democratic Party cannot support Dr NG's amendment, as we wish to avoid any other social misunderstanding of the DVO that may hinder the passage of the Bill.

We maintain that we should adopt an attitude of zero tolerance towards domestic violence. This is beyond doubt. As for other support measures, such as a domestic violence court, a multi-disciplinary mechanism for reviewing family tragedies, and so on, the Democratic Party will certainly continue to strive for them through different channels, in the hope that the Government can provide greater protection to the public outside the legislative framework.

I would also like to share with Members some of my personal feelings or personal views. A family formed by a man and a woman, or a husband and a wife, has all along been a core value of Hong Kong. We understand that some people have homosexual inclination, and we respect their sexual orientation. But it is clearly stipulated in the marriage legislation of Hong Kong that the system of marriage to be upheld in Hong Kong shall be based on one man and one woman, or one husband and one wife. While seeking to protect the interests of the minority, we must honestly avoid creating any impact on the core values of Hong Kong as much as possible. Unless there have been in-depth discussions, and all members of the public or a majority of the people agree on the disintegration or alteration of the existing family system, I think that rather making any light changes, we must continue to uphold this core value. The Government has stated expressly that the clear policy of not recognizing same-sex marriage in law will remain unchanged. This is a point which I strongly insist on. That was why I put forward some views when the Bill was introduced last year. My purpose was not to stop anyone they choose

homosexuality of their own accord, and I suppose that when they get along with others, people with homosexual orientation may not be any different from other people. I only meant to say that at this very moment, we must protect our established family core value. This very value should not be shaken at this very moment.

Of course, after I had put forward this view, many people hurled a lot of criticisms at me without actually understanding my view. Some critics are people with whom I have fought for democracy, human rights, equality and social justice over the years, and some of them, like me, have also fought for democracy and human rights while upholding family core values. These people are supportive of what I have been doing in this regard. Since there were different people expressing different views, I hoped at that time that the Government could adopt To put it simply, the Government could just rename the DVO and make changes to some definitions, so as not to mix up family relationships with other relationships. That would suffice, I thought. I am deeply grateful to the Government for accepting our different views and introducing many amendments in this amendment exercise.

During that period of time, what caused very great frustrations to me were some people's criticisms I frankly have no idea whether they did so with or without a purpose. I have never on any occasion criticized homosexuals or supporters of same-sex marriage, and I have always thought that they have their own freedom and they are welcome to fight for their ideal and principles by all means. But I think many of the criticisms were vicious attacks and even attempts to cause many people to have certain misunderstandings about me. I think this is unbecoming to a civilized society.

Deputy President, "the family is the natural and fundamental group unit of society and is entitled to protection by society and the State". This is an international obligation established in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and also the Hong Kong Bill of Rights Ordinance. Therefore, while championing for human rights and democracy, we must not give up the protection of the family core values. The many social problems that we face today can be resolved only by consolidating the family system. The collapse of the family system will very easily Although some human rights are under protection, it must be borne in mind that the development of our children may thus be seriously affected. This would be considered utterly regrettable by many people.

However, the debate on the Bill over the past year has shown that Hong Kong is a pluralistic society capable of formulating a win-win proposal after heated arguments. This has precisely shown that ours is a mature and rational civil society. I hope that the Central Government can notice this and then realize that the civil society of Hong Kong is well-equipped to implement dual universal suffrage. The public can eventually find a way out through a process of debates and discussions.

Deputy President, lastly, I would like to say that this Bill before us now is a win-win proposal acceptable to all sides. This can, on the one hand, protect same-sex cohabitants from violence and on the other, continuously protect and uphold the family core values of Hong Kong to ensure that they will not be shaken easily.

The Democratic Party and I myself hope that the Bill can be passed today and expeditiously take effect on 1 January 2010, so as to provide same-sex cohabitants with additional protection outside the criminal law framework. I hope the amended DVO can give same-sex cohabitants a gift that offers them a sense of security, so that they will have a happy Christmas.

Thank you, Deputy President.

MR PAUL CHAN (in Cantonese): Deputy President, I rise to speak in support of the resumption of the Second Reading of the Domestic Violence (Amendment) Bill 2009 (the Bill).

The resumption of the Second Reading of the Bill in the Legislative Council today seeks to incorporate into the scope of protection those who were not considered and taken care of by the Domestic Violence (Amendment) Bill 2007 introduced previously, that is, same-sex cohabitants victimized by violence. The Bill also seeks to give effect to the cross-party consensus reached in the last term of the Legislative Council.

It is only after many rounds of consultation and tug-of-war that this version of the Bill is drawn up. Issues relating to ethics and human rights were brought up in the process of discussions, which was marked by exaggeration, sensational appeals, expression of extreme views and even efforts to mobilize street protests.

We are glad to see that after repeated discussions and presentation of arguments, an all-win situation has finally been achieved. I believe this is a lesson that should merit the in-depth reflection and consideration of politicians. And, it should also be considered as a good example of how a controversial issue can be resolved.

Deputy President, why do I say so? I think I must start with the cross-party consensus reached in the last term of the Legislative Council. At the end of last year, in response to the cross-party consensus, the Government introduced legislative proposals to the Panel on Welfare Services (the Panel) in the new term of the Legislative Council. However, the legislative proposals of the Government came just like a sudden peal of thunder, producing huge reverberations in the Panel. I, as a newcomer to this Council, and some other new Members, expressed strong opposition to the legislative proposals.

I must stress that those Members opposing the proposals and I were actually in support of making legislation to protect all persons against violence, including same-sex cohabitants. We raised our objection mainly because the legislative proposals of the bill at that time might have an impact on the definitions of marriage and family, because traditional concepts of the family and marriage refer to heterosexual relationships, and the parties to a homosexual relationship cannot be considered as parties to a family relationship. However, under the Government's proposal at that time, it was mentioned that same-sex cohabitants were in a relationship as in a marriage. This seemed to be a further step towards recognizing homosexual relationship, making people worry whether an indirect recognition of same-sex marriage would result. This was not only inconsistent with the Administration's intention of proposing the legislative amendments, but would also spark off a series of disputes over the legalization of homosexuality and impact the moral and family values of Hong Kong society.

Under the Marriage Ordinance, a marriage is the voluntary union of one man and one woman as husband and wife. This is the marriage or family relationship recognized by the law. My view is that the definitions of marriage and the family cannot allow even the slightest bit of ambiguity. I was worried then that these legislative proposals which the Government had formulated for the sake of expediency would impact the definitions of marriage and the family, thus shaking the core values of our Chinese society, and even leading to legal disputes in the future, as pointed out by Dr Priscilla LEUNG earlier on.

After a number of Members and I had expressed our strong views, many stakeholders in the community and this Council came forth one after another to express their views and put forward proposals, thus triggering contentions on human rights, moral values and family values. Two opposing sides were formed soon, and what started as rational debates soon changed in nature and became drastic actions. These disputes made the Administration think twice and pay attention to the different voices in society. While society had reached a consensus on making legislation to protect all persons against violence irrespective of their sexual orientation, there was nevertheless no consensus on making changes to the marriage and family relationship based on one man and one woman.

Fortunately, people who held opposing views could exercise restraint, which enabled the debates to re-focus, thus preventing any further deviation from the objective. And, owing to the participation of the education sector, parents and other organizations, arguments were no longer confined to religious faiths, and the Government and the community could thus gain a more comprehensive understanding of the concerns of those in disagreement.

After six months of consultation and tug-of-war, the Government finally introduced some new proposals in June this year. The proposals included the amendment of the short title of the Domestic Violence Ordinance (《家庭暴力條例》) as "Domestic and Cohabitation Relationships Violence Ordinance" and 《家庭及同居關係暴力條例》 in Chinese, so as to stress the applicability of the Ordinance to parties to a cohabitation relationship. The Government also proposed to include in the Ordinance a definition of "cohabitation relationship" which makes no references to marriage, spouse or husband and wife. It is defined to mean a relationship between two persons who live together as a couple in an intimate relationship, and includes such a relationship that has come to an end. These amendments, which provide protection to cohabitants against violence without dealing a blow to family and marriage values, are accepted by all sides. Members urged the Government to introduce the Bill as soon as possible, so that the Legislative Council can examine and endorse it expeditiously to provide protection to same-sex cohabitants against violence.

Deputy President, I, being a newcomer in this Council, hope that this incident can become a good example of how problems can be resolved in society

or in this Council. It is in fact normal for Members to hold different views but we need to seek consensus, set a clear goal and work together to identify solutions, rather than hurling abuses at each other, defying, insulting and trampling on each other or going to different extremes. While some of the views may not be what we wish to hear, these voices must be given the opportunity to be presented and considered in this Council or in society. This is an important test to the maturity of the civil society of Hong Kong. In order to have freedoms and democracy, there must be the rule of law, and there must be citizens with good education and a mature civil society.

Deputy President, I so submit.

MR RONNY TONG (in Cantonese): Deputy President, the proposed amendments to the ordinance are marked by a process and a course of developments. As Dr Margaret NG has explained this very clearly, I am not going to make any repetition. However, I must still point out that while this process is gratifying on the one hand, it is regrettable on the other.

Deputy President, the gratifying side of the process is related to the fact that in the last term of the Legislative Council, the pan-democratic camp strongly requested the Government to squarely address the aspirations to basic human rights, and in particular, to ensure that the enactment of legislation would not be marked by any discriminatory predisposition, lest this might run counter to Article 25 of the Basic Law which provides that all persons "shall be equal before the law". It was very good that when Secretary Matthew CHEUNG requested us to support the amendments in the last term, he made an undertaking. And, I am very happy to see that he is now trying to honour his undertaking. I think that when compared with Chief Executive Donald TSANG, Secretary Matthew CHEUNG is much more trustworthy, and he can also understand the spirit and responsibilities as provided for in the Basic Law. This is the gratifying side.

(THE PRESIDENT resumed the Chair)

President, the regrettable side is that even such a simple piece of legislation has caused a complex uproar in Hong Kong, stirring up highly controversial

arguments and accusations not just in society. Even within the Civic Party, some incomprehensible accusations and controversies have unexpectedly arisen.

President, the object of this legislation is the protection of personal safety, which is only a very straightforward legislative responsibility. But its special circumstances have led to many disputes over ethical and moral standards, plunging some people in the community into confrontation. This is very regrettable. Earlier on Dr Priscilla LEUNG explained her views on the issues involved, and I can appreciate her views. But the experiences she described are precisely the undesirable outcome of a sharply divided society.

In fact, we should look at this issue with tolerance and compassionate understanding. The most fundamental issue we must deal with is that all persons shall be provided with equal treatment and equal protection under the law. The equal treatment and protection of all under the law should have nothing to do with sexual orientations or other moral standards. What I consider absolutely unacceptable is the deprivation of some people's protection under the law for reasons of their inability to meet others' expectations in terms of moral values. This, I think, is absolutely unacceptable.

President, the best way to amend the ordinance is certainly to apply the concept of "domestic" or the concept of "household" as a unit to all people in need of protection, as explained by Dr Margaret NG. This is the most desirable approach.

So, when Secretary Matthew CHEUNG first discussed this issue with us, some people even put forward a proposal (which I tended to support) — people who live under the same roof should perhaps also be brought under the protection of this legislation, and they may not necessarily have to be in an intimate relationship as specified under the current proposal.

Secretary Matthew CHEUNG held the view that if the personal safety of all the people living under the same roof is to be brought under blanket and extensive protection, other problems might ensue. Although I was not totally convinced, I held that it would be better to have this provision than not having it, and it would be better to leave a door ajar than closing it completely. So, I could accept this point.

When drawing up the amendment, the Government already dealt with this point very carefully. But I think the Government failed to see one point — the basic spirit of the amendment — even though the amendment was to be proposed by it. President, as I explained earlier, the Government insisted on not accepting a scope of legal protection based on a household or the concept of people living under the same roof, because it thought that the scope would be too wide and wanted to limit the scope to intimate relationship. President, an intimate relationship actually involves either love or sex only. There is no explicit explanation of this term in law, but the court will make an interpretation under section 3B of the amended ordinance. The judge will have to carefully consider and gauge a dozen of circumstances in order to decide whether the two persons concerned are in an intimate relationship.

Such a presentation and legal definition are actually very narrow already and yet, we can still accept it. But if, in making the legislation, an additional description is added to such a narrow definition, the already narrow scope of protection will be further narrowed, which is contrary to our original intent of amending the ordinance. We hope that the scope of protection of this ordinance can be broadened as far as possible because what we are discussing is the protection of personal safety, President, not the ethical or moral standards certain people should reach. That being the case, where it is acceptable, we hope that the scope of protection can be made as broad as possible. But if the wording used in the legislation to be enacted may narrow the scope of protection, I would think there is a problem.

So, my starting point is a bit different from that of Dr Margaret NG. Dr Margaret NG is very How should I put it? She questioned this point in a very sophisticated manner. But looking at it from a less sophisticated, or even banal, perspective, one may ask, "What is meant by living together as "情侶" (a couple) in an intimate relationship?

President, we all know that two persons in an intimate relationship may not necessarily be "情侶", and "情侶" may not necessarily be in an intimate relationship. I think we have all heard about "love without sex" and "sex without love". Both cases are possible. A cohabitation relationship may be based on mercenary considerations, rather than love. Or, such a relationship might have started because of misunderstanding and ended with understanding. When it comes to love affairs, it is often difficult to make any definitions in the

law. When the persons concerned are asked whether there is any love between them, or when, for example, a couple who have been married for 50 years are asked whether they still consider themselves as "情侶", they may say no and yet, they have been living together and used to have an intimate relationship. It may be a bit risky, and even superfluous, to use "情侶" as a criterion for determining whether there is an intimate relationship. As I explained earlier, the proposed section 3B sets out many signposts for the court's consideration when making a decision.

So, it is entirely feasible for this legislation to drop the references to "情侶", and there will be greater certainty and clarity in that case. The addition of the expression "情侶" will blur the basic principle and may cause disputes. For example, what is to be done if the abuser does not admit having lived with the victim as "情侶"? President, how can we judge whether they love each other? Or, how can we judge whether they used to love each other? It may be possible that no love has been involved from the beginning to the end, and the relationship has been bought with money. But even in the case of a relationship bought with money, can a person inflict bodily harm on another person? No, I do not think so, President.

In this connection, the addition of the expression "情侶" will put the ordinance in a very embarrassing position. I think it is entirely feasible to drop this expression from the ordinance. Besides, it will not offend (I hope it will not) people who aspire especially to very lofty moral standards. So, all I can say here is that I welcome this amendment but I also support Dr Margaret NG's amendment. I hope that the authorities will accept this view, so that greater clarity can be added to this legislation to facilitate its implementation. Thank you, President.

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

MR PAUL TSE (in Cantonese): President, I have some observations on the amendment proposed by Dr Margaret NG. I totally agree that the proposed definition of "cohabitation relationship" is not ideal, but I must say that it is a

compromise between "tightrope walking" and "indecision due to fears". Let me explain why, in the face of a dilemma, I would prefer not to support the amendment proposed by Dr Margaret NG.

President, we can see that the policy intent is for a very narrow scope. In principle, it is intended only to slightly broaden the scope of protection, so as to cover only husbands and wives, and men and women in cohabitation who are not formally married. But in order to meet the needs and requests in the community, and in line with the principles of humanity, the scope of protection is further broadened slightly to include same-sex persons in intimate relationship. This is to a certain extent a shackle which restricts its direction.

The original policy intent is to include the word "couple", and people who know English well will understand what "couple" means. But it seems that there is not a simple and appropriate, or as Margaret NG has put it, presentable, Chinese translation for the term "couple". I have consulted many people with the same level of Chinese proficiency as that of Dr Margaret NG or people who are accepted by the community as men or women of letters. It seems that with the exception of "情侶", there is no other way to express the meaning of "couple". Even the rendition of "伴侶" does not carry the meaning of this expression. I must add that the Law Society, in its letter dated 11 September 2009, expressed its view on this word. They consider that insofar as its meaning is concerned, the word "couple" by itself often gives the impression of a relationship between a man and a woman, whether married or engaged, but not a same-sex relationship. In this connection, I believe the authorities will have no alternative but to make an effort to tackle this dilemma.

President, generally speaking, we all know that if it is about a cohabitation relationship between a man and a woman, this word can be easily understood, and over the years a cohabitation relationship between a man and a woman is generally considered to be a relationship of a man and a woman who live together without formally getting married. There have also been many precedent cases in law, where views in this regard were expressed. So, it is absolutely not difficult to understand the meaning of the word in this context. On the contrary, it seems to be more difficult to understand a same-sex cohabitation relationship. Dr Margaret NG's amendment seems to suggest that a cohabitation relationship "includes" — the word "includes" has its pros and cons. The advantage is that it

makes the definition broad, and as Mr Ronny TONG has said, it can include many other situations, while the disadvantage is that with regard to some situations not mentioned in the definition, there will be a big question mark: What other situations are also included?

Dr Margaret NG's amendments include only two situations. First, persons of the same sex, and second, something in the past or something which occurred already. But is there any omission or is there a question mark? This is exactly the concern of the Administration about "tightrope walking" or whether this would be interpreted to include other situations. So, faced with this dilemma, I am inclined to accept a not-too-presentable expression, one which may even be open to subjective interpretation to a certain extent, and that is, "情侶".

Besides, while opposing the Chinese expression "情侶", Dr Margaret NG, like me, seems to be unable to suggest a better alternative, and she only tries to adopt a completely detached approach which avoids any embarrassment and conflicts, one which makes no mentioning of the issue, in the hope that the eight factors set out from (a) to (h) under the proposed section 3B(2) of the ordinance can be used as signposts. As we all know, if we just rely on signposts or indicators rather than actual definitions for the purpose of defining concepts in law, confusions will often result. Without any principal definitions, the signposts can only help us find definitions, and as most signposts only use the word "whether", saying, for example, "whether there are the following situations". This means that a situation may be or may not be covered, or all the situations are covered. So, how can a clear line be drawn? This is not a desirable approach in law. All in all, under such circumstances and faced with this dilemma, I accepted the Government's approach, and although it may not be very presentable, it is still better than an ambiguous approach which can easily lead to confusions and even controversies.

While making these points, I must stress that I agree to a number of points made by Dr Margaret NG and Mr Ronny TONG in their speeches. First, "domestic violence" often includes not only couple, a relationship between a man and a woman, same-sex cohabitation or intimate relationship, but also other situations. However, as I said earlier on, this is not the policy intent of the Administration. If, in the future, further amendment and extension is necessary, I would express my welcome, but having said that, I am afraid that this may not be within the scope involved this time around.

Second, I also think that this issue is actually very simple and the legislation itself covers just a very narrow scope. But it seems that even if we just want to take half a step forward, many unnecessary disputes will still follow. In this respect, if we really can be as accommodating as suggested by Dr Priscilla LEUNG I think in some cases, things are like Newton's law of action and reaction, which means that when one punches, there will always be a punch in return. If we are too anxious, too cautious and too wary in making definitions, people holding different views will naturally react. Sometimes, it may be better for us not to be overly cautious because in the final analysis, there is a very clear definition of marriage in the existing laws of Hong Kong — the union of a man and a woman. There is no reason for us to be bothered by unwarranted concerns and engage in these unnecessary disputes. Thank you, President.

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

(No Member indicated a wish to speak)

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

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, I sincerely thank the Chairman of the Bills Committee on Domestic Violence (Amendment) Bill 2009 (the Bills Committee), Mr LEE Cheuk-yan, and the 19 members of the Bills Committee for efficiently completing the deliberations of the Domestic Violence (Amendment) Bill 2009 (the Bill) in less than six months, and also for their valuable views on the Bill. I also thank various sectors of the community, especially the organizations which have attended meetings of the Bills Committee, for putting forward many useful and practical views on the Bill.

The Domestic Violence Ordinance (DVO), enacted in 1986, provides for a civil remedy for spouse, a man and a woman in cohabitation and their children to seek injunction from the court against molestation by the other party. To provide greater protection to victims of domestic violence, the Government

introduced the Domestic Violence (Amendment) Bill 2007 (the 2007 Bill) to extend the scope of the DVO to cover former spouses, persons formerly in heterosexual cohabitation relationship, and persons in other immediate or extended familial relationships.

During the scrutiny of the 2007 Bill, Members of the Legislative Council from various political parties urged the Government to extend the coverage of the DVO to same-sex cohabitants. To respond to the proposal of the Legislative Council and the aspiration of the community, the Government, during the resumption of the Second Reading debate on the 2007 Bill, undertook to expeditiously introduce amendments in the 2008-2009 legislative session to further extend the coverage of the DVO to same-sex cohabitants. Subsequently, we consulted the Legislative Council Panel on Welfare Services (the Panel) and attended two special meetings of the Panel to listen carefully to the views of various organizations on the amendment bill. After comprehensively considering and carefully balancing the views and aspirations of all sectors of the community, we introduced the Bill to the Legislative Council on 3 June this year. The Bill was tabled for First Reading and Second Reading debate on 17 June.

The purpose of the Bill is to extend the scope of the DVO from heterosexual cohabitants and former heterosexual cohabitants to same-sex cohabitants and former same-sex cohabitants. When drafting the relevant amendments, the Government upheld the following principles and policy positions:

First, the Government introduced the Bill on the premise of not giving legal recognition to same-sex marriage, civil partnership or any same-sex relationship. The civil remedy under the DVO is provided to target only the specific or intimate relationship between the abuser and the victim. Against this backdrop, we notice that same-sex cohabitants, like heterosexual cohabitants, may also have considerations arising from the intimate relationship and special power interface with the abusers and hence, the victims may not be willing or dare to report their case to the police. As a result, such incidents involving violence may develop to a state where bodily harm is inflicted and a person's life is endangered. Considering that this is a matter of life and death and in view of the aspirations of Members of the Legislative Council and the relevant organizations, the Government agreed to make special consideration on the principle of not recognizing any same-sex relationship in law and further amend the DVO to

provide additional civil protection to same-sex cohabitants. This principle was also our important consideration in discussing in detail the clauses of the Bill with the Bills Committee.

Second, in view of the concerns and worries of parents and religious groups, the Government has deleted the provisions targeting only heterosexual cohabitation relationship in the existing DVO and added a gender-neutral definition of "cohabitation relationship" to mean "a relationship between two persons who live together as a couple in an intimate relationship". This definition covers not only heterosexual cohabitation relationship but also same-sex cohabitation relationship. To respond to the concern of the relevant organizations, this definition is devoid of any references to or linkages between "spouse", "marriage", "husband and wife", and same-sex cohabitation. The Bill is introduced on this principle, in order to have regard to the voices of various sectors of the community while achieving the objective of incorporating same-sex cohabitants into the scope of protection of the DVO.

Third, the eligibility threshold for injunction applications by a party to a cohabitation relationship under the amended DVO must be equivalent to or pitched as close as possible to the established standard for injunction applications by a party to a cohabitation relationship between a man and a woman under the existing DVO. The DVO, since its enactment in 1986, has the policy intent to provide additional civil protection to individuals in specific relationships against molestation by their partners. Under the existing DVO, these certain relationships include marriage, a cohabitation relationship between a man and a woman as in a marriage, and immediate and extended familial relationships. When extending the coverage of "cohabitation relationship" under the DVO to same-sex cohabitants, the Government seeks to ensure that the essential qualities of "cohabitation relationship" covered by the amended DVO are of an equally stringent standard with the eligibility threshold for "cohabitation relationship" between a man and a woman under the existing DVO. We have no intention to lower the eligibility threshold for injunction applications under the DVO through this amendment exercise.

President, we are glad that the amendments proposed by the Government have obtained the support of the Bills Committee and that the Second Reading debate on the Bill can be resumed in this Council by the end of this year. In response to the requests and views of the Bills Committee, we will appropriately fine-tune the wordings of the definition of "cohabitation relationship" and some

of the important factors for consideration of "cohabitation relationship" in the Bill, and I will propose the relevant amendments later. Moreover, we notice that Dr Margaret NG will propose an amendment to delete the new gender-neutral definition of "cohabitation relationship" proposed by the Government which is devoid of any linkages with such concepts as "same-sex cohabitation relationship", "husband and wife" and "marriage". I wish to stress that we strongly oppose her amendment. I will explain our reasons for opposing the amendment in detail when I speak again later.

In order to extend the protection of the DVO to same-sex cohabitants and former same-sex cohabitants as early as possible and to enhance the legal protection for victims of violence, if the Bill and the amendments proposed by the Government are formally passed by the Legislative Council tonight, a notice of the commencement date of the ordinance can be gazetted on 31 December 2009 and the new provisions can formally take effect on 1 January 2010 the earliest. Procedurally, the new provisions will take effect before the notice of the commencement date is tabled to the Legislative Council on 6 December 2010. We have consulted the Bills Committee on this legislative timetable and obtained the support of the Bills Committee for the formal commencement of the amended ordinance on 1 January 2010. The relevant government departments have made all necessary preparations to support the implementation of the new provisions with effect from 1 January 2010.

With these remarks, President, I hope Members will support the Bill and the amendments that I will move later.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Domestic Violence (Amendment) Bill 2009 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Domestic Violence (Amendment) Bill 2009.

Council went into Committee.

Committee Stage

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

DOMESTIC VIOLENCE (AMENDMENT) BILL 2009

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Domestic Violence (Amendment) Bill 2009.

CLERK (in Cantonese): Clauses 1, 2, 4, 6 and 8 to 19.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clauses 1, 2, 4, 6 and 8 to 19 stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 3 and 7.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Chairman, I move the amendments to clauses 3 and 7 as set out in the paper circularized to Members.

We propose to amend clause 3 of the Domestic Violence (Amendment) Bill 2009 (the Bill). This is a technical amendment. At the suggestion of the Bills Committee on Domestic Violence (Amendment) Bill 2009 (the Bills Committee), the proposed Chinese text of the long title to the Bill is amended, so that the Chinese term "關係" appears only once in the Chinese text as the equivalent of the English term "relationships".

Besides, we propose to amend clause 7 of the Bill. There are two types of amendments. Firstly, in view of the addition of the definition of "applicant" in clause 5(2) that I am going to move later on, we propose that a consequential technical amendment be made to the reference to "applicant" in clause 7.

The second type of amendments seek to amend clause 7 of the Bill in that amendments are made to the eight factors as set out in the new section 3B(2) of the amended ordinance. In response to the requests and views of the Bills Committee, some minor amendments are made to some of the factors appropriately, in order to provide that when considering whether a cohabitation relationship is involved, the court shall have regard to whether the two parties to a cohabitation relationship share the care and support of a specified minor, the parties' reasons for living together and the degree of mutual commitment to a shared life, and whether the parties conduct themselves as parties to a

cohabitation relationship, and whether they are treated as such by their friends and relatives, and so on.

Chairman, these amendments have been discussed in detail by the Bills Committee and they have the support of the Bills Committee.

With these remarks, I hope that Members can support these amendments.

Proposed amendments

Clause 3 (see Annex II)

Clause 7 (see Annex II)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 3 and 7 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clauses 3 and 7 as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clause 5.

CHAIRMAN (in Cantonese): Dr Margaret NG and the Secretary for Labour and Welfare have separately given notice to move amendments to the proposed definition of "cohabitation relationship" in clause 5(2).

If Dr Margaret NG's amendment is passed, she may later move her consequential amendment to the long title, and the Secretary for Labour and Welfare may not move his relevant amendment which is inconsistent with the decision already taken. If Dr Margaret NG's amendment is negatived, she may not move her consequential amendment to the long title, and the Secretary for Labour and Welfare may move his relevant amendment.

CHAIRMAN (in Cantonese): Members may now have a joint debate on the original provisions and Dr Margaret NG's as well as the Secretary for Labour and Welfare's amendments. I shall now call upon Dr Margaret NG to speak first, to be followed by the Secretary for Labour and Welfare; but no amendments are to be moved at this stage.

DR MARGARET NG (in Cantonese): Chairman, it is impossible for my amendment to be passed today. That said, this debate is very important, because many years later when we try to find out why there is the expression of "作為情侶 (as a couple)" in the ordinance, we only need to look up the records of proceedings of the Legislative Council and we will know the reasons.

Chairman, I always adhere to one principle: if it is purely a problem with the drafting of legislation, I will normally not insist on my own views after voicing them out. But what is involved here today is not purely a drafting issue. Rather, the expression "作為情侶" is actually a factor contributing to the definition of a cohabitation relationship.

The law never requires one to love anybody, and it never requires one to be in love with anybody. So, the inclusion of the aforesaid expression in the Bill will mean adding a factor which is very difficult to satisfy and yet, this is truly made to be a factor. Chairman, let us look at how a cohabitation relationship is defined. It is defined as "(a) a relationship between two persons who live together as a couple (作為情侶) in an intimate relationship". In this connection, the two persons do not only have to be cohabitating and living together. They must also be living together "as a couple (作為情侶)", and if this is not the case, no further argument would be necessary. What is more, it is not enough even if they live together "as a couple (作為情侶)", because they must also be "in an intimate relationship". So, the three elements must co-exist, and there are three conditions to satisfy.

What is meant by "情侶"? Must a relationship be akin to that of YANG Guo and Xiaolongnü⁽¹⁾ before the persons concerned can be called "情侶"? If so, I would say that not even the relationship between YANG Guo and Xiaolongnü will count, Chairman, because they did not live together in an intimate relationship, for they were separated for 16 years. So, even though they were in love with each other, they still could not pass the test because they did not live together.

Another example is the old-fashioned unequal relationship: the keeping of a kept woman or mistress. Once a man became rich, he would become dissatisfied with his wife and lived with a concubine outside. Can this meet the requirements? Is such a relationship a cohabitation relationship? People in

⁽¹⁾ YANG Guo and Xiaolongnü are the two lovers in the Chinese martial arts novel, *The Legend of the Condor Heroes*, by Jin Yong.

general understand the meaning of a cohabitation relationship using their common sense. But the proposed definition is not a matter of common sense, as it includes the requirement of "作為情侶 (as a couple)". A woman may say that she has no alternative, she is under the pressure of livelihood, she needs the man for financial reasons, so she must live with him. But they are not "情侶". Does such a relationship count? Sorry, this does not meet the requirements under the definition.

What is the original definition, that is, the definition proposed to be deleted by the Bill? It reads: "subject to section 6(3) this Ordinance shall apply to the cohabitation of a man and a woman as it applies to marriage". So, the relationship with a kept woman (or mistress) in the past, or in an opposite case, the keeping of a gigolo by a woman who has the means (to put it in colloquial language) will both count, because these are akin to marriage. But as to whether the persons concerned are romantically attached to each other or whether they are "情侶", the law simply does not care. The law only cares about the *de facto* status of their living together from an objective point of view, and the court does not care about how closely they are associated with each other romantically. So, Chairman, this definition being proposed today is very dangerous, because if the persons concerned are not "情侶" and do not have any romantic affection towards each other, their relationship will not count even though they do live together.

Chairman, when I spoke during the resumption of the Second Reading debate on the Bill earlier, I mentioned section 3B which sets out the factors for the court to consider whether there is a cohabitation relationship. First, let me reiterate that the meaning of a cohabitation relationship is common sense. For example, two brothers who are single by marital status and who live together in the same flat will not be considered as living in a cohabitation relationship; or when several classmates share a flat, which is very common among university students, they can be taken to have a close relationship but they will not be described as having a cohabitation relationship.

So, the meaning of a cohabitation relationship is only common sense. The court does not need to be told whether the two persons are living together as "情侶" and whether they have an intimate relationship because the court, when in doubt, will make consideration according to the new section 3B(2). Chairman, earlier on when I spoke during the resumption of the Second Reading debate on the Bill, I used the word "household". Section 3B(2)(a) proposed in the Bill

reads, "whether the parties are living together in the same household". It is "same household", not same house. The Chinese text is "雙方是否在同一住戶內共同生活". When the persons concerned live in the same household, both of them will buy daily necessities irrespective of who is the head of household. Of course, how two persons live together is different in each case. In some cases, they may do many things together and stay with each other all the time. It is a different matter as to whether they have any romantic affection towards each other, but even if they are only outwardly close, they must still pretend to be so.. Some cases are just different, as the two persons may really be fervently in love with each other but they have very independent lives. There are indeed such cases, but they still live together in the same household. Other factors include the sharing of tasks or duties in daily lives, and whether there is stability and permanence in the relationship. So, when in doubt, the court can make a decision based on these signposts.

Chairman, I actually do not agree that the court will need these signposts, because the law is not something written in vacuum. Each word and expression in the law carries its social meaning. Therefore, people all have a common-sense understanding cohabitation relationship, and it is actually a social relationship. If the court is in doubt, there are established case laws to tell it under what circumstances it can determine a relationship to be a cohabitation relationship. This is a normal feature of the common law. It is unnecessary for the executive authorities and the legislature to work out together those paragraphs from (a) to (h) under section 3B(2) as proposed in the Bill. They are superfluous.

Chairman, in the final analysis, I maintain that if there is nothing wrong with the law itself, whether it is drafted well will at most make me feel a bit regrettable. But as it is written now, the provision concerned is really plagued with problems of legal concepts, because "作為情侶" is truly made to be a requirement in law. Chairman, if my amendment can be passed, a cohabitation relationship will be defined as this: "cohabitation relationship includes a cohabitation relationship between two persons of the same sex and such a relationship that has come to an end". Some people have raised two questions. They say that although it is specified that it "includes a cohabitation relationship between two persons of the same sex", it does not provide a definition of "cohabitation relationship". As I said very clearly just now, nobody would consider several classmates living together as having a cohabitation relationship;

nor will anyone consider two brothers who are single by marital status and who live together as in a cohabitation relationship. So, I think it is unnecessary to provide a definition. The second question is about "such a relationship that has come to an end", and they question what "such a relationship" refers to. Does it mean a cohabitation relationship of two persons of the same sex only or many other relationships that include a cohabitation relationship of two persons of the same sex? It is clear from reading the provisions in context that in the case of two persons of the same sex, it means a same-sex cohabitation relationship that has come to an end, and in the case of two persons of the opposite sex, it means a heterosexual cohabitation relationship that has come to an end. Why does it have to be so cumbersome? So, Chairman, I think this definition proposed by me is very clear already and if there is anything unclear, there are already clear indications in the legal provisions. However, after all these necessary additions, I can only wish the Secretary good luck. I understand that he did this in good faith and I understand that he wanted to stay away from the "landmines". But sometimes, being over-cautious may create other troubles. So, Chairman, irrespective of whether my amendment can be passed, our debate will be put on record. Thank you, Chairman.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Chairman, as I stressed during the resumption of the Second Reading debate on the Bill, the Government strongly opposed the amendment proposed by Dr Margaret NG. First of all, the wording of Dr NG's amendment is unclear and can be understood as narrowing the coverage of the Domestic Violence Ordinance (DVO), resulting in a situation where an abused party to a former heterosexual cohabitation relationship would cease to be protected by the DVO and hence could not apply for an injunction order from the court to protect himself/herself and his/her abused children from molestation by the other party. Moreover, judging from its concept and meaning, Dr NG's amendment has drawn an equal sign between the test of same-sex cohabitation relationship and a relationship of two persons living together as husband and wife, thus establishing a link between the concept of marriage and same-sex cohabitation relationship, and this is precisely what many religious

(Dr Margaret NG stood up)

CHAIRMAN (in Cantonese): Secretary, hold on please. Dr Margaret NG.

DR MARGARET NG (in Cantonese): I am not sure whether I should ask the Secretary to elucidate his remarks or I should elucidate what I said in my speech, because when I read out the expression "as it applies to marriage", I was actually saying that this part had already been deleted by the Bill. I did not say that in my amendment it would mean a relationship akin to marriage

CHAIRMAN (in Cantonese): Dr Margaret NG, if you think that the Secretary has misunderstood what you have just said, you can make clarification only after he has finished his speech.

DR MARGARET NG (in Cantonese): Alright.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Chairman, as I said very clearly just now, judging from its concept and meaning, Dr NG's amendment has drawn an equal sign between the test of same-sex cohabitation relationship and a relationship of two persons living together as husband and wife, thus establishing a link between the concept of marriage and same-sex cohabitation relationship

(Dr Margaret NG stood up again)

CHAIRMAN (in Cantonese): Secretary, hold on please.

DR MARGARET NG (in Cantonese): Chairman, I would like the Secretary to clarify now why he said that this was what I meant in my speech. I would like him to clarify this point.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Chairman, in the following part of my speech I will actually give a very detailed response. I

will explain one by one all the Just give me some time and allowance to explain this. Well, will Members please give me some time and listen to my explanation? This is precisely the gravest concern and worry initially expressed by many religious, parent and education groups on the proposed amendment.

Another important reason why the Government opposes Dr NG's amendment is that the amendment does not provide a definition of "cohabitation relationship" with certainty and clarity, thus causing ambiguities in the scope of "cohabitation relationship" covered by the DVO, and in turn leading to future disputes over the legal effect.

I urge Members to oppose Dr NG's amendment, so that the Government can propose an amendment at the request and with the consent of members of the Bills Committee on Domestic Violence (Amendment) Bill 2009 (the Bills Committee) to the definition of "cohabitation relationship" in the Domestic Violence (Amendment) Bill 2009 (the Bill) under the Rules of Procedure, specifying that the definition applies to two persons disregarding whether they are of the same or opposite sex to ensure consistency with the long title of the Bill.

Chairman, let me now explain one by one the Government's reasons for opposing the amendment proposed by Dr Margaret NG.

The first reason of the Government's opposition to Dr NG's amendment is that the amendment may narrow the coverage of the DVO in respect of cohabitation relationship that has come to an end, to the effect that a victim in a former heterosexual cohabitation relationship currently under protection will no longer be able to apply for an injunction order from the court in future under the DVO to protect himself/herself and his/her abused children from molestation by the other party.

The scope of protection of the DVO currently covers heterosexual cohabitants and former heterosexual cohabitants, while the purpose of the Bill is to further extend the scope of the DVO to same-sex cohabitants and former same-sex cohabitants. Under the Bill, "cohabitation relationship" means "a relationship between two persons who live together as a couple in an intimate relationship, and includes such a relationship that has come to an end". As the definition of "cohabitation relationship" is gender neutral, "a relationship that has come to an end" hence naturally covers a heterosexual cohabitation relationship

that has come to an end and a same-sex cohabitation relationship that has come to an end.

Dr NG's amendment seeks to delete this gender-neutral definition of "cohabitation relationship" by substituting it with "cohabitation relationship includes a cohabitation relationship between two persons of the same sex and such a relationship that has come to an end". From the wording of Dr NG's amendment, it can be interpreted to be applicable only to same-sex cohabitation relationship that has come to an end and as a result, the abused party to a heterosexual cohabitation relationship that has come to an end may no longer be protected by the DVO with the passage of Dr NG's amendment. This is extremely unfair to the abused party to a former heterosexual cohabitation relationship and also against our policy intent in introducing this Bill to the Legislative Council.

From discussions at meetings of the Bills Committee, we understand that Dr NG has no intention of making any changes to the applicability of the DVO through her amendment to the effect that the abused party to a heterosexual cohabitation relationship that has come to an end will not be protected by the DVO. However, judging from the wording of Dr NG's amendment, there are indeed uncertainties which may easily lead to disputes. We have discussed this with individual Members, and some Members also consider that the wording of Dr NG's amendment will indeed cause misunderstandings and disputes. In contrast, the definition of "cohabitation relationship" proposed by the Government is gender neutral and clear, and it is in line with the Government's policy intent of extending the protection of the DVO to same-sex cohabitants on the principle that the protection for heterosexual cohabitants remains unchanged.

Another main reason for the Government's opposition to the amendment proposed by Dr NG is that the amendment will cause ambiguities in the scope of "cohabitation relationship" covered by the DVO and it will link the test of "same-sex cohabitation relationship" with the concept of marriage.

During the discussions of the Bills Committee, Dr NG pointed out that as the meaning of "cohabitation relationship" is commonly understood, she considered it unnecessary to include this definition in the DVO, and as she also mentioned earlier, the meaning of "cohabitation relationship" is a matter of common sense. We take exception to this approach. After all, the

understanding of "cohabitation relationship" varies from one person to another, and there is no uniform standard in society. Some people may understand it literally by equating a "cohabitation relationship" with a relation between people who live together. However, a relationship between very good friends who live together under the same roof as if sisters is actually different from the intimate relationship between two persons living together as required under the DVO. Some people may think that two persons who have committed intimate acts and who live together are in a "cohabitation relationship". However, even though they commit intimate acts and live together, if they are absolutely not associated with each other in other aspects and they live completely independent of each other and do not interfere with each other's life, and they do not have plans for a shared life either, such a relationship cannot meet the application threshold under the DVO and so, it should not be included as a "cohabitation relationship" as referred to in the DVO.

Furthermore, while it may not be necessary to provide an accurate and standardized definition of the concept of "cohabitation relationship" if it is taken as a chat topic over a cup of tea or after a meal, if this concept is to be applied in law and if it is not clearly defined, disputes and confusions are set to arise in future. In fact, the language used in law must be clear and unequivocal. The Interpretation and General Clauses Ordinance (Cap. 1) provide definitions for terms which are commonly used, such as infant, adult, and so on, as necessary. Individual legislation also provides for the definitions of terms used in the legislation as necessary. Insofar as the Bill is concerned, what kind of "cohabitation relationship" will be protected by the DVO is the key of this amendment exercise and so, its definition must be clearly provided for in the DVO. Dr NG's amendment cannot tell the court expressly that a "cohabitation relationship" under the DVO must reach the standard of two people living together as husband and wife. Relying solely on the different perceptions of "cohabitation relationship" among the public to interpret the legislation would result in uncertainties in the legislation, and it is not in line with the principle consistently upheld by the Bills Committee of ensuring clarity, simplicity and comprehensibility of legislation. In comparison, the definition of "cohabitation relationship" proposed by the Government is clear, enabling the court, lawyers, front-line officers and persons applying for an injunction order to understand the protection provided by the DVO and the eligibility for injunction applications, and should therefore be maintained.

Dr NG mentioned earlier that using the interpretation of "cohabitation relationship" in the common law together with the eight signposts would suffice for the purpose of defining parties to a cohabitation relationship under the DVO. The Government has misgivings about how far Dr NG's amendment can achieve this purpose. Meanwhile, I also wish to point out that the use of common law precedents in Hong Kong to interpret the definition of "cohabitation relationship" in the DVO is precisely against the wish of the relevant organizations, and it is tantamount to linking the test of "same-sex cohabitation relationship" with the concept of marriage.

With regard to the legal effect of the provision, if, as suggested by Dr NG, the criteria for determining "cohabitation relationship" are not specified in the DVO and the court is expected to use the concept of a relationship akin to husband and wife in the common law to define "cohabitation relationship" under the DVO and also apply the interpretation of "cohabitation relationship between a man and a woman" directly to "same-sex cohabitation relationship", such an approach is indirect and unclear, and it is actually undesirable. In common law cases, the test of "as husband and wife" applies only to "cohabitation relationship" which is linked with the concept of marriage, and the wordings of the provisions in which this concept is applied will

(Dr Margaret NG stood up for the third time)

CHAIRMAN (in Cantonese): Secretary, please hold on. Dr Margaret NG, you can speak again in this session. I would suggest you to let the Secretary finish his speech first.

DR MARGARET NG (in Cantonese): Chairman, I know I can speak again. If I want to explain my points or argue with the Secretary, I can, However, I really wish to ask the Secretary to clarify why he considers that the "cohabitation relationship" I mentioned is a relationship "as in a marriage"? It is because I have not mentioned this point in my entire speech.

CHAIRMAN (in Cantonese): Dr Margaret NG, you will have a chance to speak again after the Secretary has finished his speech. Therefore, I suggest that you

should wait for your turn to speak later to point out the part of his speech which you think there is problem. The Secretary will have a chance to respond again. Secretary, please continue with your speech.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Thank you, Chairman. In the case laws under the common law, the test of being "as husband and wife" is only applicable to a "cohabitation relationship" which is linked with the concept of marriage. And, the provision invoking this concept usually states "living together as husband and wife" as a test, or stipulates that such "cohabitation relationship" is comparable to the concept of marital relationship. For example, as pointed out in section 2(2) of the existing ordinance, the DVO is applicable to cohabitation as it applies to marriage. Dr NG's amendment does not make any reference to illustrate that such "cohabitation relationship" is comparable to the concept of marital relationship. Some people may even argue, given that Hong Kong does not recognize same-sex marriage in its laws and policies, we cannot compare "cohabitation relationship" to the concept of marital relationship. The amendment is written in such an ambiguous manner, leaving much room for us to argue which standard should be adopted for determining "cohabitation relationship".

The common law has borrowed the concept of marital relationship to interpret "cohabitation of a man and a woman". The expression "as husband and wife" have defined two parties, a man and a woman, textually. At present, as there does not exist any case law which is binding on the courts in Hong Kong to illustrate whether the test of being "husband and wife" is applicable and how it can be applied to "same-sex cohabitation relationship", Dr NG's amendment is sufficient to arouse a controversy that the concept of "living together as husband and wife" will only be applicable to cohabitants of the opposite sex but not "same-sex cohabitation relationship". As a matter of fact, there were case laws in overseas countries in which the two parties in litigation had disputes regarding this point. Unless Dr NG states clearly in the DVO that the test of opposite-sex "cohabitation relationship" is "living together as husband and wife", and same-sex cohabitation relationship adopts a test which quality is equivalent to the concept of "living together as husband and wife"; otherwise, it is inevitable that Dr NG's amendment will arouse the controversy I have just mentioned. From the policy perspective, such controversy may affect the opportunity of same-sex cohabitants for being covered by the DVO; and from the legal perspective, in the absence of a

clear definition of "cohabitation relationship", the certainty of the DVO will be greatly reduced.

Moreover, Dr NG on the one hand considers that the test of being "husband and wife" under the common law can be used to interpret "cohabitation relationship"; and on the other hand, she requests the court to make reference to the eight factors as codified in the statute in the DVO, this is self-contradictory. In fact, if such test under the common law is adopted, the case laws in this regard will undoubtedly be applicable. There is absolutely no need to enact legislation separately to provide guidance on these reference factors. Dr NG's amendment will only cause confusion, making it difficult for the court to grasp whether its original intent is to adopt the concept under the common law or interpret the content of the provision by virtue of the statute law.

Chairman, in view of this, Dr NG's amendment is bound to give rise to litigations. Even if the concept under the common law is adopted, in order to avoid such controversies, we should state clearly the test of "living together as husband and wife" in the provision and stipulate how such test can be applied to "same-sex cohabitation relationship", rather than leaving such important parts blank as proposed in Dr NG's amendment.

Moreover, what is worrying is that Dr NG's amendment will link "same-sex cohabitation relationship" with the concept of "marriage", which is strongly opposed by religious and parent groups. In fact, based on their concerns and views, we have not added any provision in the Bill to allow the court to invoke this concept under the common law directly to interpret the definition of "cohabitation relationship", whether of the same sex or of the opposite sex. On the contrary, we have listed the quality of "living together as husband and wife" under the common law, so as to make it clear to the court that "cohabitation relationship" under the amended ordinance is as strict as the application threshold required under the existing DVO. If Dr NG's amendment is sufficient to make the court adopt the interpretation of "cohabitation relationship" between a man and a woman under the common law to "same-sex cohabitation relationship", it is equivalent to allowing the court to apply the concept of marital relationship directly to "same-sex cohabitation relationship". Legally speaking, it will link "same-sex cohabitation relationship" with the concept of "marital relationship". I would like to draw Members' attention to the

fact that once such linkage is recognized by the court, it will become a case law. This will arouse grave concerns among religious and parent groups and even in the whole community, which is absolutely not the policy intent of the Government.

Furthermore, in the absence of a clear test and eligibility threshold of "cohabitation relationship", the quality of intimate relationship required by the DVO cannot be brought out explicitly by the eight factors. The definition of "cohabitation relationship" proposed by the Government and the eight factors, which is an integral design, cannot be separated. Paragraph (a) of the definition of "cohabitation relationship" proposed by us has stipulated the test of "a relationship between two persons who live together as a couple in an intimate relationship", whilst the eight factors are to assist the court to judge whether a relationship between two persons meets the reference factors of such test. The test and the reference factors are complementary to each other. As I have mentioned just now, they cannot be separated. If the test is removed as per Dr NG's amendment, the eight factors will have no target or basis for the test, which will in no way assist the court to interpret the eligibility threshold for application for an injunction order under the amended ordinance.

Chairman, I have stated the reasons why the Government objects to Dr NG's amendment in details. I understand that after all, Dr NG is most concerned about the Chinese rendition of "情侶" in the definition of "cohabitation relationship" proposed by the Government. Although Dr NG finds the term "a couple" in the English version acceptable, she opposes the use of "情侶" as the Chinese equivalent of "a couple". Dr NG worries that with the inclusion of the term "情侶" in the definition, it is necessary for the court, when considering injunction applications from parties to a cohabitation relationship, to consider whether the two persons are in love, and that will involve subjective judgment. As no other equivalent is found to be able to reflect the policy intent unequivocally as the term "情侶", Dr NG has adopted an across-the-board approach to remove the definition of "cohabitation relationship" which is proposed by the Government and supported by the Bills Committee.

I wish to stress that the proposed definition of "cohabitation relationship" is to use the state of affairs between two persons who are living together to define whether their relationship is the "cohabitation relationship" stipulated in the DVO. Whether the relevant persons have any romantic affection and the level

of such affection is not a test to define "cohabitation relationship" proposed in the Bill.

Similar to the existing DVO, as far as cohabitation relationship is concerned, the court, in judging whether a man and a woman is in the cohabitation relationship stipulated in the DVO, will base on the actual situation to see if they are living together as husband and wife, rather than whether they are still deeply in love with each other. It is an objective judgment to determine the state of affairs between two persons who are living together. Moreover, it has also proposed in the Bill an objective test to enable the court to have regard to all the circumstances of the case, including the eight factors.

Adding the term "情侶" in the definition does not mean that the court is required to determine whether there is any romantic affection between the two persons. In daily life, even a couple does not have any romantic affection, they may still maintain their relationship and status as a couple because of various reasons (for example, they are concerned about their children's feelings), and maintain their existing state of affairs. In considering the case concerned, the judge will see if the two parties continue to live together as a couple to determine their relationship in an overall and comprehensive manner. There is no need for us to interpret the terms in the definition of "cohabitation relationship" separately, nor should we do so, so as to avoid causing any unnecessary worries. Moreover, it is not worthwhile for us to remove such an important test of "living together as a couple in an intimate relationship", making the definition of "cohabitation relationship" under the DVO become ambiguous.

From the policy perspective, the expression "as a couple" is an essential and integral component in the definition of "cohabitation relationship", so as to stipulate that as far as the eligibility threshold for injunction applications under the amended ordinance is concerned, the qualities of the relationship between the cohabitants is comparable to the threshold of "living together as husband and wife" required under the existing DVO. As a matter of fact, in the light of Dr NG's views, the Administration has striven to trawl for other possible Chinese renditions of "a couple", so as to ease Dr NG's worries.

Some members proposed to use the term "伴侶" to replace the term "情侶". This is not appropriate. The term "伴侶", whose dictionary meaning includes good friends, has a greater scope of coverage than the term "情侶". If

the term "伴侶" is adopted, the coverage of the DVO will be extended to cohabitants who are not living together as husband and wife in an intimate relationship, such as intimate female friends who are living together. This is against our legislative intent. After discussing with the Bills Committee repeatedly, no matter the Administration, the Bills Committee and Dr NG, none of us can find another rendition to better meet the policy intent than "情侶" in the Bill. In the absence of any alternative rendition which is agreed by both the Administration and the legislature, the Government therefore proposes to retain "as a couple" and "情侶" in the definition, so as to accurately reflect its policy intent.

Some members proposed to remove the expression "as a couple" from the definition and change it into "the relationship between two persons who live together in an intimate relationship". Under such a definition, other intimate cohabitation relationships (such as those between very good friends, between a mistress and a man who visits her occasionally and between persons in dating relationships) will probably be included in the coverage of the DVO, which is not the policy intent of the Government.

Chairman, like Honourable Members, we hope that the Bill can be passed expeditiously, with a view to extending the coverage of the DVO to same-sex cohabitants and former same-sex cohabitants on 1 January next year the earliest. I implore Members to vote against the amendment proposed by Dr NG, so that the Government can retain the definition of "cohabitation relationship" and move its amendment as requested by the Bills Committee, so as to provide protection for those cohabitants and former cohabitants being covered under the DVO expeditiously.

Thank you, Chairman.

DR PRISCILLA LEUNG (in Cantonese): Chairman, I have consulted Dr Margaret NG in person about the original intent of her amendment. After listening to her explanation, I basically understand it. Initially, I wondered if Dr Margaret NG's amendment was similar to the one which we wished to propose to the Government at the outset, that is, persons living together under the same roof or those having an intimate or permanent relationship could also be covered. It is because there are such examples in the laws of overseas countries. However,

if my interpretation just now was correct, "couple" as referred to by Dr Margaret NG should carry a meaning conventionally understood by us; it should be a cohabitation relationship between two persons, involving love. On such a basis, I tend to agree with Ms Miriam LAU that such an amendment will make the definition even more ambiguous and unclear.

I would like to talk about clause 5(2). In fact, I stated openly earlier on that I intended to move an amendment to this clause. At that time, I was worried whether the Government and I had interpreted "between two persons who live together as a couple in an intimate relationship" differently. According to my understanding, both "two" and "couple" are very important factors. Legally speaking, there should not be much room for more than two persons to claim themselves as a couple and be covered by this definition. However, during the discussion in the Bills Committee, it seemed that different members and even representatives of the Government had different interpretations. I did consider very seriously whether I should move an amendment, so as to make it clearer. However, I am very satisfied with the reply given to me by the legal adviser on 10 November 2009. And as it is also relevant to the amendment proposed by Dr Margaret NG today, I have opted to put part of it on record.

The legal adviser has particularly mentioned clause 5(2)(a) in his reply, pointing out that instead of providing for a definition of "couple", the Bill has stipulated a definition of "cohabitation". In the definition proposed to be added to section 2(1) of the Domestic Violence Ordinance (DVO), cohabitation relationship in fact means a relationship between two persons who live together as a couple in an intimate relationship, including such a relationship that has come to an end. In his opinion, it is basically ascertained that this definition is not applicable to a cohabitation relationship between more than two persons who live together as multiple couples in intimate relationships. As pointed out clearly by the legal adviser, it appears that "couple (情侶)" is an important component of this definition. And, as such word is not defined in the DVO or the 2009 Bill, he has conducted some research and found that "couple" means "two individuals of the same sort considered together" or "two people who are married or otherwise closely associated romantically or sexually". Similarly, he found that according to some commonly accepted dictionaries, "couple" means "two people or things" — but this should not be applicable here — or "two people who are seen together, especially if they are married or in a romantic or sexual relationship."

The legal adviser has also pointed out repeatedly why "couple" is an important component. It is because if there is no clear definition, we may have other associations. Under such a situation, after making reference to the definition of "couple", both in the law and some commonly accepted dictionaries, he considered that there should be two important features in the definition of cohabitation relationship. The first feature is that it is a relationship of one person with another person, and there should not be any room to imply a multilateral relationship among more than two persons. The second feature is that according to the term "couple", a couple in an intimate relationship referred to in the proposed definition should be analogous or akin to a marriage. However, during the process of legislation, many people were of the view that the term "marriage" would arouse great controversy. Therefore, the legislation is devoid of such reference. However, it does not mean that cohabitation relationship can be construed as being able to cover a cohabitation relationship between more than two persons who live together as multiple couples in intimate relationships.

Moreover, why would there be such discussion? In fact, this is something that happened about two to three months ago. We all asked about the possible consequences if this definition was brought to the court. But I am afraid I must say that I tend to consider that we had better stipulate it explicitly. It is because sometimes, the views of the courts and judges may not be able to truly reflect our consensus on the legislation. Sometimes, there may even be the influence of different cultural backgrounds. Therefore, it is better to strive for as much clarity as possible.

In this regard, I wondered at that time whether the court would have different interpretations. The legal adviser has given me a very clear reply. He considers that according to the legislative intent stated in the Government's policy paper as well as the wordings being stipulated at present, including the various considerations in clause 5(2)(a) mentioned by the Secretary just now, the court does not have any basis to handle such applications. Therefore, it will not entertain multiple couples. This means that it will not deal with the so-called "3P" sexual relationship being discussed now. Rather, it will only deal with the one-to-one relationship between two persons, whether of the same sex or of the opposite sex.

I remember that we also questioned on that day why people living under the same roof, such as intimate female friends or good friends we have just mentioned, were not covered. As a matter of fact, under the laws of many overseas countries, these people are covered as well, and the only thing is that it is the Government's policy to exclude them. I personally do not agree to an argument that people in this type of couple relationship are relatively weak. In fact, there were many past cases in Hong Kong where some strangers lived together. Let me cite a case here, which is still fresh in our memory. After a female victim had been killed by a male tenant, her 7-year old younger brother, who wanted to save her, was also killed. The number of violence cases among the elderly is even greater. Therefore, I do not agree that they should not be covered in the scope of protection from violence for people living under the same roof. Rather, they should also be protected. Of course, this view has not been accepted. The reason, I believe Members should also know, is that it covers the protection for same-sex cohabitation relationship which many people are now striving for. This is a special relationship, which is not an ordinary relationship between persons living under the roof or between intimate female friends. It has also been put on record during the process of our legislation. In particular, what we should consider is that regarding spouses or a man and a woman in cohabitation — same-sex cohabitants are also included now — the special power interface arising from their intimate relationships or sentiments may render them reluctant to report to the Police because of their intricate emotional and sexual relationships. I have also considered this view in a very open manner and also agree to it. With such a deep emotional and familial relationship, especially if they have children, they do not wish to sue their loved ones — provided that they still have love rather than hatred. Therefore, I have made a concession basically. I mentioned that the point in respect of living under the same roof has not been taken into consideration. However, as what I have mentioned when I spoke for the first time, I think this point deserves our consideration. We even have to think about the circumstance under which the fact of living under the same roof we have just mentioned should be included. There is no alternative at all. That person has the key to your home and you have small children at home. What can you do?

Under such a situation, I also agree to the views given by the legal adviser, and this is also the basis on which we agreed at that time to add two persons, more than two persons and a couple in an intimate relationship. Therefore, in repeating the legal adviser's views, as well as my views and the consensus on the

entire process of legislation, I consider that the proposal currently put forth by the Government is the consensus reached at that time. Perhaps, some people may consider it quite cumbersome. There is such a possibility. But sometimes, in order to reach a consensus, we should eliminate all necessary or unnecessary worries which may probably emerge. At least, there will not be any worries in future.

On such basis, I consulted the legal adviser once again that in case there was any ambiguity in the oral explanations given by public officers in the Bills Committee, what could we do? His reply was that the Administration's written clarification on the relevant policy intent should certainly prevail over the oral explanations given by any individual public officers or representatives. On the whole, I fully concur with the views given by the legal adviser. Therefore, I have no intention to distract the discussion on this Bill and decide that I will not move any amendment. I wish to reiterate here that we have all along been striving for a consensus on the legal terms in these provisions, hoping that Hong Kong society can have a happy ending on this issue at this stage. With these remarks, I support the Government's original motion and object to Dr Margaret NG's amendment.

MR RONNY TONG (in Cantonese): Chairman, many people say that lawyers are fond of "playing with words", and some even say that they charge their clients for every word they say.

Chairman, that is right. Lawyers are extremely cautious in using every single word. However, it is not only lawyers who should adopt such a practice. Legislation should be made in the same manner as every single word is meant to serve a purpose. The use of one more word may lead to more trouble or misunderstanding than using one word less. Therefore, what we are discussing today is not only about divergent views on the basic concept. Rather, it seems that there are also some contradictions in some particular expressions.

I have listened attentively to the justifications put forth by the Secretary for objecting to Dr Margaret NG's amendment just now. However, the more I listen, the more I am confused. It is because his speech is merely based on the argument that her amendment is related to a relationship which is akin to a marriage. However, after going over Dr Margaret NG's amendment again, I cannot find any wordings such as "akin to" or "as". In contrast, the amendments

proposed by the Government embraced such meaning. Take the expression "as a couple" I have just mentioned as an example. What does it mean? Couples are simply couples. How come there is such an expression "as a couple"? Therefore, "as a couple" has in fact brought out the meaning of "akin to a couple". The Secretary has also admitted this point indirectly in his speech just now. I therefore think that the expression now being proposed by the Government has the meaning of "akin to a couple" or "as in a marriage". However, Dr Margaret NG's amendment has only included a cohabitation relationship between two persons of the same sex. I absolutely cannot see how it is related to marriage, both textually and conceptually. If it is not related, the justifications put forth by the Secretary in his speech, which are based on the strong opposition of religious or moral groups, cannot be substantiated at all.

Chairman, as for the expression "as a couple", I already mentioned when I spoke for the first time just now that the major question is whether a relationship marked by "love without sex" or "sex without love" is to be excluded from the Bill. Moreover, I also wish to point out that what we should understand is that in the amendments proposed by the Government, cohabitation relationship is in fact qualified by the proposed section 3B(2). It is because as stipulated in the proposed section 3B(2), in determining whether two persons (the parties) are in a cohabitation relationship, the court shall have regard to all the circumstances of the relationship including but not limited to any of the following factors that may be relevant in the particular case. And the so-called eight factors are then listed.

Chairman, these factors are most notable: whether the parties are living together in the same household; whether they share the tasks and duties of their daily lives; whether there is stability and permanence in the relationship; the arrangement of sharing of expenses or financial support between the parties; whether there is a sexual relationship between the parties; whether the parties have any children and how they act towards each other's children; and the motives of the parties in living together. Chairman, up to this point, we may find it quite strange as these eight factors have not mentioned marriage or a relationship "as in a marriage". They only mention sexual relationship but not any emotional relationship.

There is no need for the judge to ask the abuser how much he/she loves the victim. It is generally understood that in order to be a couple, there should be love between each other. If one party only indicates he/she has affection

towards the other party, they are not a couple. Why do I suddenly mention that the court has to deal with the motives of the parties in living together here? Frankly speaking, motives and a couple are not related at all. The motives may only refer to some mercenary requests or circumstances. These are what we call motives.

Therefore, the motives of the parties in living together may be a factor to deny their relationship as a couple. If this is the case, there may be inherent or potential contradictions between the content mentioned in the eight factors and the requirement of being a couple. As such, if such a definition is added to the definition of cohabitation relationship, it may lead to some unnecessary confusion. This is actually the main argument put forth by the Secretary against Dr Margaret NG's amendment in his speech just now.

In fact, such an argument is applicable to the amendments presently proposed by the Government. I support Dr Margaret NG's amendment, not merely because she is a member of my political party or she is relatively fierce. Rather, I consider that her amendment is clearer and more straight-forward, whether in terms of language or the definition. If the definition of "couple" or "as a couple" is added, especially if the eight factors stipulated in section 3B(2) are used jointly to interpret the basic factors of such relationship, it will be a difficult case for the court.

Chairman, I can only say that I do not understand the Secretary's speech. I am hoping that he can clarify again when he speaks later why he considers that Dr Margaret NG's amendment is directly related to a marital relationship.

MR PAUL TSE (in Cantonese): Chairman, I cannot read the Secretary's mind. However, I will try to make sense of his speech and figure out what the framework mentioned by Mr Ronny TONG is. I think the Bureau is hindered by a psychological obstacle or a phobia, namely a phobia of marital relationship. Once we touch upon anything which may involve a marital relationship, the Bureau will become extremely sensitive and terrified. I think this may be caused by its past experience. This is a problem related to the background.

Therefore, Mr Ronny TONG is absolutely right. The existing ordinance does not mention "as it applies to marriage". However, if we use common sense to interpret a cohabitation relationship, the Bureau is afraid that such common

sense always involves a marital relationship. I think this is the crux of the question. As the Secretary has prepared a script to read from, it seems that he and Honourable Members are talking at cross-purposes. He has not responded to what Mr Ronny TONG or Dr Margaret NG has mentioned at all. The Secretary simply reads from his script while they just put forth their views. That is why they have been talking at cross-purposes.

I hope this phobia can explain what the Bureau, Dr Margaret NG and Mr Ronny TONG are worried about. Actually, what the Bureau is worried about is that in case it is not stipulated clearly or all the possibilities are not ruled out, a marital relationship will be involved again and it may be "checked". This is its fear. Priscilla LEUNG, who is sitting behind me, is laughing happily. She has another phobia, namely the 3P phobia. I will talk about this phobia of multi-party relationships.

Chairman, let me stress one point once again. First of all, as the Secretary mentioned just now, if viewed merely from a technical point of view, his first point has already knocked out Dr Margaret NG's amendment. Why? It is because her amendment does have an ambiguity. Let us take a look at her amendment. It seems that it has only mentioned particularly the two words "such a" in the expression "such a relationship that has come to an end", which can be interpreted as only referring to a cohabitation relationship between persons of the same sex. The Secretary has not elaborated his first point clearly as he just read from his script. He thus failed to discuss this question with us clearly. This is merely a technical problem. However, if we wish to amend it at this stage again, I am afraid that many troubles will emerge. Therefore, as far as this point is concerned, many Honourable colleagues consider that we should not accept Dr Margaret NG's amendment.

However, I do not advocate that we merely use the difference or ambiguity in the technical or textual aspects to knock out the amendment. Regarding the explanation, in order to choose the lesser of the two evils, I hope we can accept reluctantly the argument relating to "couple" currently put forth by the Bureau. As a matter of fact, I strongly agree with Dr Margaret NG and Mr Ronny TONG that the law does not exist in vacuum. Very often, we have to make reference to the case laws in the past, including the case laws under the common law. Moreover, we also depend on how the court interprets or explain a word or an expression. I hope there are two things which can ease our worries slightly.

One of them is the factors stipulated under section 3B. Theoretically, I am sure that the court will consider them. But more importantly, we have common sense. This is also a general requirement when the court interprets a provision. That is to say, in case there is any disputes — any disputes over the explanation or expression in any language — it is absolutely necessary and even appropriate for the court to put the same emphasis on both Chinese and English. If the court does so, the word "couple" can bring out the meaning of "情侶". I also agree with the Secretary that even if the expression "情侶" is used, it does not mean that there must be love all the time, even up to any particular moment. Rather, what we should be talking about should be just a state of affairs, a situation and a definition which has once applied. We cannot interpret love separately. We cannot merely focus on love but ignore the meaning of "情侶" generally understood by Chinese people or Hong Kong people. In this regard, although such an interpretation is not ideal, I am confident that we can overcome the problem.

Chairman, I have mentioned just now why we have to extend the definition now. Apart from an intimate relationship, there are also some problems relating to love. There are some relationships which, according to our understanding, should generally exist between a husband and a wife. However, sometimes there is a slight deviation, in the sense that the parties involved are not a husband and a wife, but are of the same sex. However, they are still like husband and wife, but a marriage phobia is avoided. In that case, what should we do? This is very difficult. To a certain extent, I agree with Dr Priscilla LEUNG that we should in fact consider extending the policy coverage. However, a consensus which is widely accepted at present is that we do not wish to extend the coverage to other intimate relationships between those living under the same roof for the time being. Therefore, we are forced to add the expression "couple". However, in order to avoid touching upon a marital relationship, we have no alternative but to use the term "couple", rather than using other terms which may be more neutral. For example, Dr Margaret NG has not mentioned "couple" in her amendment at all. This is understandable. I also understand Dr Margaret NG's good intention. But having considered the overall difficulty at the same time, we have no other alternative but to do so. As I mentioned just now, in the actual interpretation, the court will not focus on this word and take whether there is love or not as an important signpost to exclude those who should be covered. In other words, the court will not leave them out of the coverage because it fails to identify love.

I find that there are some difficulties after listening to what Dr Priscilla LEUNG mentioned just now. As I just mentioned, she has a little bit of 3P phobia. She strongly objects to any relationship other than that between two persons, which explains why she has sought clarification from the legal adviser. However, what Dr Priscilla LEUNG has just mentioned cannot help us resolve the difficulties and contradictions we are now facing as well as the contradiction between Dr Margaret NG's amendment and that of the Bureau. Instead, it will only make the problem even more complicated. I hope that we should not have too much 3P phobia.

Chairman, we have spent a lot of time in this regard. I would like to draw a conclusion here. This is not the most ideal approach. However, having considered the Bureau's policy intent and the fact that we do not wish to extend too much the coverage of the policy, I think we can accept this term reluctantly as there is no better option. I do not like the term "情侶", either. I also agree that from a legal point of view, "情侶" is not quite so presentable. However, we, after all, have to find a translation for the term "couple". In the absence of a better option, we have no alternative but to take this as a feasible term.

Chairman, I so submit. Thank you.

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

(Dr Margaret NG raised her hand)

CHAIRMAN (in Cantonese): Dr Margaret NG, I will let you speak after the Secretary has spoken for the second time.

(Dr Priscilla LEUNG raised her hand)

CHAIRMAN (in Cantonese): Dr Priscilla LEUNG, you may speak for the second time.

DR PRISCILLA LEUNG (in Cantonese): I shall be very concise. Thank Mr Paul TSE for mentioning that I have phobia. I do think that I have any phobia. However, I am really eager to clarify that I, in fact, do not know much about 3P or 2P. He is much more fashionable than me. I only wish to clarify that I object to it. I have no phobia at all. Rather, I object to it as there are really some homosexual people who have relationships with more than two persons. They have sex together in a group of three, four or even five persons. I do not know whether it is known as 3P, 4P or 5P. I do not know how to define it. I am really worried about this. For this reason, I have sought clarification from the legal adviser to the Legislative Council over and over again as these people have made a request to me. Therefore, I am duty-bound to clarify what the actual coverage will be provided under the legislation that we are going to endorse. That is what I wish to say. Thank you.

CHAIRMAN (in Cantonese): Mr Paul TSE, do you wish to speak again?

(Mr Paul TSE shook his head to indicate that he did not wish to speak again)

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Chairman, I have just explained the reasons for the Government's objection to Dr Margaret NG's amendment in detail. I wish to reiterate that Dr Margaret NG's amendment fails to provide a definition of "cohabitation relationship" which is clear and can meet the legislative intent. As the wordings of her amendment are ambiguous, it will give rise to problems in three aspects. Let me explain it briefly. First of all, it can be interpreted that the coverage of the DVO has been narrowed, with the result that former heterosexual cohabitants can no longer be covered by the DVO. Secondly, in the absence of a clear definition of "cohabitation relationship" under the DVO, the court has the power to apply the concept of "cohabitation relationship between a man and a woman" as in a marriage under the common law to "same-sex cohabitation". Legally speaking, this will link the quasi-marital concept with "same-sex cohabitation". As we all know, many groups are gravely concerned and worried about this. Thirdly, the ambiguous definition of "cohabitation relationship" proposed by Dr NG will very likely lead to litigations and arguments in future, which will greatly reduce the certainty of the coverage of the DVO.

In contrast, the definition of "cohabitation relationship" proposed by the Government is formulated after drawing on collective wisdom and balancing the concerns and requests raised by various parties, and it is also a consensus reached after thorough discussion in the Bills Committee. On this issue of grave concern among people from all walks of life, the Government, based on the spirit of seeking common grounds, has coordinated concerns of various groups in a proactive manner. After putting in tremendous efforts, the Government has eventually come up with an option which is acceptable to people from all walks of life. If the definition proposed by the Government, which is formulated by the joint efforts of various parties, is ruled out simply because Dr NG does not like the term "情侶" and cannot find a suitable rendition in its place, I must say that it is really not worth doing so. Moreover, she has also ignored the joint efforts made by various parties over the past few months and the views put forth by various groups.

I sincerely call upon Members to vote against Dr NG's amendment, so as to retain the definition of "cohabitation relationship" proposed by the Government. In this way, the Government can amend the definition of "cohabitation relationship" in the Bill in accordance with the Rules of Procedure.

Chairman, I so submit.

DR MARGARET NG (in Cantonese): First of all, I would like to thank the Chairman for not allowing me to respond to the Secretary immediately just now, as I was really very angry at that time. The reason for my being so angry was that I was a bit shocked. I always believe that the Secretary is an honest person and I respect him very much. However, I now find that he is not an honest person after all. I have to change my mind. Therefore, I have made some sort of emotional adjustment. There is no need for me to be so angry. Many public officers may not be very honest. All I have to do is to speak the facts.

Chairman, I wish to respond to three points. The first one is whether the definition is clear and concise. As far as cohabitation relationship is concerned, there are case laws under the common law for us to follow. Even if we do not draw up any definition, it will not cause any problem to the court. The many views put forth by the Bureau today simply regard our judges as fools. As a

matter of fact, the court has never come up with any odd ideas because of such matters.

Secondly, according to the definition provided by the Bureau, cohabitation relationship means "living together as a couple (情侶) in an intimate relationship". Chairman, the more the Bureau has said, the more clearly it has pointed out that "as a couple (情侶)" is an essential factor. Therefore, the court has to ask whether the relationship between the two persons concerned is "as a couple (情侶)". If not, they do not meet the definition of cohabitation.

Chairman, there are case laws on cohabitation relationship but not on "as a couple (情侶)". Actually, what is love? The court does not define it, neither do martial arts novels. Therefore, if we talk about whether it is clear or not, once the Secretary has added this essential factor "as a couple (情侶)", we can in no way make the definition of cohabitation relationship clearer.

The third point is that when talking about whether it is clear or not, the Secretary queried whether the expression "such a relationship" in my amendment only refers to a cohabitation relationship between two persons of the same sex that has come to an end, while a cohabitation relationship between two persons of the opposite sex should be excluded. Chairman, assuming that there is something unclear in this definition proposed by me, what will the court do? The court will definitely consider whether this definition refers only to a cohabitation relationship between two persons of the same sex that has come to an end, and whether a cohabitation relationship between two persons of the opposite sex that has come to an end is also included. Let us take a look at the entire legislation. Yesterday, the Law Draftsman explained to the Panel on Administration of Justice and Legal Services that the current legislation, very often, had to be interpreted according to its contextual meaning. There is indeed no need to discuss this as it is a general principle. Therefore, the court will interpret according to the contextual meaning to see if there are reasons to exclude a cohabitation relationship between two persons of the opposite sex that has come to an end. If we insist on explaining it in this way, our approach will be to preserve, that is, our explanation will be considered odd and unable to take account of human nature.

Therefore, why should the Secretary say that there is something unclear? Firstly, I absolutely do not agree that it is unclear. Secondly, if there is anything unclear, under the general legal principle, the court will not interpret the definition in the way suggested by the Secretary. Chairman, I have heard of a

commercial which talks about "less is more". Sometimes, the greater the number of words, the more unclear the message will be. Chairman, it is similar to what we learnt in our mathematics classes in the past. Those who have studied in mathematics and logic will know, if we use a number of words to define another number of words, it may not necessarily be able to make the concept any clearer. It is because every word has its own definition. The longer the definition, the more unclear it will be. Therefore, my definition is much clearer than that proposed by the Secretary. This is the first point.

The second point is that Chairman, I was very shocked just now. I can say that I was both frightened and angry. How come he said that I referred to "akin to a marriage"? Chairman, very obviously, this has already been removed. The Bill we are discussing this time is to remove what is said in the original Domestic Violence Ordinance — "this Ordinance is applicable to the cohabitation of a man and a woman as it applies to marriage". Why should he put me in the wrong and say that I have mentioned it? In fact, it is because "those with a harelip are wary of broken bowls". Why is he so terrified? Actually, this is due to the fact that the Secretary does wish to say that such relationship is akin to a marriage. Why?

Chairman, our marriage law was drawn up during the colonial era on the basis of European Christian matrimonial concepts. It is not based on the traditional Chinese concept of the family, under which outside of a husband and a wife, there can also be some concubines. Moreover, the martial relationship is, very often, be regarded as a kind of social or familial relationship. Therefore, there is a slight difference between the two ways of thinking. However, a marriage in Christian countries in the West should include love, and there are two requirements which should be fulfilled. First of all, even if there is no love, they should say that they love each other and should love each other for their whole life. This is an essential element in the Christian marriage in the West. Secondly, intimate relationship is also an essential element. It is because a marriage is no marriage if there is no intimate physical relationship.

Therefore, the definition currently proposed by the Bureau that "two persons who live together as a couple in an intimate relationship" is all about being akin to a marriage, isn't it? Secretary, if you wish to say that it is akin to a marriage, please say so, rather than saying indirectly that they are "as a couple" or "in an intimate relationship". If this is not what you are thinking, you will not "take one's seat according to the number on the ticket" even when others have not said so, right? Therefore, it is you, not me, who really wish to define

cohabitation as a relationship which is akin to a marriage. If there is any dispute today, it is stirred up by you, not me. The concept of marriage is not in my mind. My amendment has not mentioned marriage, either. And there is no need for such a relationship to be akin to a marriage behaviourally or legally. Secretary, you "living together as a couple in an intimate relationship" is akin to a marriage. Secretary, it is you who consider that even in the case of two cohabitants of the same sex, they can only be regarded as having a cohabitation relationship if such relationship is akin to a marriage. Apart from this, Dr Priscilla LEUNG has mentioned that some homosexual people live together in a group of more than two. Is such a relationship also covered? You say no, and assert that it must be exactly two persons. If this is not a marital relationship under the Christian culture in the West, what is it then?

Thirdly, I wish to respond to Dr Priscilla LEUNG. She is very worried, saying that in view of the current situation, if the words "two persons" are not added, a crowded relationship among three or even more persons may emerge. I am sorry, Dr Priscilla LEUNG. I consider that your worries are really justified. It is because although it is defined in this way, we cannot rule out such a possibility. The clause added to this Bill today is section 3B which has been mentioned by several Honourable Members just now. Chairman, in section 3A Excuse me, perhaps I have quoted it wrongly. Anyway, there is a provision talking about marriage. What I mean is that regarding a couple who are husband and wife in a lawful marriage, there is another provision talking about it. Section 3B is only about cohabitants, and it is stated, "On an application by a party to a cohabitation relationship ('the applicant'), the District Court, if it is satisfied that the applicant has been molested by the other party to the cohabitation relationship " This means that a party claims that he/she has been molested by another party. For example, there are three persons, namely A, B and C. A has molested B, and thus, B lodges an application to the court in accordance with section 3B. The court will of course ask — my amendment cannot be passed, right — whether they are "living together as a couple in an intimate relationship"? The court will of course ask this question unless it believes the Secretary and thinks that they should have a relationship which is akin to a marriage. If there are three persons, their relationship will certainly not be akin to a marriage. However, if they are "as a couple" or "in an intimate relationship", their relationship will meet such definition. As such, if three persons go to the court and lodge an application against each other, I am afraid they will not be entertained. However, if there are three persons, say A, B and C, or even more persons who have a complicated relationship, say A, B, C, F

and G, any party of a group of two will be allowed to apply for restraining the other party. Therefore, Dr Priscilla LEUNG's worry is absolutely not unnecessary. Right, the two litigations cannot be proceeded at the same time. But it is allowed to deal with one case at a time, and it is also allowed to deal with them case by case. Take an example, you were B. If you apply for restraining A this time; you can apply for restraining C the next time; and you can also apply for restraining F the time after next. Certainly, you are allowed to do so. Therefore, Dr Priscilla LEUNG's worry is absolutely not unnecessary.

Chairman, I only wish to propose a definition which can better meet the legal requirements; the needs in Chinese and English; and the reality. However, I am subjected to such a lot of criticisms. Originally, I believed that I had a strong determination and was not afraid of any difficulties. I do know that my amendment could not be passed. But as I respect the law, the legislature and the Bureau, I have still raised my amendment. However, the Bureau does not allow me to resolve this problem by adopting such a simple approach. Chairman, I have already put in my utmost efforts. Whether my amendment can be passed, the Bureau should be held responsible for all the consequences. Thank you.

CHAIRMAN (in Cantonese): Dr Margaret NG, you may move your amendment.

DR MARGARET NG (in Cantonese): Chairman, I move the amendment to clause 5(2).

Proposed amendment

Clause 5 (see Annex II)

CHAIRMAN (in Cantonese): Before I put to you the question on Dr Margaret NG's amendment, I wish to remind Members that if the amendment is passed, the Secretary for Labour and Welfare may not move his relevant amendment. If Dr Margaret NG's amendment is negatived, the Secretary for Labour and Welfare may move his relevant amendment.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Dr Margaret NG be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Dr Margaret NG rose to claim a division.

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

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

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

Functional Constituencies:

Dr Margaret NG voted for the amendment.

Dr Raymond HO, Mr CHEUNG Man-kwong, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Ms Miriam LAU, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr Paul CHAN, Mr CHAN Kin-por, Mr CHEUNG Kwok-che, Mr IP Wai-ming, Mr IP Kwok-him, Dr PAN Pey-chyou, Mr Paul TSE and Dr Samson TAM voted against the amendment.

Ms LI Fung-ying abstained.

Geographical Constituencies:

Mr LEUNG Yiu-chung, Mr Albert CHAN, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr Ronny TONG, Ms Cyd HO, Miss Tanya CHAN, Mr WONG Yuk-man and Mrs Regina IP voted for the amendment.

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Mr CHAN Kam-lam, Mr LAU Kong-wah, Mr Frederick FUNG, Mr WONG Kwok-hing, Mr CHEUNG Hok-ming, Mr KAM Nai-wai, Ms Starry LEE, Mr CHAN Hak-kan, Dr Priscilla LEUNG, Mr WONG Sing-chi and Mr WONG Kwok-kin voted against the amendment.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 19 were present, one was in favour of the amendment, 17 against it and one abstained; while among the Members returned by geographical constituencies through direct elections, 24 were present, nine were in favour of the amendment and 14 against it. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendment was negatived.

CHAIRMAN (in Cantonese): As Dr Margaret NG's amendment to clause 5(2) has been negatived, Dr Margaret NG may not move her consequential amendment to the long title.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Chairman, I move the amendment to the proposed definition of "cohabitation relationship" in clause 5(2).

Proposed amendment

Clause 5 (see Annex II)

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

(Members raised their hands)

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

(Members raised their hands)

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

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Chairman, I would like to thank Members for giving their support to retain the definition of "cohabitation relationship" proposed by the Government.

I move a further amendment to clause 5(2) to add the definition of "applicant", as set out in the paper which has been circularized to Members.

We propose to add a new definition of "applicant" in the interpretation and application of the Domestic Violence Ordinance, so as to stipulate that "applicant" means a person who applies for an injunction to be granted under section 3, section 3A or section 3B.

Chairman, the above amendment, which is proposed upon request by the Bills Committee on Domestic Violence (Amendment) Bill 2009 (the Bills Committee), has been supported by the Bills Committee.

With these remarks, I hope Members can support the passage of the above amendment.

Proposed amendment

Clause 5 (see Annex II)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clause 5 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 5 as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clause 6A

Power of District Court to grant injunction: other relatives.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Chairman, I move the Second Reading of new clause 6A, as set out in the paper which has been circularized to Members.

As we have added the definition of "applicant" to clause 5(2) of the Domestic Violence (Amendment) Bill 2009, technical amendments should be made to the reference to "applicant" in the original section 3A(1) of the Domestic Violence Ordinance.

Chairman, the above amendment has been supported by the Bills Committee on Domestic Violence (Amendment) Bill 2009.

With these remarks, I hope Members can support the passage of the above amendment.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 6A be read the Second time.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That new clause 6A be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clause 6A.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Chairman, I move that new clause 6A be added to the Bill.

Proposed amendment

New clause 6A (see Annex II)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 6A be added to the Bill.

CHAIRMAN (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bills

PRESIDENT (in Cantonese): Bills: Third Reading.

DOMESTIC VIOLENCE (AMENDMENT) BILL 2009

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, the

Domestic Violence (Amendment) Bill 2009

has passed through Committee stage with amendments. I move that this Bill be read the third time and do pass.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Domestic Violence (Amendment) Bill 2009 be read the third time and do pass.

Does any Member wish to speak?

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Domestic Violence (Amendment) Bill 2009.

MOTIONS

PRESIDENT (in Cantonese): Motion. Proposed resolution under the Pharmacy and Poisons Ordinance to approve the Pharmacy and Poisons (Amendment) (No. 4) Regulation 2009 and the Poisons List (Amendment) (No. 4) Regulation 2009.

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

PROPOSED RESOLUTION UNDER THE PHARMACY AND POISONS ORDINANCE

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, I move that the motion under my name, as printed on the Agenda, be passed.

Currently, we regulate the sale and supply of pharmaceutical products through a registration and monitoring system set up in accordance with the Pharmacy and Poisons Ordinance (the Ordinance). The Ordinance maintains a Poisons List under the Poisons List Regulations and several Schedules under the Pharmacy and Poisons Regulations. Pharmaceutical products put on different parts of the Poisons List and different Schedules are subject to different levels of control in regard to the conditions of sale and keeping of records.

For the protection of public health, some pharmaceutical products can only be sold in pharmacies under the supervision of registered pharmacists and in their presence. For certain pharmaceutical products, proper records of the particulars of the sale must be kept, including the date of sale, the name and address of the purchaser, the name and quantity of the medicine and the purpose for which it is required. The sale of some pharmaceutical products must be authorized by prescription from a registered medical practitioner, dentist or veterinary surgeon.

Arising from an application for registration of eight pharmaceutical products, the Pharmacy and Poisons Board (the Board) proposes to add the following eight substances to Part I of the Poisons List and the First and Third Schedules to the Pharmacy and Poisons Regulations:

- (a) Allergen extract of *Dermatophagoides pteronyssinus*;
- (b) *Bordetella* species;
- (c) Canine infectious diseases; the above two items to be listed under item (b) of "Antisera, antitoxins, immunoglobulins and vaccines"
- (d) Mertiatide; its salts; its esters; their salts;
- (e) Prasugrel; its salts;
- (f) Racecadotril; its salts;
- (g) Tafluprost; and
- (h) Trabectedin; its salts; its esters.

Pharmaceutical products containing the above substances must then be sold in pharmacies under the supervision of registered pharmacists and in their presence, with the support of prescriptions.

We propose that these Amendment Regulations take immediate effect upon gazettal on 18 December 2009 to allow early control and sale of the relevant medicine.

The two Amendment Regulations are made by the Board, which is a statutory authority established under the Ordinance to regulate pharmaceutical products. The Board comprises members engaged in the pharmacy, medical and academic professions. The Board considers the proposed amendments necessary in view of the potency, toxicity and potential side effects of the medicine concerned.

With these remarks, President, I propose the motion.

The Secretary for Food and Health moved the following motion:

"RESOLVED that the following Regulations, made by the Pharmacy and Poisons Board on 24 November 2009, be approved –

- (a) the Pharmacy and Poisons (Amendment) (No. 4) Regulation 2009; and
- (b) the Poisons List (Amendment) (No. 4) Regulation 2009.

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

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

MEMBERS' MOTIONS

PRESIDENT (in Cantonese): Members' motions. 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.

As it is now already 8.50 pm, I think it would not be possible for this Council to finish the remaining two motion debates before midnight. Therefore, I will suspend the meeting at around 10 pm and have it resumed at 9 am sharp tomorrow.

PRESIDENT (in Cantonese): First motion: Formulating operational standards for public organizations.

Members who wish to speak in the debate on the motion will please press the "Request to speak" button.

I now call upon Mrs Regina IP to speak and move her motion.

FORMULATING OPERATIONAL STANDARDS FOR PUBLIC ORGANIZATIONS

MRS REGINA IP (in Cantonese): President, I move that the motion, as printed on the Agenda, be passed. My motion is concerned with operational standards for public organizations.

For various historical reasons, a number of non-government public bodies, also called quasi-government organizations, or QUANGOS, by the Government, have been established by the Government since the colonial era. Covering a wide range of areas, these organizations include the former Kowloon-Canton Railway Corporation, the former MTR Corporation Limited, the present MTR Corporation Limited (MTRCL), the Urban Renewal Authority, the Hong Kong Trade Development Council, the Hong Kong Productivity Council (HKPC), the Housing Society, the Hong Kong Monetary Authority (HKMA), the Hong Kong Science and Technology Parks Corporation, the Hong Kong Airport Authority, the Vocational Training Council, the Hong Kong Hospital Authority, and so on.

President, I am really surprised that the Government has acted as if it had foresight by merely assigning the Secretary for Financial Services and the

Treasury to appear before this Council today to deal with such a wide-ranging issue as well as the principle of governance — I wonder if the Government was thinking that I was referring to the HKMA. Can it be said that the Government is trying to cut corners? It should at least assign a Secretary of Department to come here. I wonder if Secretary KC CHAN has been assigned to come because he is young and strong and in a better shape. I really have to complain to the Chairman of the House Committee about this on Friday that the Government has sought to cut corners in dealing with the Legislative Council.

Honourable Members may wish to take a look at the list of these non-government public bodies, which is extremely long. More than 60 non-government public bodies are listed in this table I have in hand. They play a key role in various aspects, including housing, transportation, commerce and trade, finance, technology, education, and so on. While some of them are statutory bodies, others were established purely as corporations.

During the colonial era, the Government had its difficulties in establishing so many non-government public bodies, but it is reluctant to talk about them. Of course, there was also a very good reason for doing so, as the services provided by those non-government public bodies were predominately commercial in nature. For instance, if transportation services are operated in the form of a corporation, their revenue and expenditure can be excluded from the Government's balance sheet that is off from its balance sheet. Therefore, the manpower establishment of the corporation can also be excluded from the civil service establishment, so that such corporations or statutory bodies can enjoy more room and freedom to operate. It is also hoped that profits can be made, and so less subsidies from the public coffers will be required.

Actually, during the British Hong Kong era, that is, the colonial times, one of the key reasons for the British Hong Kong Government to be allowed to enjoy financial independence from Her Majesty's Treasury was that the British Hong Kong Government had to be self-financing. This explained why every Financial Secretary and Treasurers were so afraid of deficits. The provision of some public services, no matter if they are transportation or airport services, would be undertaken in the form of a corporation as far as possible, so as to enable the corporation to be self-financing and achieve break-even and prevent the Government from incurring deficits. A good example of that is the MTRCL. As Members are aware, the MTRCL is a listed corporation but it is actually an oddity, for 76% of it is owned by the Government while the remaining 24% is

listed. This explains why there are frequent conflicts between its function as a public organization and its other function of making money. There have also been frequent debates in this Council as to why the MTRCL cannot provide the public with more concessions or it should not charge exorbitant fares. In New York, a flat fare of US\$2 is charged for all metro trips. It is because the MTRCL has to make profits.

When I consulted the senior staff of the MTRCL before the debate today, they asked me not to blame them, for the MTRCL is actually a cash cow for the Government. Moreover, the concessions offered to the public, including the elderly, students, the able and the disabled, reach \$1 billion a year. Since its establishment, the MTRCL has paid \$180 billion to the Government, including proceeds of more than \$30 billion from the sale of 24% of the MTRCL's shares and its profits shared with the Government, that is, proceeds generated from share dividends. Therefore, the MTRCL is actually a cash cow for the Government, too.

I understand this and also agree that the Government has been very smart in making such financial arrangements. Today, I also praise the services provided by the MTRCL which are not bad at all. Moreover, its fares are not too high. However, there is one thing I want to mention, though the Government might not have considered this years ago. Although the Mass Transit Railway fares in Hong Kong cannot be considered exorbitant compared with overseas countries or those of London, Britain, they are still exorbitant when measured against the income of the Hong Kong people. Let me cite an example to illustrate this. Savantas, a small policy institute set up by me, has employed a number of young people. One of them, a young graduate from the Hong Kong Institute of Vocational Education, is earning a monthly salary of only \$6,000. Actually, it is not easy for him to make a living because he has to commute between Tsuen Wan and Wan Chai to work every day. There is actually not much money left after he pays for his transportation expenses and lunches.

At present, the median household income in Hong Kong is only \$17,000 and the median income for individuals is \$11,000. Considering such a wide poverty gap, many members of the public hope that the MTRCL can lower its fares slightly. However, the MTRCL is a bit schizophrenic in that on the one hand, it has to provide public services but, on the other, it has to generate profits for the Government. Being such a major public organization which provides

public services, as I have proposed in my motion, it should really assume good corporate social responsibility in addition to making profits. In this regard, *The Economist* has given a detailed explanation of such corporate social responsibility. Actually, in many overseas countries, good private organizations, not to mention public organizations, have adopted these indicators as their operational principles too.

Hence, let me reiterate what it is meant by good principles of corporate and social responsibility. It means protecting the environment; ensuring the production of safe products — in the case of the MTRCL, it should provide safe services — taking care of employees by such means as providing retirement and medical benefits; producing some affordable products; complying with human rights standards; providing a good environment in workplaces; not casually resorting to outsourcing and lay-off; protecting privacy and information security; engaging in production, publicity and promotion of products by ethical means; and paying attention to the remuneration of executive staff and ensuring that it is not exceedingly high.

Therefore, with respect to these non-government public organizations, I would like to call on the Government to comply with the abovementioned social responsibility of enterprises, rather than purely using profits as its indicator, when setting the remuneration for senior staff.

Furthermore, I am increasingly shocked by the fact that the present operation of many public organizations with great powers and responsibilities, as well as having legal powers and enormous capital has become increasingly deviated from the principles on which they are founded. One of the most prominent cases is, as I have also mentioned it during the meetings of the Panel of Financial Affairs, the Hong Kong Mortgage Corporation Limited (HKMC) set up under the HKMA. When it was established in 1997, the HKMC vowed in the paper submitted to this Council that it would assist Hong Kong people in owning properties and provide liquidity for the local banking system.

What about the figures today? In Hong Kong, the total amount of outstanding home mortgages stands at \$630 billion, but the HKMC accounts for only \$25 billion of it, or a mere 4% of the local home mortgage loan market. In other words, there is simply no market for the business operated by the HKMC, though a number of programmes have been launched by it. For instance, the

"Home Owner Mortgage Enhancement Programme" was eventually scrapped after implementing for several months because only a few hundred applications were received. Because of its poor business turnover, its Chief Executive Officer, Mr James H LAU Jr, recently explained on a television programme the reasons for his purchase of minibus and bank mortgages in 2006 and mortgages in Korea in 2007. At present, the HKMC is having only \$25 billion worth of home mortgages in Hong Kong. However, according to the information provided to this Council, the HKMC has purchased \$21 billion worth of mortgages from Korea. On the question of why the HKMC provides mortgage guarantees to the secondary real estate market in Shenzhen, Mr LAU explained to the audience that there was not enough business in Hong Kong. He told the audience to the effect that, "If we did not reach out to develop our business, figures in our balance sheet would have dropped 30% to 40% because the economy in 2006 was very robust."

If the HKMC is operating in the form of a corporation, it should close down or put on sale if its business turnover is poor. Why should it divert its funds to Korea, Malaysia and Shenzhen, thus exposing taxpayers in Hong Kong to exceedingly high and unnecessary risks? This is really open to question.

Moreover, why should this mortgage corporation compete with the private sector for profits because of its poor business? For instance, the HKMC has recently launched the "Fixed Adjustable Rate Mortgage Programme (FARM)", which is an adjustable mortgage programme with fixed-rate periods from one to 10 years. Given that its interest rates are lower than those currently offered by banks by at least 40 to 50 percentage points, this is clearly competing with the private sector. I have got complaints from many banks. Some banks told me that since the launch of this programme, there was simply no market for it. If we check its business turnover, we will find that it is a far cry from the turnover predicted by Mr Joseph YAM when the programme was launched.

According to my understanding, while major banks are reluctant to sell their mortgage business to the HKMC, even minor banks are unwilling to do so. I was told by the small banks that this mortgage corporation was basically relying on the backing from the HKMA. According to its conditions, the banks are asked to sell the best and safest mortgages or mortgages which are most unlikely to breach agreements to the HKMC. Someone from a small bank told me that he did not see the point of this, for when the best mortgages were handed over to the HKMC, the HKMC would not have to bear any risks. Why would a public organization operate in this manner? Are the salaries of its staff pegged to its

financial performance? Will they receive higher salaries with more business and higher profits? All these warrant our attention.

Of course, the problem with the HKMA is even more serious, as all its senior staff are high-ranking and hold great powers. They manage the \$2,000 billion savings of the Hong Kong people and put it in the Exchange Fund. I once sent my assistant to the HKMA to enquire about its mechanism for declaration of interests. After a round of enquiries, it was found that there was no such mechanism — he was told by the staff at the counter to go to the library, where he was again told by the staff there to look for it himself. At last, he merely found some declarations of interests by members of the Exchange Fund Advisory Committee, but there was no declaration of interests by the senior staff of the HKMA. Later, I received a written reply from the HKMA that the declarations of interests by its senior staff would be made available to the Financial Secretary only.

Given their key functions and enormous financial and monetary powers, why is it unnecessary for the senior staff of the HKMA, being high-ranking and influential senior officials, to declare their interests like our accountable officials and even Members of this Council? We are only one of the 60 Legislative Council Members, but we are required to make all our interests public, even though we do not have any actual power. Whenever conflict of interests arises in each discussion, we have to spend a lot of time declaring our interests for the sake of making ourselves come under public surveillance. All these are indeed open to question.

Apart from these, in what ways will the exit arrangements applicable to civil servants at D4 or above affect these senior staff of the HKMA? According to the exit arrangements for retiring senior civil servants at D4 or above, they have to go through a sanitization period of five years. What about the HKMA or the Securities and Futures Commission (SFC)? I have been told by someone working in the banking sector that his bank was once requested by a senior staff of the SFC to provide him its business report concerning the direction in which the bank will operate in the following year. Upon receiving the report from each bank, however, he left the SFC and brought with him the business plans of local banks to join a foreign-funded company. Is this not a big joke?

In other words, President, the importance of these non-government public organizations is actually even greater than that of many government departments,

as the future of Hong Kong's finance or various aspects will be affected. But why are these public organizations governed in such a loose manner? Given that the Audit Commission has identified many cases of squandering public money by the HKPC, I will move this motion today in the hope that the community will pay more attention to these public organizations in order that their governance can be improved.

Thank you, President.

Mrs Regina IP moved the following motion: (Translation)

"That dozens of public organizations in Hong Kong, some being statutory bodies, provide important public services in areas including housing, transportation, commerce and trade as well as financial services, etc; the funding for such organizations is mostly provided by the Government in full or in part, and some of them are authorized by legislation to impose levies or develop other businesses to enhance their profitability; it is learnt that in determining the pay and bonus for the management of these public organizations, their profitability is one of the important criteria for measuring performance, causing some public organizations to fully strive to expand and compete with the private sector for profits, hence disregarding the purposes of their establishment, development of market economy and public interests; as such, this Council urges the Government to formulate operational standards for public organizations, which include ensuring that their operation:

- (a) shall meet the purposes laid down upon the establishment of the organization;
- (b) shall meet the overall interests of the community;
- (c) shall comply with stringent indicators for corporate social responsibility;
- (d) shall be subject to the regulation of the fair competition law;
- (e) shall have a highly transparent mechanism for declaration of interests, including proper confidentiality and exit arrangements, so

as to prevent real or potential conflicts of interests or transfer of interests;

- (f) shall be subject to value for money audits by the Director of Audit on a regular basis; and
- (g) shall not jeopardize the principles of 'big market, small government' and free market economy;

and peg the pay/bonus for the remunerated directors and senior executives of public organizations to the above criteria."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Mrs Regina IP be passed.

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 Mr Frederick FUNG to speak first, to be followed by Ms Miriam LAU and Dr PAN Pey-chyou; but no amendments are to be moved at this stage.

MR FREDERICK FUNG (in Cantonese): President, my proposed amendment pinpoints mainly item (d) of Mrs Regina IP's motion, because I think that not all public organizations can be subject to the regulation of the fair competition law. I will explain this in detail later. My amendment also seeks to delete item (g) from her motion.

President, the purpose of my proposed amendment today is to rectify some of the fallacies in thinking, some of the major principles we believe intuitively to be natural and right, and some of the things we consider to be necessarily correct, such as free market, fair competition law, and so on. In actual operation, however, regard must be given to the Government's due social role and functions and some give and take should be made on these.

The public uproar sparked by the absurdity and chaos of some public organizations was probably the cause behind the seven proposals raised in the original motion. For instance, in an earlier case concerning the Equal Opportunities Commission (EOC) and two recent cases concerning the Office of the Privacy Commissioner for Personal Data and the Hong Kong Productivity Council, the authorities concerned were slammed as spendthrifts, squandering public money and chaotic management. Let me cite the EOC, to which I was recently appointed, as an example. There are indeed a lot of areas for improvement in its internal operation, management, and so on. For instance, the EOC was accused of wasting public funds with its Chairman having excessive powers. Subsequently, the EOC reviewed its administrative and management procedures by, for instance, introducing independent audit consultants, expanding its research areas, and so on. I envisage that it is precisely because some problems have been identified that the EOC will unveil some improvement initiatives for administrative and financial management in January or February. However, we cannot generalize just because a certain committee in it is found to be problematic.

I agree with the proposals put forward by Mrs Regina IP, such as the operation of public organizations shall meet the purposes laid down upon their establishment; they shall have a highly transparent mechanism for declaration of interests, so as to prevent real or potential conflicts of interests or transfer of interests; and they shall comply with stringent indicators for corporate social responsibility.

However, President, if we study the wording of the original motion carefully, it will not be difficult for us to find that Mrs Regina IP focuses on attacking public organizations relating to commercial operations. The motion has repeatedly emphasized the operation of the free market, criticized the expansion of public organizations for the purpose of making more profits, thereby causing public organizations to compete with the private sector for profits. Even the Government's firmly held fiscal philosophy of "charting a course of governance that does not go against nature", that is, the principle of "big market, small government", is put forward for compliance by public organizations. I find this a bit overboard, tantamount to overkill, or is even lopsided. Actually, apart from some profit-making public organizations, the vast majority of public organizations are relying on government subsidy to maintain their operation and achieve their social purposes.

Mrs Regina IP is probably very concerned about the Hong Kong Monetary Authority (HKMA) and the approach taken by some of the listed corporations owned by the Government, so much so that she criticized how the Hong Kong Mortgage Corporation Limited engaged itself in some high-risk mortgage investments. However, these public organizations represent only a small part of all public organizations. We still have a wide range of public organizations operating not on a profit-making basis and with serving the public as their goals. Examples are the EOC, a statutory body which strives to eliminate discrimination based on sex, marital status, pregnancy, disabilities, family status and race; the Housing Authority, a statutory body responsible for formulating and launching public housing programmes to meet the housing needs of the majority of the grassroots; and the Hospital Authority, a statutory body responsible for managing all public hospitals in Hong Kong and providing health care services for the majority of the public.

Should we require all these public organizations to compete fairly with private enterprises in the free market? Let me cite the Housing Authority as an example. Had it not provided the public with inexpensive public housing, it would be hard to imagine how the grassroots could have managed to purchase their homes at market price by relying on those profiteering property developers or through the so-called free market. Many people who are called successful people today used to live with their parents in public housing flats when they were young and managed to get out of poverty step by step after receiving schooling and supported by their hardworking parents. Hence, the Housing Authority actually performs the function of achieving social stability and has great social significance in allowing the grassroots to live and work happily. We must not simply apply the principles of economic operation to interpret these acts of the Government, not to mention using the free market to impose control on these measures with such social functions.

By the same token, we cannot treat the provision of health care services by the Hospital Authority as a commercial act in the free market, and compare public hospitals with private hospitals and private clinics. This is obviously ignoring the significance behind the provision of inexpensive health care services by the Government to people of the lower and middle strata of society.

President, a caring and just society must care for the disadvantaged and provide patients in need with health care services, in order to manifest what is stated in Article 25 of the Universal Declaration of Human Rights: "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including medical care and necessary social services". Actually, by providing health care services through the Hospital Authority and implementing a policy of charging low health care fees, the Government can achieve social stability, a cooling effect is also resulted as wages are prevented from excessive expansion, hence business costs are lowered. Furthermore, there are underlying values of improving the livelihood of the people and ensuring that everyone has the right to medical treatment when they fall ill. Therefore, the Government must not use free market, fair competition, and even health care financing and reform as pretexts to alter the existing health care policy which has proved to work well.

President, some people will probably raise these questions: Is everyone not equal before the law? Why can the Government and some public organizations be exempted from fair competition law, and does this reflect that the Government can break the law, though it is well aware of it, and act in an arbitrary and reckless manner? In my opinion, these questions seek to question and challenge the Government's authority in governance and credibility more than arising from a true understanding of fair competition law. Actually, fair competition law has its intrinsic purpose and target. It is an important means to maintain fairness in the market, regulate the conduct of market players, and safeguard the rights and interests of consumers. However, as in housing and health care services which I have mentioned earlier, some of the relevant acts of the Government do have their social purposes and they can definitely not be compared with free market acts which purely seek to reap profits.

On the other hand, the financial tsunami has let the world see how greed and corruption of the free market have seriously impacted the global economy, thus compelling various countries to resort to extreme means, including injecting huge amounts of capital to banks and even nationalizing banks, and so on, for the purpose of bailing out their collapsing financial systems. Are all these means not seriously in breach of the economic principle of free market? However, the consequences will be catastrophic if the governments of these countries choose not to step in. Are all these experience and lessons not enough? Should we

blindly believe in the principle of "big market, small government" in disregard of the Government's monitoring role and even forget about the duties expected from the Government by attempting to surrender all acts with a social mission to the market? Should we allow these acts to be governed by a free market which is only after profits? These are unacceptable to society. Therefore, what are advocated in the original motion are based on a "take-for-granted" trust in the free market. This is seriously lagging behind the prevailing economic situation and out of touch with the impact of the free market on society.

Furthermore, government intervention is required before success can be gained in promoting social enterprises set up with a mission and for providing development opportunities for the disadvantaged. These examples can be readily found in overseas countries. Let me cite one or two examples. We have once visited an association for the blind in Spain. With one of the four licences for selling lottery tickets granted by the local government, the association managed to employ 7 000 blind persons. Moreover, the profits made by the association were used to operate 14 social enterprises to provide enough space and financial strength for training to be provided for the blind, so that the blind can work just as competently as those who are not blind. Furthermore, we have recently visited a restaurant in Taiwan called Xi Han Er ("喜憨兒"), where all the employees are people with intellectual disability. Through the joint operation of the restaurant by people with intellectual disability and normal people, people with intellectual disability who were originally unemployed because employers were reluctant to employ them, are employed and offered a minimum wage to enable them to support themselves. These social enterprises demonstrate precisely that the Government's support, assistance and encouragement are required before the disadvantaged can pull themselves together and earn their own living.

The various examples cited above have not only reflected the apparent inadequacy of the original motion, but, more importantly, demonstrated that the motion has failed to take into account other public organizations which are high and above the market and regard the fulfillment of social mission as their own duty. Therefore, I propose a relevant amendment with the purpose of specifically pointing out that such myths as an absolutely "free market" and "big market, small government" have already been shattered and they should no longer exist. Not only should the market be monitored, the so-called principle of free market economy and the fair competition law that seeks to maintain fairness in the market and safeguard the interests of consumers ought to be used only for

regulating market players only. Public organizations seeking to fulfil their social mission must not be put under the restraint of the principle of free market economy.

I so submit.

MS MIRIAM LAU (in Cantonese): President, as their names suggest, public organizations are non-government organizations established or operated with public funds, and so they are not restrained by the red tape of the bureaucratic system. While it was originally intended that these organizations could provide the public with better public services through a more flexible mode of operation, they can be described as having a lofty position as they often enjoy certain statutory powers and are given special protection.

Regrettably, as pointed out in the original motion, some public organizations have not only failed to perform their responsibilities properly, but they have also even strived to expand their business and, as a result, they have often been criticized for competing with the private sector for profits or even failing to meet the purposes laid down upon their establishment and take care of public interests. In proposing her motion earlier, Mrs Regina IP has already cited some examples.

Of the examples cited, the Report No 53 on the results of value for money audits published by the Audit Commission last month levelled many criticisms against two public organizations for chaotic management and failure to make effective use of public funds. They include: The Hong Kong Productivity Council (HKPC) in which the increases in the pay and benefits of the senior staff were not discussed and approved by its governing body; its senior staff were granted double housing allowances and paid huge amounts of non-standardized variable salary; and poor management of inventory, leading to the disappearance of more than \$50 million worth of equipment, and so on.

Similarly, the Office of the Privacy Commissioner for Personal Data (PCPD) was criticized for being generous at the expense of taxpayers' money, including renting excessive office space so that \$140,000 more is spent each month; spending nearly \$50,000 on an extravagant farewell party; lack of criteria for entertainment expenses on official duties and poor administrative efficiency in handling complaints, and so on.

Apart from these two public organizations, nearly every value for money report prepared by the Director of Audit over recent years involved a number of public organizations. As the performance of these public organizations has time and again come under criticism from the Audit Commission for failing to perform their duty of making effective use of public funds, the Government must pay attention to this and rectify these problems.

Hence, like Mrs Regina IP, the mover of the motion, the Liberal Party is very concerned about the performance of public organizations and the quality of their management. We also hope that objective standards or gauging indicators can be formulated. The amendment proposed by me on behalf of the Liberal Party today merely seeks to improve Mrs Regina IP's motion by, for instance, making it clear that public organizations must pay attention to the effective use of public funds and formulate clear public service standards. Furthermore, even members of management boards have to perform their due responsibilities seriously and responsibly in monitoring these public organizations.

Only some of the public organizations, such as the Urban Renewal Authority, the Hong Kong Trade Development Council and the Hong Kong Mortgage Corporation Limited, are also business organizations. Of course, it is justified for these public organizations to be subject to the regulation of the fair competition law. However, for public organizations such as the Consumer Council and the Equal Opportunities Commission (EOC), they are by no means business organizations. It seems to be unreasonable to require these public organizations to be subject to the regulation of a fair competition law and not to jeopardize the principle of "big market, small government". This point was also raised by Mr Frederick FUNG earlier. But, of course, our arguments are not necessarily identical.

Besides, the management of public organizations is basically not in a position to influence the criteria laid down in the original motion as to whether these public organizations shall be "subject to the regulation of the fair competition law" and "audits by the Director of Audit". It is difficult and unfair to peg the pay and performance of the management to the elements mentioned above.

The purpose of this amendment proposed by the Liberal Party today is to rationalize the issues mentioned above.

This amendment is proposed by us in the hope that the Government can enhance the monitoring of the use of public funds by various public organizations, reduce extravagance and unnecessary spending while putting in place a highly transparent mechanism for declaration of interests and requiring public organizations to be subject to audits by the Director of Audit on a regular basis. Meanwhile, public organizations having an objective to make profits have to strike a balance between pursuing profits and public interests, and they should be subject to the regulation of the fair competition law and uphold the principles of "big market, small government" and free market economy in their operations. This is because they are required to assume some social responsibility. While they should not regard profit maximization as their goal, they should also strive to avoid causing a heavy burden on the public.

In order to enhance the accountability of various public organizations, they should be required to evaluate their performance based on their respective nature and the following five criteria: (a) meet the purposes laid down upon the establishment of the organization; (b) meet the overall interests of the community; (c) comply with stringent indicators for corporate social responsibility; (d) attain public service standards which are updated from time to time and are measurable; and (e) for public organizations having an objective to make profits, they shall adhere to the principle of prudent business operation. We have added the last two criteria are added to the original motion proposed by Mrs Regina IP in the hope that the performance of various public organizations can meet certain public expectation.

To prevent the pay and remuneration of the management of public organizations from being criticized as being too generous, their pay and bonus should similarly be pegged to the abovementioned criteria.

Lastly, we consider that while it is very important for criteria to be established for enhancing the monitoring of public organizations, the role played by the regulator is also crucial to ensuring that these criteria can be met. Regrettably, the performance of some members responsible for overseeing the operation of public organizations is disappointing to the public. For instance, the attendance of members of the governing body of the HKPC has been criticized in the audit report just published for being too low. Similar situations have also been found in previous reports criticizing explicitly the EOC and the Applied Science and Technology Research Institute (ASTRI). In the report

targeting the ASTRI, government officials, namely Francis HO, former Permanent Secretary for Commerce, Industry and Technology, and Anthony Wong, Commissioner for Innovation and Technology, have even been named in a rare move for having low attendance and failure to perform their monitoring role as directors representing the Government.

The Audit Commission's reports make it clear that public organizations can have operation problems or even become empires should their governing bodies or management committees fail to perform their monitoring role properly. Hence, for the sake of enhancing monitoring and accountability, we consider that the appointment and removal of their chairmen and members of their management should be pegged to their evaluation results. In other words, if the performance of a certain public organization is unsatisfactory, members of its governing body or management committee should also be held accountable and be removed.

President, we cannot support Mr Frederick FUNG's proposed amendment of deleting "shall not jeopardize the principles of 'big market, small government' and free market economy;" because, in our opinion, his amendment does not necessarily serve public interests.

We can support the newly added criterion of "taking care of employees" raised in Dr PAN Pey-chyou's amendment because we consider this request to be reasonable on a whole.

President, I so submit.

DR PAN PEY-CHYOU (in Cantonese): President, the amendment I propose today focuses mainly on discussing the responsibility of public organizations towards their staff and their accountability towards the community.

President, if we compare a government to a computer which deals with the daily operation of our society, then the public organizations referred to in the motion today can actually be likened to the external accessories of this computer, such as external hard disks, memory, wireless internet modem, or even loudspeakers.

Like a computer, public organizations can enable the Government to add or reduce its functions, according to different needs and requirements to meet the different demands and developments of the public and the community. They can help government departments deal with different situations, without the frequent need of altering their structure, while concentrating their attention on certain policies and matters, so as to provide the public with quality services. Therefore, I am of the view that it is important for public organizations to exist.

Nevertheless, public organizations are also plagued with problems. As pointed out by Mrs Regina IP in her motion today, the operation of public organizations is subject to certain criteria and regulation. The word "shall" has appeared seven times in Mrs Regina IP's motion. While I generally agree with Mrs Regina IP's views, there is something I want to add regarding these seven items with the word "shall".

Of course, a computer installed with additional external accessories according to our needs can complement our tasks and needs. However, if the accessories installed are problematic or their functions are incompatible with the computer, then these accessories will be unable to achieve the desired result. They may even affect the original functions of the computer, thereby causing great frustration to users.

The same thing applies to public organizations. At present, there is a great variety of public organizations in Hong Kong, and they can be found in various areas such as housing, transportation, finance, economic services, labour, and so on. Although these public organizations are operated with public funds, their work results and utilization of resources are very often not known to the public. Furthermore, they are not subject to any objective outcome standards. Hence, it is really necessary for the Government to enhance the transparency of public organizations so that the public can monitor these public organizations together with the Government.

President, at present, a number of statutory bodies have set up their board of directors to allow people from different strata of society to sit on it and collaborate in monitoring. However, the vast majority of these directors do not have actual power. Sometimes, they even have to rely on the administrative staff of the statutory bodies for meeting papers and support services. Therefore, most of them can only allow themselves to be manipulated by the administrative head of the statutory bodies they serve rather than effectively perform their

function of monitoring the administration and financial management of the statutory bodies.

In the light of this situation, we think that the Government should consider providing directors of public organizations with additional support for enhancing their administrative and financial ability in monitoring the public organizations. The Government should also enhance the transparency of public organizations in appointing members of the community to sit on the board of directors of these organizations in order to enhance their representativeness and credibility. Furthermore, people from various social strata, including service users and staff representatives, should be appointed to the board of directors of certain public organizations relating to people's livelihood, such as the Housing Authority, the Urban Renewal Authority, the Hospital Authority (HA), and so on.

Although public organizations are operated with government resources, they are not required to be accountable to the public direct and, therefore, they will often deviate from the basic principle of "serving the public" laid down upon their establishment. Let me cite the HA as an example. As the distribution of resources to various clusters of the HA is based on the amount of services currently provided by various hospital clusters and not on the needs of the population of various communities, this has given rise to a phenomenon in which people deprived of hospital services are getting less and less while those enjoying hospital services are getting more and more. As a result, the quality of services cannot be raised, and there is also a considerable gap between the health care treatment received by people in different districts.

As we all know, the purpose of existence of private organizations is to yield returns and profits for their shareholders. This explains why profits provide the best means for measuring the performance of the management of a private enterprise. However, profits cannot be used to measure the performance of public organizations which regard serving the public as their mission. If the general public cannot participate as users or stakeholders in monitoring and regulation, these public organizations will definitely act casually according to their own wishes and they will get out of control.

Furthermore, there are also some public organizations enjoying administrative and financial autonomy. Therefore, after the allocation of funding by the Government for their establishment, the Government will find it

difficult to intervene again and, as a result, these organizations will enjoy excessive administrative and management powers. Sometimes, they will even defy the Government's orders and become independent kingdoms.

Some public organizations have even spent the public funds allocated by the Government on their own administrative staff and senior managers. As a result, the benefits and enjoyment of these staff and managers have far exceeded the expectation of the Government and the public, and they become "spendthrifts" branded by the public.

Over the past several years, the Audit Commission has fiercely criticized many public organizations, such as the Hong Kong Tourism Board, the Hong Kong Productivity Council, the Equal Opportunities Commission, the Applied Science and Technology Research Institute, and so on, for using resources improperly and allowing the relevant situation to occur again and again. Actually, the current work of public organizations is not subject to an objective and transparent mechanism and standards. As a result, these public organizations are given the chance to squander resources without having to submit their report cards.

President, the staff should be considered as the most important asset for private companies, government departments and public organizations alike and they ought to be taken seriously. But unfortunately, the attitude of many public organizations towards their employees is infuriating. In fact, some public organizations choose to suppress their employees because these organizations having a monopoly in certain trades. Sometimes, they think that their employees have nowhere to go and so, they exert pressure on their employees casually. Let me cite the medical profession as an example. For anyone working in this profession in Hong Kong, they cannot deny that the largest employer is the Hospital Authority (HA). As a result, the HA is accustomed to passing the demands of the public on to its staff. Coupled with the persistent failure to increase manpower, health care personnel have been working in an environment where there are long working hours, little rest and enormous pressure. Let me cite a recent incident involving a group of nurses working in public hospitals and applying for sick leave *en masse* as an example. The wastage rate of nurses working in public hospitals last year rose by 50% compared to that two years ago. The drastic increase in pressure faced by health care personnel has made them fallen ill one after another. In 2007, the overall number of days of sick leave for public hospital staff was 180 000, 50% more

over the year 2002. This reflects that the system is simply on the verge of collapse.

Furthermore, the staff of some public organizations were originally under the Civil Service establishment. However, their remunerations and prospects had become completely unprotected once their organizations had detached from the government structure. At present, some of the dispensers of general out-patient clinics operated by the HA, who were originally employed by the Department of Health under the Civil Service establishment, are no longer taken care of by the Government after it was made mandatory for the departments they formerly served to be taken over by the HA. Not only have they lost promotion opportunities, but they are also faced with growing work pressure. As a result, they feel exhausted both physically and mentally, and their morale is low. Some of them even have to seek psychiatric treatment. There is also a great likelihood for certain individual staff to commit suicide due to work pressure. The Government should indeed assume its due responsibility to assist these staff with job transfers or take them back so that they can work for the Government again.

President, public organizations should function like quasi-government corporations to serve the public with public funds. Like the Government, they are obliged to act like a good employer to provide their employees with due remunerations and keep their workload at a reasonable level. However, many public organizations do not have staff representatives to sit on their board of directors to monitor the operation of the organizations concerned. Very often, the positions of employers and employees are not completely equal. It is therefore very difficult for employees' complaints to reach the management or board of directors.

Hence, I spell out in my amendment that public organizations should establish a good staff management system and foster a good employment relationship while allowing staff with representativeness to sit on their board of directors, so that the opinions of staff can reach the higher level.

I so submit.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, first of all, I wish to thank Mrs Regina IP for proposing this motion today.

Over the years, the Government has, in the light of actual needs, established different types of public organizations to provide services to the public. Compared with government departments, public organizations no doubt have greater flexibility in their operation and hence can better meet public needs. Public organizations have an extensive coverage. They include statutory bodies and non-statutory bodies. They can be fully or partially funded by the Government, and some rely on fees charged for their services or levies collected under the relevant legislation to provide funding for their operation. Disregarding the source of their operational funding, the Government attaches great importance to the operation of public organizations. While respecting the operational autonomy of individual public organizations, the relevant policy bureaux will review the operation of individual organizations from time to time on a needs basis.

On Mrs Regina IP's proposal of formulating operational standards for public organizations, we would be glad to listen to the views of Members. In fact, before the establishment of a public organization, the Government will first consider all relevant factors to ensure that this is a better way to achieve the relevant policy objectives and we will clearly set out the objectives expected to be achieved by the public organization as well as the powers that should be conferred on it. We agree with the Member that public organizations shall meet the purposes laid down upon their establishment and this is an important indicator for reviewing the operation of individual organizations by the relevant policy bureaux. Moreover, a majority of public organizations providing public services, including those which receive more than half its income from public moneys or those which are subject to funding requirements, or those which are authorized by the relevant legislation, are incorporated into the scope of an "audited organization", meaning that they are subject to the value for money audits by the Director of Audit on a regular basis.

However, as each organization is unique, it may not be appropriate to rigidly apply to all of them a particular set of standards, such as Mrs Regina IP's proposal that public organizations shall be subject to the regulation of the competition law now being drafted. As the activities of most public organizations are non-economic in nature or involve essential public services, they should not be the target of the competition law, it is therefore inappropriate to subject all public organizations to the regulation of the competition law across

the board. However, we understand that some public organizations are engaged in economic activities, directly competing with the private sector in some areas, and these economic activities are not essential public services. Such being the case, the relevant organizations or their activities should be subject to the regulation of the competition law presently being drafted. At present, the Commerce and Economic Development Bureau is studying in detail which public and statutory bodies engaging in economic activities should be subject to the regulation of the competition law and plans to incorporate these organizations into a schedule of "non-exempted" statutory bodies under the competition law. The views of Members and stakeholders will be considered in drawing up this schedule.

We very much appreciate the concern of Members and the public about the operation of public organizations. For the time being, I will first listen carefully to the valuable views of Members and will give a further response later. Thank you, President.

MR WONG KWOK-HING (in Cantonese): President, the word "shall" appears seven times in Mrs Regina IP's original motion and once in Dr PAN Pey-chyau's amendment to express hopes for the Government to improve the governance of public organizations. I would like to make use of the following few minutes to summarize the "eight sins" or "eight states of ugliness" pointed out by Members in criticizing public organizations.

I think the Secretary did not resolve the issue at all by simply responding just now that certain public organizations would be subject to the competition law. The key is whether the Government's will of governance is determined and strong enough and whether the Government takes the criticisms from the public and the Legislative Council seriously. Now I wish to explain the eight sins or eight states of ugliness in the hope that the Secretary can relay what he has heard to other senior government officials.

The first sin concerns lax government monitoring and the Government's deliberate act of permitting government officials and public organizations to defend each other and shirking their responsibilities to each other. As pointed out by Mrs Regina IP earlier in the meeting, there are no Secretaries of

Departments, including the Chief Secretary for Administration and the Financial Secretary, present at the meeting today. The fact that there is only one Bureau Director attending this meeting does demonstrate that the Government does not take the existing problems with public organizations seriously.

The second sin concerns the serious inadequacies and loopholes with governance by the senior staff of public organizations. Not only is monitoring not frequently carried out by so-called governing bodies and board of governors according to established procedures, but it is also led by administrative personnel only. The governing bodies and board of governors have absolutely not performed their function of high-level governance. As such examples can be found readily, I will not elaborate them in detail.

The third sin concerns abuse of public funds, with some public organizations behaving like "spendthrifts". I believe Members have cited numerous examples just now. For instance, the Hong Kong Tourism Board has printed a large quantity of useless publicity materials; the Applied Science and Technology Research Institute has spent \$180,000 on "fung shui"; some public organizations have squandered on rental, renovation, procurement of equipment, banquets, and so on. The situation is indeed horrifying.

The fourth sin concerns the use of public funds for private purposes. As in the incidents revealed by the Audit Commission and criticized by Members, some senior staff of public organizations substantially increased their own pay and bonus while their elementary staff were being suppressed and exploited. In one of the incidents uncovered by the Audit Commission, an official of a public organization substantially upgraded her medical insurance scheme to her own advantage. This precisely demonstrates the gravity of the use of public funds for private purposes.

The fifth sin concerns the "fattening the top and thinning the bottom" phenomenon. As Dr PAN has outlined the specific situation of the Hospital Authority earlier, I will not spend time to give additional information in this aspect. At present, the railway authorities are also behaving in the same manner, with the bonus and pay of their senior staff being substantially raised and the senior staff being so fat that they cannot even put on the socks. Meanwhile, however, they have continued to rely on outsourcing and even take advantage of headhunting companies to provide labour, thus allowing them to continue to

suppress and exploit the pay and benefits of their elementary staff. Should this situation persist, the management will definitely face constant and irresolvable conflicts between the employer and employees or the management and the staff.

The sixth sin concerns gross misconduct on the part of the administrative and management personnel and chaotic administration. In the latest incident uncovered by the Audit Commission, the Hong Kong Productivity Council was found missing a staggering amount of assets. I think Members will also be very surprised on hearing this and find this unbelievable. Why would such a chaotic situation occur?

The seventh sin concerns the poor transparency of these public organizations, thus making it difficult for the public to monitor them. Originally, the Government would appoint officials to the board of governors or governing bodies of these public organizations, but it is strange to know that these government officials do not notice or are unaware of such a situation. How can they explain this?

The eighth sin concerns public resources being eroded. Why am I making this criticism? We have found that the senior posts of these public organizations have become lucrative vacancies eyed by senior civil servants. To our great surprise, we have recently found that some promising senior government official refuse to stay in the civil service and take up a lucrative post offered by a public organization instead. What does this tell us? These problems are very serious, but has the Government noticed them? Apparently, we have not seen any response from the Government. Moreover, the determination of the pay of the lucrative posts offered by these public organizations is subject to no supervision at all. The pay level of these organizations can even be higher than that of the management of comparable private organizations. I find this absolutely unbearable.

What is the Government's attitude to the existence of this wide range of problems? After all, the Government's will to carry out monitoring has failed to keep abreast of the times. It has only devolved its authority without carrying out stringent monitoring, thereby creating hotbeds for bureaucracy, "no-man's land", maladministration, wastage of public funds, and so on. Even though this motion debate is conducted today, we still cannot see any vigorous and proactive response from the Government. The Secretary has merely indicated that he will

give us a response after listening to Members' views. However, I would like to ask this question: Why did the Government not take positive steps to provide relevant papers and conduct a review after these incidents relating to various public organizations are uncovered?

MR CHEUNG KWOK-CHE (in Cantonese): Undoubtedly, public organizations can enhance their operational flexibility and avoid excessive bureaucracy since they are independent of the government structure. However, due to the lack of a well-developed monitoring mechanism, problems such as competing with the private sector for profits, abusing government resources for personal gains and abusing public money have occurred again and again.

When public organizations are found to have governance problems, the Government can carry out monitoring. But what can be done once a public organization is listed? The public organization will surely maintain that the interest of shareholders overrides everything. The Government will also say that the economy of free market has to be respected. In the end, the interest of shareholders will precede everything, all social responsibilities will be forgotten, and ordinary people will become victims.

At present, the territory's largest transportation system, that is, the railway network, is similarly handed to the MTR Corporation Limited (MTRCL) for management. Of course, due to such constraints, the MTRCL's decisions are often made in the interest of its shareholders. For instance, when screen doors had to be installed at MTR platforms due to safety reasons years ago, the cost was passed on to MTR commuters. It was also after years of campaign by the Legislative Council and the community that recently half-fare concessions were finally offered to people with disabilities. All these illustrate that public interest will often be jeopardized after the listing of public services.

Furthermore, not only is the determination of pay and bonus for the senior staff of public organizations marked by poor transparency, there is also great unfairness as the senior staff will only be rewarded rather than punished. As a result, they are able to enjoy benefits as if they are working for private organizations and yet, like those working in private organizations, they do not need to face the prospect of being dismissed because of the mistakes they have made.

Despite the Lehman Brothers minibonds incident that occurred last year, all the senior staff of the Securities and Futures Commission responsible for monitoring investment products still received more than \$34 million in pay and bonus last year. Why could they keep their lucrative posts and pocket the money without the need to make compensation and quit their posts even though they had failed to carry out their monitoring role properly, thereby causing the Lehman Brothers victims to loss more than \$10 billion? Why?

The same applies to the Airport Authority. As the Hong Kong Airport is faced with no competition at all, it can be said that operating the airport is a profiting business. However, over the past two years alone, on top of \$27 million in basic salary, \$13 million in bonus was also paid to the management of the Airport Authority. What is more, these payments have to be made every year.

Actually, in 2006, the HA abolished the granting of bonus to its management, including its Chief Executive and Cluster Chief Executives. Why can the Government not extend this practice to cover other public organizations as well? Given that there are so many public organizations in Hong Kong, if the Government is willing to revamp the bonus system for the management of public organizations, hundreds of millions of dollars in public funds can be saved. However, the Government must, at the same time, ensure that public organizations will not conceal some secretive actions, as it has come to our attention that, despite the abolition of bonus granted to the senior staff of the HA years ago, their salaries were raised unnoticed.

In the face of the malpractices of public organizations, the Government only knows to take one step at a time or adopt stopgap measures. As a result, scandals have continued to occur. Sometimes, the Government will even connive with or protect public organizations. The Government is therefore obligated to establish a more comprehensive independent monitoring mechanism to ensure that public funds will not be abused. More importantly, it has to ensure that public organizations will emphasize "people-based" governance and they must not be allowed to turn into independent kingdoms. Otherwise, not only will the prestige of the Government's governance be jeopardized, public interest will also go unprotected.

President, I so submit.

MR IP WAI-MING (in Cantonese): President, the motion proposed by Mrs Regina IP today is excellent, for it gives us an opportunity to discuss those public organizations which are not non-government organizations but are operated with public funds and resources to serve the public. President, I did not realize until I prepared my draft speech that we could definitely find one of these public organizations near us. All public needs in such areas ranging from health care, housing, economic matters, labour, complaints to examinations for students and even cemeteries, are related to public organizations.

President, although these public organizations can specifically deal with the services and matters under their ambits, they are, after all, not government departments. Furthermore, the current monitoring mechanism by the public and the Government is inadequate, and the autonomy enjoyed by these public organizations is quite high. Hence, even if they have internal management problems, it is difficult for the public to find out, and even the Government might not be aware of these problems. In the end, public funds might be wasted. Therefore, I consider it imperative for the Government to undertake a serious review of the monitoring of these public organizations with a view to enhancing it. Value for money audits for these public organizations should be carried out. More representatives from different strata should be appointed to the monitoring mechanism to ensure that these public organizations are transparent enough to be accountable to the public, so as to prevent the recurrence of administrative confusion, cases of squandering money, or suppression of employees.

President, as mentioned by a number of Honourable colleagues earlier, the Hong Kong Productivity Council (HKPC) was involved in the latest incident concerning the chaotic operation of public organizations. Problems in the HKPC being exposed include chaotic administration, disappearance of assets, bonus granted to the management without approval, double housing benefits given to senior staff, and so on. Had these problems been found in a private enterprise, I believe it would already have wound up a long time ago. The HKPC is allowed to continue with its operation in a chaotic manner just because it is a public organization and it is given a government funding of \$170 million a year. As the Government has not formulated any criteria after the provision of funding to monitor the operation of these organizations and regulate the pay and benefits of the management, the relevant persons can therefore abuse their administrative powers to set aside more resources for themselves.

Actually, ever since the publication of the report by the Audit Commission, the Government has taken no action to penalize the relevant persons. Neither has it required the HKPC to return the variable pay and housing allowances granted without prior approval. After the publication of reports by the Audit Commission, the departments and organizations concerned would very often indicate their willingness to accept the reports and undertake that improvements would be made. However, after a few years, other organizations or even the same organizations would be found to have the same problems again. This is why we fully support the motion proposed by Mrs Regina IP today for these public organizations to be subject to audits on a regular basis, regulating the pay of the management and enhancing the monitoring of these organizations. As quasi-government departments, public organizations must be extra careful in reviewing and improving their administration regularly and they should take the initiative to invite the Audit Commission to carry out value for money audits for them. After all, as users of public funds, it is indeed necessary for them to be accountable to the public. It is only that monitoring is absent under the existing regime and so, they are "set free". As a result, not only can the public not monitor these public organizations, the public will even be affected by these organizations. This is like the example last year when the books of the Housing Society were in the red as the financial tsunami led to a loss of more than \$1.98 billion from investment. As the media report, the Housing Society is planning to raise the rents in order to cover this shortfall in income. If we think about this more carefully, such an approach of requiring the public and public funds to pay for the investments made and expenses incurred by public organizations is inherently no different from the Loco London gold scam handled by Dr PAN earlier. So, the authorities should consider how these public organizations should be monitored.

President, when the Chairman of the HKPC appeared before this Council last week, he pointed out that since the publication of the report by the Audit Commission, the morale of the HKPC staff had been hit as a result of the media's criticism and some of them dared not admit that they were employees of the HKPC. In my opinion, the management should all the more be held totally responsible should the staff really act in this manner, because it is precisely the problems of and the moves taken by the management, not the accusations by the media or Members, that undermine the morale of the staff. The moves taken the management are indeed far from proper.

President, our trade union has previously dealt with the HKPC. At that time, the HKPC used a new performance evaluation as a pretext and rated six

members of the union as poor over a period of six months before dismissing them or forcing them to quit their jobs. When we filed a complaint to the Labour Department about the HKPC's discrimination against the trade union, the Labour Department considered that there was sufficient evidence to prosecute the HKPC. However, we were finally ruled by the Judge to lose the case due to some technicalities. When I referred to the Audit Commission's report this time, one of the problems identified is precisely relevant to the evaluation of work performance. According to part three of the report, the staff being rated as excellent are not given the highest bonus but the staff considered not up to standard are given the highest variable pay. This precisely illustrates that the power possessed by the management within these public organizations is so great that they can even deviate from the established evaluation mechanism. As a result, wage earners working in these organizations are actually not given any fair treatment at all.

Hence, we consider that the board of directors of public organizations should allow staff representatives who have recognition to sit on the board so that the staff can directly reflect their views and the board of directors can have an opportunity to learn more about the operation of the organizations and the actual situation of the staff. At the same time, the check and balance formed by staff representatives will also reduce abuses of administrative means for the purpose of fattening the top but slimming the bottom.

With these remarks, President, I support the motions and the amendments.

MS STARRY LEE (in Cantonese): President, I believe many people in charge of public organizations will say that the existence of public organizations is indispensable because they can adopt a mode independent of the government structure so that they can operate flexibly and assist the Government effectively in providing quality public services. Each public organization has its mission upon its establishment. However, as far as I can remember — the Government may clarify this later — it seems that the Government has never closed down any public organization. And, neither has the Government or any public organization ever come forward and said that a historical mission has been completed and a certain public organization can bow a graceful exit, with the relevant services handed back to the private sector. It is precisely attributed to the ever-growing number of public organizations and the rising rate of

participation of public organizations in the market that many people have this question in mind: Will public organizations affect the viability of private enterprises? Should they be subject to the fair competition law? The Hong Kong Trade Development Council (HKTDC) is one of the frequently cited examples in view of the constant protests by the exhibition industry against the HKTDC's monopolization of the market and its competition with the private sector for profits.

In its submission presented to the Legislative Council in 2000, the Hong Kong Exhibition and Convention Industry Association (the Association) raised some of its concerns. For instance, the HKTDC has been using "Hong Kong's data protection codes" as an excuse to refuse providing the Association with the full list and addresses of the exhibition contractors in Hong Kong. People can see that the HKTDC has done this for the sole purpose of allowing its own exhibition contractors to solicit business from exhibitors ahead of others. As one more example, the overseas offices set up by the HKTDC are operated with public funds. However, only the exhibitions hosted by the HKTDC as well as its publications and specialty items are displayed on the walls of the reception office in its office in Frankfurt, while not a word is mentioned about the displays of and services provided by other companies in Hong Kong. The HKTDC has completely forgotten about its official duty of promoting the entire exhibition industry of Hong Kong, including private exhibitors.

I think it is imperative for the Government to face these accusations concerning unfair competition squarely. However, should all public organizations be subject to the fair competition law across the board? Each public organization has its unique mission and provides unique services. For instance, the services provided by the Hospital Authority (HA) overlap with those provided by many private hospitals. If the HA is strictly required to be subject to the fair competition law for the purpose of restricting its scale and scope of service, it will definitely not do the public any good. We can thus see that the results of applying a fair competition law to all public organizations are not only dubious; but also not necessarily in the interests of the community and the public. Therefore, the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) is of the view that the respective nature of operation of each public organization and its degree of participation in the market and the economy should be subject to a comprehensive examination and evaluation before deciding which

public organizations should be subject to the fair competition law, rather than applying the fair competition law to all public organizations universally.

A number of public organizations have given the public a very poor impression lately, such as behaving like spendthrifts or being governed in a chaotic manner. In recent years, the Audit Commission has also exposed in its annual report a lot of governance problems with public organizations, including the continuous appointment of members of their governing bodies despite their low attendance, the disappearance of assets, super deluxe insurance coverage and official duty arrangements. All these have really infuriated taxpayers. This year, the rising star award should really go to the Hong Kong Productivity Council (HKPC). As a number of Members have already mentioned the HKPC earlier, I will not talk about it anymore. The Audit Commission's reports are actually iron-clad facts telling us that our public organizations do not regard themselves as using public funds and their spending of money does not meet the principle of being appropriate and conservative. More importantly, the monitoring bodies have evidently failed to carry out their monitoring function properly. As a result, they have failed to prevent the occurrence of the abovementioned situation and effectively perform their gate-keeping role for taxpayers. The problems exposed by the Audit Commission might just be the tip of the iceberg. As everybody knows, the Audit Commission has a busy schedule, and the annual number of organizations inspected by it is very small. But still, it has managed to expose such a large number of major problems every year. Actually, are these problems very serious? Should the Government fail to tackle the problems at their root by enhancing the accountability and transparency of public organizations, these problems will only continue to get exposed. This will only undermine the Government's prestige and credibility.

So, how can the transparency and accountability of public organizations be enhanced? In my opinion, apart from requiring these organizations to submit annual audit reports, the Government should consider commissioning independent auditors to carry out audits of the internal monitoring of these organizations. It may consider carrying out irregular audits and requiring these auditors to report directly to the Audit Commission. If these organizations have already set up their own internal audit departments, the Government might as well consider requiring these internal audit departments to carry out investigation in individual special items and report directly to the Audit Commission. In doing so, the Government will be able to monitor the usage of public funds

directly. If the existing mode of monitoring is to be retained, I am afraid the annual reports of the Audit Commission will expose even more scandals of public organizations to the public.

Apart from enhancing monitoring, the chairmen and CEOs of various public organizations should also be required to report the progress of work of their organizations to the Legislative Council and answer questions raised by Members on a regular basis. While Members can often meet with government officials in the Legislative Council, the CEOs and chairmen of public organizations seldom appear before this Council. This is why I hope their accountability can be enhanced. I must emphasize that enhancing the accountability and transparency of public organizations will not affect their independence. By independence it means that public organizations can operate independently of the Government's administrative and governance structure, without being influenced by the civil service culture, thus enabling quality social services to be delivered in a flexible manner. It is definitely not hoped that these public organizations should turn themselves into independent kingdoms.

Lastly, I would like to mention the amendments proposed by some Members. Incidentally, they have proposed pegging the pay and bonus for the policy-makers of public organizations to such criteria as the principles of "big market, small government" and free market economy. The DAB does not approve of this. In our opinion, the principles of "big market, small government" and free market economy cannot apply to all public organizations, especially organizations which have a close bearing on the livelihood of the public. Should the pay and bonus for the remunerated directors and senior executives of public organizations be pegged to these principles, the policy-makers of some of these organizations, such as the Housing Society or Housing Authority, can then declare solemnly that they have to raise or lower rents strictly according to the principle of market economy without considering the actual difficulties experienced by the residents. It is thus evident that pegging pay and bonus to the principle of market economy is not in the interest of the community at large. It is also believed that such proposals will not be supported by the public.

President, the original motion proposes that the fair competition law should apply to all public organizations and that the pay of the policy-makers of public organizations should be pegged to the principle of free market economy.

Although the starting point of the motion is good, we are concerned that the results might not be satisfactory. Therefore, we will abstain from voting. As regards

PRESIDENT (in Cantonese): Ms Starry LEE, your speaking time is up.

SUSPENSION OF MEETING

PRESIDENT (in Cantonese): I now declare that the meeting will be suspended and to be resumed at nine o'clock sharp tomorrow morning.

Suspended accordingly at two minutes past Ten o'clock.

Annex I

PUBLIC OFFICERS PAY ADJUSTMENT BILL

COMMITTEE STAGEAmendments to be moved by the Secretary for
the Civil Service

<u>Clause</u>	<u>Amendment Proposed</u>
Schedule, Part 1, item 4	By deleting "38" and substituting "39".
Schedule, Part 1, item 5	By deleting "D10" and substituting "D8".
Schedule, Part 1, item 6	By deleting "DL7" and substituting "DL6".

PUBLIC OFFICERS PAY ADJUSTMENT BILL

COMMITTEE STAGE

Amendments to be moved by Dr the Honourable Margaret NG.

ClauseAmendment Proposed

5
[NEGATIVED]

(a) In subclause (1), by deleting “5.38%” and substituting “3.4%”.

(b) In subclause (3), by deleting “5.38%” and substituting “3.4%”.

6(1)
[NEGATIVED]

By deleting “5.38%” and substituting “3.4%”.

7(1)
[NEGATIVED]

By deleting “5.38%” and substituting “3.4%”.

PUBLIC OFFICERS PAY ADJUSTMENT BILL

COMMITTEE STAGE

Amendments to be moved by Ir Dr the Honourable Raymond HO Chung-tai, SBS, S.B.St.J., JP

<u>Clause</u>	<u>Amendment Proposed</u>
<u>3</u> [NEGATIVED]	By deleting subclause (2).
<u>5</u> [NEGATIVED]	(a) In subclause (1), by deleting “5.38%” and substituting “2.91%”. (b) In subclause (3), by deleting “5.38%” and substituting “2.91%”.
<u>6(1)</u> [NEGATIVED]	By deleting “5.38%” and substituting “2.91%”.
<u>7(1)</u> [NEGATIVED]	By deleting “5.38%” and substituting “2.91%”.

Annex II

DOMESTIC VIOLENCE (AMENDMENT) BILL 2009

COMMITTEE STAGE

Amendments to be moved by the Secretary for Labour and Welfare

<u>Clause</u>	<u>Amendment Proposed</u>
3	In the Chinese text, by deleting "家庭關係" and substituting "家庭".
5(2)	(a) In the proposed definition of "cohabitation relationship", in paragraph (a), by adding "(whether of the same sex or of the opposite sex)" after "2 persons". (b) By adding – ""applicant" (申請人) means a person who applies for an injunction to be granted under section 3, 3A or 3B;".
New	By adding – "6A. Power of District Court to grant injunction: other relatives (1) Section 3A(1) is amended by repealing "("the applicant")". (2) Section 3A(1) is amended, in the Chinese text, by repealing "該申請人" and substituting "申請人".

- 7
- (a) In the proposed section 3B(1), by deleting "the applicant".
 - (b) By deleting the proposed section 3B(2)(f) and substituting –
 - "(f) whether the parties share the care and support of a specified minor;"
 - (c) By deleting the proposed section 3B(2)(g) and substituting –
 - "(g) the parties' reasons for living together, and the degree of mutual commitment to a shared life;"
 - (d) By deleting the proposed section 3B(2)(h) and substituting –
 - "(h) whether the parties conduct themselves towards friends, relatives or other persons as parties to a cohabitation relationship, and whether the parties are so treated by their friends and relatives or other persons."

DOMESTIC VIOLENCE (AMENDMENT) BILL 2009

COMMITTEE STAGEAmendments to be moved by Dr the Honourable Margaret NGClauseAmendment Proposed

Long title

[NOT PROCEEDED
WITH]

By deleting “who live together as a couple in an intimate relationship”.

5(2)

[NEGATIVED]

By deleting the proposed definition of “cohabitation relationship” and substituting —

““cohabitation relationship”(同居關係) includes a cohabitation relationship between 2 persons of the same sex and such a relationship that has come to an end;”.

Appendix I

WRITTEN ANSWER

Written answer by the Secretary for Food and Health to Mr LEE Cheuk-yan's supplementary question to Question 6

The table below shows the number of clinics of health care professionals enrolled in the Elderly Health Care Voucher Pilot Scheme in various districts as at 28 February 2010 for Members' information.

Annex

Location of Practices of Health Care Professionals Enrolled in the Elderly Health Care Voucher Pilot Scheme
(as at 28 February 2010)

<i>Profession</i> <i>District</i>	<i>Western</i> <i>Medicine</i> <i>Doctor</i>	<i>Chinese</i> <i>Medicine</i> <i>Practitioner</i>	<i>Dentist</i>	<i>Occupational</i> <i>Therapist</i>	<i>Physiotherapist</i>	<i>Medical</i> <i>Laboratory</i> <i>Technologist</i>	<i>Radiographer</i>	<i>Chiropractor</i>	<i>Enrolled</i> <i>Nurse</i>	<i>Registered</i> <i>Nurse</i>	<i>Total</i>
Central and Western	127	83	32	3	36	3	4	9	2	3	302
Eastern	125	29	23	2	14	0	0	0	0	2	195
Southern	38	26	4	0	3	0	0	0	0	0	71
Wan Chai	87	75	30	4	27	1	0	0	1	4	229
Kowloon City	116	30	11	0	18	0	0	0	0	0	175
Kwun Tong	137	75	31	3	8	10	11	1	3	16	295
Sham Shui Po	72	45	7	3	10	3	1	0	0	0	141
Wong Tai Sin	75	52	10	0	3	0	0	0	0	0	140
Yau Tsim Mong	217	141	49	5	78	10	8	6	3	25	542
North	45	24	5	0	1	1	0	0	0	0	76
Sai Kung	88	21	7	0	5	3	3	0	0	0	127
Sha Tin	84	28	24	0	20	0	0	1	1	2	160
Tai Po	60	48	12	1	3	2	2	0	2	11	141
Kwai Tsing	82	29	13	0	8	0	0	0	1	1	134
Tsuen Wan	111	46	8	4	15	4	5	1	1	4	199
Tuen Mun	81	60	6	0	3	0	1	0	0	0	151
Yuen Long	93	25	8	0	6	0	0	0	0	1	133
Islands	27	4	1	0	5	0	0	0	0	0	37
Total	1 665	841	281	25	263	37	35	18	14	69	3 248

Appendix 1**REQUEST FOR POST-MEETING AMENDMENTS**

The Secretary for the Civil Service requested the following post-meeting amendment

Line 1 to 5, first paragraph, page 147 of the Confirmed version

To amend "Logically speaking, when we are compassionate to civil servants in the upper salary band and thus deduct 1.96% from their pay reduction rate, do we also need to consider the situation of civil servants in the lower salary band? As the net PTI of civil servants in the lower salary band is only -0.98%, should we also increase their pay by 0.98% on compassionate ground instead of imposing a pay freeze on them? These are the issues that we have to consider." as "Logically speaking, when we are compassionate to civil servants in the upper salary band and thus deduct 1.98% from their pay reduction rate, do we also need to consider the situation of civil servants in the lower salary band? As the net PTI of civil servants in the lower salary band is only -0.96%, should we also increase their pay on compassionate ground instead of imposing a pay freeze on them? These are the issues that we have to consider." (Translation)

(Please refer to line 10 to 16, first paragraph, page 3330 of this Translated version)

Line 10, third paragraph, page 147 of the Confirmed version

To amend " Although their net PTIs are -0.98% and -1.98% " as " Although their net PTIs are -0.96% and -1.98% " (Translation)

(Please refer to line 1 to 2, first paragraph, page 3331 of this Translated version)