

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 12 January 2011

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

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

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

DR THE HONOURABLE MARGARET NG

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

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

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

THE HONOURABLE LEUNG YIU-CHUNG

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

THE HONOURABLE WONG YUNG-KAN, S.B.S., J.P.

THE HONOURABLE LAU KONG-WAH, J.P.

THE HONOURABLE 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, S.B.S., J.P.

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

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

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

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

THE HONOURABLE WONG KWOK-HING, M.H.

THE HONOURABLE LEE WING-TAT

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

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

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

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

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

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

THE HONOURABLE CHIM PUI-CHUNG

PROF THE HONOURABLE PATRICK LAU SAU-SHING, S.B.S., J.P.

THE HONOURABLE KAM NAI-WAI, M.H.

THE HONOURABLE CYD HO SAU-LAN

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

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

THE HONOURABLE CHAN HAK-KAN

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

THE HONOURABLE CHAN KIN-POR, J.P.

DR THE HONOURABLE PRISCILLA LEUNG MEI-FUN

DR THE HONOURABLE LEUNG KA-LAU

THE HONOURABLE CHEUNG KWOK-CHE

THE HONOURABLE WONG SING-CHI

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

THE HONOURABLE IP WAI-MING, M.H.

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

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

DR THE HONOURABLE PAN PEY-CHYOU

THE HONOURABLE PAUL TSE WAI-CHUN

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

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

THE HONOURABLE LEUNG KWOK-HUNG

THE HONOURABLE TANYA CHAN

THE HONOURABLE ALBERT CHAN WAI-YIP

MEMBERS ABSENT:

THE HONOURABLE LAU WONG-FAT, G.B.M., G.B.S., J.P.

THE HONOURABLE WONG YUK-MAN

PUBLIC OFFICERS ATTENDING:

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

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

PROF GABRIEL MATTHEW LEUNG, J.P.
SECRETARY FOR FOOD AND HEALTH

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

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

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

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

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

CLERKS IN ATTENDANCE:

MS PAULINE NG MAN-WAH, SECRETARY GENERAL

MRS CONSTANCE LI TSOI YEUK-LIN, ASSISTANT SECRETARY
GENERAL

MRS VIVIAN KAM NG LAI-MAN, 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)

TABLING OF PAPERS

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

Subsidiary Legislation/Instruments	<i>L.N. No.</i>
Minimum Wage (Criteria for Approved Assessors) Notice	1/2011
Minimum Wage (Assessment Methods) Notice	2/2011

Other Papers

No. 56 — Hong Kong Council for Accreditation of Academic and Vocational Qualifications Annual Report 2009-2010

No. 57 — Report on the Administration of the Fire Services Department Welfare Fund together with the Director of Audit's report and audited statement of accounts for the year ended 31 March 2010

Report No. 10/10-11 of the House Committee on Consideration of Subsidiary Legislation and Other Instruments

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): Questions: First question.

Retirement Protection

1. **MR LEE CHEUK-YAN** (in Cantonese): *At the meeting of the Panel on Welfare Services of the Legislative Council held on 18 December 2010, the Government indicated that "t[T]he Central Policy Unit (CPU) is studying the sustainability of the existing retirement protection model". However, according to records, an expert panel had been formed under the CPU as early as in July 2004 to conduct studies on the subject, and the CPU had received the preliminary findings of the studies in 2007 and 2008. In this connection, will the Government inform this Council:*

- (a) of the details of the aforesaid preliminary findings of the studies;*
- (b) why it has not published the aforesaid preliminary findings of the studies; and*
- (c) given that the aforesaid studies have been conducted for more than six years, when the authorities expect the studies will be completed?*

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, the Administration attaches great importance to the welfare of retired elders. Improving the quality of life of the elderly to provide them with a sense of security, a sense of belonging and a feeling of health and worthiness has always been our policy objective. In line with this objective, Hong Kong has been adopting a three-pillar model for retirement protection, that is, the non-contributory social security system (comprising Comprehensive Social Security Assistance (CSSA), Old Age Allowance (OAA) and Disability Allowance), the Mandatory Provident Fund (MPF) system which was introduced 10 years ago after careful and extensive discussion in the community, and voluntary private savings.

The current model is well established and has been performing its due function. Nonetheless, the Administration has been monitoring closely the operation of the model in the light of Hong Kong's changing socio-economic circumstances and will introduce changes as appropriate and necessary. A recent example is the increase in the level of OAA to \$1,000 with effect from January 2009. As regards the MPF system, the Mandatory Provident Fund Schemes Authority will continue to review and improve its operation, including

the review of the minimum and maximum income levels for MPF contributions and the restrictions on withdrawal of MPF accrued benefits.

My reply to Mr LEE Cheuk-yan's question is set out below:

The CPU has been conducting studies on issues of public concern for reference by the Administration in formulating policies. The CPU has also looked into the subject of retirement protection, and completed five related studies between 2007 and 2010.

Overall speaking, the three pillars under the current retirement protection model in Hong Kong are complementary to one another, and would continue to be so in future.

Some of the findings of the CPU's studies were presented at the Conference on "Strengthening Hong Kong's Families: Obligation and Care Across the Generations" co-organized by CPU, the University of Hong Kong, The Chinese University of Hong Kong, the City University of Hong Kong and the Family Council in June 2010. Some have also been made available on the CPU's website.

One of the main reasons why the CPU has not yet released other study findings is that some data require updating in the light of changes in the social and economic environments as well as the latest developments in relevant policies. They also require further examination and analysis. For example, the studies included a territory-wide household survey. The data from this survey were used for setting up a micro-simulation model to project the income, expenses, savings, assets, and so on, of elderly persons in 30 years' time. The size of the sample in the survey (about 5 000) was a rather big one, hence the longer time taken for the work. Upon completion of the simulation exercise, the financial tsunami occurred; and the monthly rates of OAA also increased to \$1,000 shortly afterwards. These events have affected the assumptions and parameters of the original micro-simulation model, and have very likely compromised the accuracy of the projections.

Meanwhile, there are also other new developments in relevant policies, for example, the review of and improvements to the operation of the MPF system; the society is engaged in an active discussion of the proposed Health Protection Scheme; from next month onwards, the permissible limit of absence from Hong

Kong for OAA will be relaxed; and the statutory minimum wage will commence operation in May, and so on. These developments will, to a certain extent, affect the retirement protection regime in Hong Kong.

The CPU considers it necessary to refine its study on the sustainability of the three-pillar model of retirement protection in Hong Kong, having regard to the latest developments, for more accurate projections and assessment. This will entail conducting a new territory-wide household survey to obtain data for making a new round of projections on the situation of retirees in 30 years' time. In the course of refining the study, the CPU will consult the relevant bureaux, make reference to opinion in the community, and tap the views of academics, professionals, think tanks and interested parties as appropriate through its established channels.

In deciding on any future course of action, the Administration will consider the findings of the CPU studies and other pertinent factors such as how to ensure the sustainable development of the social security system, safeguard traditional family values, and maintain our overall economic competitiveness as well as a simple tax system.

MR LEE CHEUK-YAN (in Cantonese): *It has been a long time since the three policies on the elderly has been mentioned in this Chamber, that is, to provide the elderly with a sense of security, a sense of belonging and a feeling of health and worthiness. The Secretary mentioned these policies again today but they are definitely fake policies because the Secretary talked about the three pillars immediately afterwards. I think that the three pillars are basically short piles. The first pillar is social security assistance, the CSSA and OAA, which actually fail to solve the elderly poverty problem; the second pillar is savings, how can the poor elderly have savings? The third pillar is MPF, for those women who cannot work continuously and for low-income earners, the MPF fails to safeguard their livelihood after retirement. As these three pillars fail to support the three policies on the elderly, they are fake policies.*

President, what infuriates me most is that the Government has commenced to conduct a study since 2004, but it has not published its findings. According to the Secretary, the data about the projection of the income, expenses, savings, assets, and so on, of the elderly in 30 years' time cannot be released yet. Can the Secretary tell me if the Government dares not release the figures because the

data are just too revealing, indicating that life will be really difficult for the elderly in 30 years' time? Is the Government worried that it will certainly be reproved once the data are released? It will be reproved for failing to implement the three policies on the elderly, and for advocating the fake three-pillar policies. Is that why the Government dares not publish the findings of its study, Secretary?

President, the reason given by the Secretary for not publishing the findings of the study is really ridiculous. According to him, it is because the financial tsunami occurred; and the monthly rates of OAA also increased to \$1,000 shortly afterwards. Will the financial tsunami make the situation even worse in 30 years' time? Can the Secretary tell me why the findings of the study are not published? Is it because the Government dares not publish them? Can he undertake today that the data will be released promptly so that we can base on the data to continue our discussion with the Government?

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, I thank Mr LEE for his question. First of all, I would like to talk about the three policies on the elderly. I would like to clarify that the three policies on the elderly are the consistent policies of the Government and we attach great importance to them. Mr LEE has just referred to the three pillars as three short piles, we totally disagree with him. Actually, these three pillars are complementary to one another, and we have solemnly clarified this point at the meeting of the Panel on Welfare Services on Monday. Let me give an example. There are 916 000 people in Hong Kong aged 65 or above, and 78.1% of them are recipients of CSSA, OAA or disability allowance; as for the elderly aged 70 or above, the ratio is 88.3%. The ratio is substantial and we commit more than \$16 billion in this area each year. The resources put in by the Government cannot be denied.

Mr LEE has also asked why a report has not been made public. I have to clarify that the reports of the CPU serve as internal reference for the Government, and they will not necessarily be made public. We may make public a report in light of the actual situation. Three studies are involved on this occasion. Last year, the key contents of the study were announced at the seminar jointly organized by the Family Council and three universities on "Strengthening Hong Kong's Families: Obligation and Care Across the Generations". The relevant information has also been uploaded to the Internet; thus it has been made public.

However, why have the findings of another study not been published? I have explained clearly in my main reply and the CPU has also explained to us in great detail, as I have just said, the relevant data need updating as the previous data cannot fully reflect the latest situation. Evidently, a chain of events have taken place since 2008: the financial tsunami and an upcoming MPF review; the increase in the OAA level and the minimum wage. We are now considering a scheme that will allow elderly people to return to their hometowns to spend their twilight years. This chain of events are closely related to retirement protection, and we cannot just take the financial tsunami into consideration.

We are definitely not procrastinating, just that we would like to make a more accurate evaluation and projection of the situation in 30 years' time. These data are extremely important to policy making and the determination of future directions. Therefore, I hope Members would give the CPU more time and ample room to complete this study. We attach great importance to the welfare of retired elders, and we are studying this subject very seriously.

MR LEE CHEUK-YAN (in Cantonese): *I ask the Secretary if the Government dares not release the data. To be frank, data always need updating and they are always lagging behind. His reply is simply an insult to our intelligence. I have asked if the Government dares not release the data because they are too revealing, indicating that life will be really difficult for the elderly in 30 years' time.*

PRESIDENT (in Cantonese): Mr LEE, are you asking why the Government has not published the report on the study conducted by the CPU? The Secretary has already answered your question. If you consider the Secretary's answer an insult to your intelligence, please follow up the issue through other channels.

DR SAMSON TAM (in Cantonese): *The Secretary gave us an explanation about the three pillars at a Panel meeting, and some colleagues have always referred to them as three short piles. A few colleagues have asked questions about the first and second short piles, and I would like to ask a question about the third short pile, that is, savings.*

At present, there are more than 900 000 elderly persons aged 65 or above. Regarding the third pile, how much should the elderly save to be regarded as enough? Does the Secretary have a figure in mind? Is it \$1 million, \$2 million or how much? What percentage of elderly persons have enough savings? I hope the Secretary could provide this figure.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, this is exactly the information to be obtained through a census in the study conducted by the CPU. As the CPU has stated in the report made public earlier and at the seminar held last year, savings is most commonly used by Hong Kong people to meet their living expenses after retirement. Dr TAM has just asked how much savings is regarded as enough. This is hard to say because it varies from person to person, and every person has different consumption and living patterns, but this data is very important. When the information is updated in the future, we hope that a census or a household survey would produce new data for our reference to help us determine the future direction.

MR CHEUNG KWOK-CHE (in Cantonese): *The Secretary has talked about the three pillars on different occasions. However, it is very clear to all of us and the Government that the burden caused by retired elderly persons will become increasingly heavy in the next 20 to 30 years; yet the Government declares that it will not deal with the issue for the time being, and even the MPF system does not need to be reviewed comprehensively. In other words, the Government is very confident that it can properly tackle this issue in the next 20 to 30 years. Nevertheless, the current-term Government cannot remain in office for 20 to 30 years, should the burden be handed over to the next-term Government or even the Government of the term after next? Under what circumstances will the Government launch a study on long-term retirement protection?*

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, I have explained very clearly in my main reply that the CPU is now approaching this issue from a macroscopic perspective, it studies the sustainability and operation of these three pillars, and projects the situation in 30 years' time after policy adjustments have been made by the administration. The objective is to conduct a study in order to obtain the data for our reference in the course of policy formulation. We are actually considering the retirement protection issue,

so it may not be fair for Mr CHEUNG to say that we have not dealt with the issue.

MR CHEUNG KWOK-CHE (in Cantonese): *President, he has not answered under what circumstances the study will be launched. This is a practical issue. Will the Government consider launching a study when the number of elderly persons have reached a certain level, when their savings are below a certain level, or when a certain CSSA level is reached? The Government must make some estimates, or else when will a study on retirement protection be launched? It takes three to five years to conduct a study and implement measures, can the Secretary tell us under what circumstances will the study be launched?*

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): *President, I do not quite understand Mr CHEUNG's question. The CPU is now studying the issue of retirement protection and is comprehensively reviewing the sustainability of the three-pillar model. This is the first point. The second point is that, I have just answered very clearly that, the CPU will make reference to opinion in the community, and tap the views of academics and different people through established channels. The data obtained after a survey has been conducted will serve as internal reference for the Government. This is our direction.*

MR CHEUNG KWOK-CHE (in Cantonese): *President, please rule if the Secretary has misunderstood me. You can narrow down the scope of my supplementary question.*

PRESIDENT (in Cantonese): *Mr CHEUNG, I believe that the Secretary has already answered your question with reference to the existing government policy. I understand that you may have different views on the policy as mentioned by the Secretary, but I believe the Secretary has already answered your question. Mr Paul CHAN.*

MR CHAN KIN-POR (in Cantonese): *President, should it be Mr CHAN Kin-por?*

PRESIDENT (in Cantonese): I am sorry. *(Laughter)* Mr CHAN Kin-por, please ask your question. I have poor eyesight.

MR CHAN KIN-POR (in Cantonese): *Never mind. In a Commercial Radio programme this morning, WONG Wing also addressed CHAN Kin-por as Paul CHAN. It is a good thing for both of us to appear together it is a good thing because he is expressing praise. President, I would like to*

(A Member told the President that Mr Paul CHAN had also pressed the button)

PRESIDENT (in Cantonese): Really? Has Mr Paul CHAN also pressed the button?

CLERK (in Cantonese): That is right. Both of them have pressed the button.

MR CHAN KIN-POR (in Cantonese): *I am sorry, President, you are actually right. I have not seen that and I thought that he has not pressed the button.*

MR PAUL CHAN: *Go ahead, go ahead.*

MR CHAN KIN-POR (in Cantonese): *President, can I ask my question now?*

PRESIDENT (in Cantonese): Mr CHAN Kin-por, please ask your supplementary question.

MR CHAN KIN-POR (in Cantonese): *I trust that the Secretary understands the seriousness and urgency of universal retirement protection. The later the Government makes a decision, the shorter the time for Hong Kong to make preparations. Can the Secretary tell us when the CPU will conduct another study? What is the Government's timetable? Even if the CPU has completed*

the study, the Government still has to make a policy decision. When will the Government seriously discuss or decide whether the scheme will be implemented because we need to make contributions. We have to consider where the money will come from, so I would like to know more about the timetable.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Concerning Mr CHAN's question, I have stated clearly in my answer a while ago that the CPU will conduct a new household survey in order to update the relevant information. It is projected that we will have the latest and more comprehensive information within next year, and we will then have the preliminary findings. I would like to add one point about the territory-wide survey. Apart from updating the relevant information, the survey will have a more extensive scope of study. The new survey can further enhance the quality, such as the intergenerational non-monetary support in households, personal habits, consumption and investment patterns, which will enable us to consider in a more comprehensive manner the issue of retirement protection for the elderly in Hong Kong.

PRESIDENT (in Cantonese): I should have more confidence in my eyesight.

MR PAUL CHAN (in Cantonese): *I am sorry that President is confused by the presence of two "Ah Por". President, my supplementary question is related to the main reply. Having read the main reply, I am a bit worried that the CPU may be working behind closed doors. Why do I say so? While there are economic cycles, when we review the situation of Hong Kong, there was an Asian financial turmoil in 1998; an IT or dot com bubble burst in 2000; the outbreak of SARS in 2003; and the financial tsunami occurred in 2008; these incidents have occurred very frequently. If the Government needs to reconsider the scheme because of the financial tsunami, it does not need to publish the findings because it may have to start from square one should anything happen. Can the Secretary undertake here that the findings will certainly be made public after the CPU has completed the study?*

Moreover, regarding the projection of the situation of retirees in 30 years' time, the Secretary mentioned that, owing to rapid social changes, as well as

changes in government policies during the period, it is meaningless to make projections of the situation of retirees in 30 years' time, making projections on the situation of retirees in 10 to 20 years' time would suffice. We hope that the report would be made public, so as to give the community some substantive data for rational discussion. Then, we do not need to make wild guesses about this subject.

PRESIDENT (in Cantonese): Mr CHAN, are you also asking if the Secretary would make public the report of the CPU?

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Generally speaking, the reports of the CPU serve as internal reference for the Government. However, we will decide whether the reports will be made public in view of public interests or public concern. For example, as I have just mentioned, three of the five studies have been made public, so we are not working behind closed doors. I will surely reflect to the CPU the views just expressed by Mr CHAN, but I would like to clarify again that the CPU is a think tank comprising different professionals, including accountants, actuaries, and academics. They will certainly solicit public opinion, listen to views and draw on collective wisdom before providing data and views for our reference.

MR PAUL CHAN (in Cantonese): *Secretary, we are worried that the CPU may listen to only one side.*

MR WONG SING-CHI (in Cantonese): *President, the Secretary has mentioned the three pillars, but these three pillars fundamentally fail to support housewives because housewives in poor households will hardly have savings. They can barely make ends meet and they do not have MPF protection. When they reach retirement age, they will not have any support. The Secretary may say that they can apply for CSSA; but this is an inhumane remark which ignores the interests and existence of this group of women who have made contributions to our society over a long period of time.*

Secretary, now that these three pillars cannot support this group of housewives after retirement, will the Government consider allowing housewives

who have reached retirement age to receive pensions so that they need not use the savings of their husbands or children or become impoverished? This is a really pressing

PRESIDENT (in Cantonese): You have already asked your supplementary question.

MR WONG SING-CHI (in Cantonese): *I would like to know how the Secretary would respond.*

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Members are very much concerned about the retirement of housewives who are not engaged in employment. We would like to take into account the updated data from the CPU. They are now conducting a very comprehensive study and examining intergenerational support. One of the three reports made public earlier has touched upon filial piety, and I would like to share with Members a few points. As stated in the report, providing parents with financial support continues to be seen as desirable filial behaviour. The two generations attach greater importance to mutual love, care and respect. Savings is the most popular form of preparation made by Hong Kong people for retirement. Yet, it is also mentioned in the report that, elderly persons of this generation are more dependent on financial support from their children and the Government to cope with their retirement life. Nonetheless, the future generation, that is, the retirees of the next generation are better prepared for retirement. For instance, in 20 to 30 years' time, the MPF accrued benefits will increase, their incomes or wages may generally increase, and they have higher educational levels. So, they do not need to take great pains over retirement arrangements. This is just a preliminary data, and we must wait until the completion of further studies to decide on the future direction.

PRESIDENT (in Cantonese): We have spent more than 22 minutes on this question.

PRESIDENT (in Cantonese): Second question. This question is asked by Mr Albert CHAN on behalf of Mr WONG Yuk-man.

Support for "Hidden Elderly"

2. **MR ALBERT CHAN** (in Cantonese): *President, since "Yuk-man" is out of town, I will therefore raise this question on his behalf. President, it has been reported that two horrifying family tragedies happened in September last year. An elderly man living in Sha Tin, who allegedly could not bear seeing his wife suffer from the pain of cancer, strangled his wife to death and then jumped to his death from a building after an unsuccessful attempt to commit suicide together with his wife by burning charcoal. Another case happened in Tseung Kwan O where a woman, who also allegedly could not bear to see her elderly spouse suffer from illness, suffocated her husband to death with a pillow before jumping to her death from a building. Moreover, it had also been reported last year that an elderly couple in Tai Hang Sai Estate in Shek Kip Mei and a 60-year-old⁽¹⁾ singleton elder in Lei Muk Shue Estate in Kwai Chung laid dead at their homes for several days before they were found. Regarding the aforesaid incidents about the "hidden elderly", will the Government inform this Council whether:*

- (a) it knows at present the total number of social workers working in elderly centres throughout the territory who are dedicated to serving the "hidden elderly"; whether such dedicated social workers have to concurrently attend to other services in the elderly centres; of the total number of the "hidden elderly" identified by these social workers on their own initiative in each of the past five years;*
- (b) the Government will consider using the surplus of the Lotteries Fund or providing other additional resources so as to enhance the services for identifying and supporting the "hidden elderly"; and*
- (c) the Government will review the existing elderly care policy in view of the problem of the "hidden elderly"?*

(1) Mr Albert CHAN pronounced the Chinese expression "六旬" (luk6 ceon4) (meaning 60-year-old) as "luk6 seon1".

PRESIDENT (in Cantonese): The elderly person mentioned in the main question is the same age as me. Both of us are "luk6 ceon4", meaning 60-year-old.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, our reply to the question raised by Mr Albert CHAN on behalf of Mr WONG Yuk-man is set out below:

(a) and (b)

The needs of singleton elders are more likely to be neglected owing to the lack of care from family members. Among them, the hidden elders are mostly devoid of family support and normal social life and also not known to our existing community support network. These elders are particularly in need of our care. The Government has all along been trying to identify and support these elders through an array of community support and care services.

At present, the 41 District Elderly Community Centres (DECCs) and 117 Neighbourhood Elderly Centres (NECs) in the territory will approach the singleton and hidden elders through their outreach services. Each DECC has specially set up a Support Team for the Elderly (STE) which will seek to build mutual trust with the elders upon contact and provide them with suitable support and services according to their needs. Such services include keeping in touch with elders through telephone calls and home visits, providing simple assistance (such as escorting elders to attend follow-up consultations or doing housework), providing emotional support and counselling, helping them rebuild their social network, and referring them to the relevant organizations for assistance (the most common examples are referrals to hospitals for treatment, to the Housing Authority for compassionate rehousing and to the Social Welfare Department (SWD) for subsidized long-term care services, and so on).

The STEs are now providing services for about 60 000 elders, of whom some 30 000 are singletons.

In recent years, the Government has also allocated additional resources to the relevant service units for further strengthening the support for singleton and hidden elders. In early 2008, additional recurrent funding of about \$42 million was provided to all DECCs and NECs in the territory for each of them to recruit one more social worker to enhance their outreach services. As the strengthening of outreach services will result in higher demand for DECC services, a further recurrent funding of \$18 million has been provided in June the same year (that is, 2008) for each DECC to recruit one more social worker to strengthen their counselling and referral services. A total of 199 additional social worker posts have been created under these two new initiatives. Over the past two years, the elderly centres have made use of the additional resources to reach out and support about 12 000 singleton or hidden elders.

Under the Lump Sum Grant Subvention System, subvented non-governmental welfare organizations (including organizations operating elderly centres) may flexibly allocate funding and recruit staff according to their actual service needs. As such, the SWD has no statistics on the total number of social workers in Hong Kong who are solely or partly responsible for handling the cases of hidden elders at present.

- (c) Promoting "active ageing" is one of the key concepts of our elderly care policy. With this in mind, we have been helping elders age in the community and enjoy a positive life. Since 2008, we have collaborated with the Elderly Commission in launching the Neighbourhood Active Ageing Project (NAAP) which seeks to establish a neighbourhood support network and enable elders to become a new driving force in the community. Besides, through cross-sectoral collaboration, the NAAP mobilizes different organizations and members of the community to promote the messages of neighbourhood support, inter-generational harmony, as well as care and respect for elders. Many elders and members of the community serve as volunteers under the NAAP. So far, a total of 75 projects have been implemented throughout the territory. Cases of hidden elders identified through these projects are being followed up by the Government or non-governmental organizations (NGOs).

Mr WONG's question also raises the issue of stress faced by carers of elders. In tandem with our efforts to strengthen the support for hidden elders, we are providing support to carers of elders through different channels. At present, the 158 elderly centres, 85 home care service teams and 59 day care centres or units for the elderly throughout the territory are providing support services for carers, including counselling, assistance in forming mutual assistance groups, and providing demonstration and loan of rehabilitation equipment, and so on. Besides, all subvented residential care homes for the elderly and day care centres/units for the elderly also help relieve the stress of carers through their residential or day respite services. We also launched the District-based Carer Training Scheme in 2007 to subsidize elderly centres in organizing training programmes to teach carers basic care knowledge and skills so as to enhance their caring capacities.

In addition, the 61 Integrated Family Service Centres and two Integrated Services Centres over the territory also provide needy families (which certainly include elderly families) with a continuum of preventive, supportive and remedial welfare services, including counselling and referral services, family life education, assistance in forming supportive/mutual help groups and consultation service, and so on, in order to enhance the skills of family carers in handling stress and problem solving.

As our policy objective is to encourage "ageing in place", we will definitely continue to provide various kinds of care and support services for elders in need, including day care and home care services for elders, as well as integrated support services for elders discharged from hospitals. The Elderly Commission is conducting a consultancy study to explore how to provide community care services for elders through a more flexible and diversified service mode in the long run, so as to better meet the needs of elders and strengthen the support for elders who age at home and their carers. The study is expected to be completed within this year.

MR ALBERT CHAN (in Cantonese): *President, the Secretary has missed out a lot of things. Just now, he mentioned community care, Liaison Officers of*

District Offices, mutual aid committees and volunteer groups providing care services for elders. He can actually name hundreds of thousands of people who are helping the elderly. However, President, they are totally irrelevant. The focus of this question is the respective numbers of social workers serving the elderly and "hidden elders", but the Secretary has bundled the numbers of singleton and hidden elders together. Some singleton elders are indeed very active and energetic, and they often go to elderly centres. They are not hidden at all. Therefore, singleton and hidden elders are two completely different target groups. Problems currently faced by hidden elders include suicide and nobody found that they were dead. President, this is the crux of the problem. And yet, in the reply, the Secretary has stated a continuum of service. If the Secretary continues to adopt such an attitude, the hidden elders will continue to be hidden and their deaths will continue to be left unnoticed

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

MR ALBERT CHAN (in Cantonese): *Can the Secretary change his attitude and do something, focusing on the problems currently faced by the hidden elders, including the intent or attempt to commit suicide, having no one to turn to or feeling lonely, or can the Secretary enhance the services, such as communication, home visits or contacts with these hidden elders? Will the Secretary stay awake, so that Hong Kong would not become a "city of suicide of hidden elders"?*

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, thank you, Mr CHAN, for your question. We have, by all means, provided assistance to the hidden elders in a pragmatic, proactive and responsible manner. There are currently 143 500 singletons aged over 65 in Hong Kong. Earlier, he was right in saying that living alone does not mean that they have problems. We all understand that not all singleton elders have problems and are hidden, I therefore strongly agree with his view that we must be focused in our work. Hence, a funding of \$60 million was provided in 2008 for outreach services and 199 social workers were recruited. It is hoped that we can focus our efforts to help those hidden elders.

As a matter of fact, after the creation of these posts, the elderly centres have enhanced their outreach service over the past two years, and 60 000 elderly persons have been approached, among them 30 000 are singleton elders. We will continue our efforts in this regard. Furthermore, a neighbourhood support network was established — the Neighbourhood Active Ageing Project (NAAP), which aimed at bringing the elders to the community so that they know where to seek support, join the social network and receive more love and care. These are our objectives. As for the suicide cases mentioned by the Member, unreserved efforts have been made to tackle this problem through three levels, namely prevention, support and focused initiatives. We will continue to deploy resources for this purpose and exert our best efforts to help the hidden elders in need.

MR CHEUNG KWOK-CHE (in Cantonese): *President, first of all, we all know that social workers dedicated to serve the hidden elders have currently encountered great difficulties in entering public or private housing estates. Their entry is actually prohibited by many owners' corporations.*

Secondly, even if they are able to contact the hidden elders, services and assistance are basically provided on a one-to-one basis. What is actually needed is that the whole community should be mobilized to care and love the elderly. Yet, so far, no one is responsible for this so-called co-ordination or organization work. Can the Government consider starting the work at public housing estates? At present, there are 150-odd social workers dedicated to serve the hidden elders. Given that there are some 100 housing estates, if we start with public housing estates and have social workers station in these estates, they can greet the kaifongs and elderly residents of these housing estates every day. And when they become familiar with the environment, they can organize some services or provide direct assistance to the elderly

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

MR CHEUNG KWOK-CHE (in Cantonese): *..... I wish to ask whether the Government has considered establishing social worker teams to station in housing estates to serve the hidden elders, hidden families and hidden youths, so as minimize the occurrence of unfortunate events.*

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, thanks to Mr CHEUNG for his supplementary question. In part (c) of my main reply, I have stated clearly that in 2008, the Elderly Commission, the Labour and Welfare Bureau and the SWD had launched the NAAP, which could address the issue raised by the Member earlier, and that is, mobilizing the community from the district level. So far, they have made 200 000 contacts, which include people living in housing estates and rural areas, and even in places where our staff will be chased by dogs. Not fearing the chase of dogs, our volunteers and social workers have worked hand-in-hand in such places. Services have also been provided in some relatively older housing estates, particularly in old buildings and tenement flats mostly inhabited by elderly persons. All along, incessant efforts have been made.

Just now, Member is right in querying why our work has not started at the neighbourhood level. According to him, there are 150 social workers. And yet, the number is actually more than that. There are 199 social workers — it should be noted that the number is 199, which is very important — and we have allocated \$60 million. A funding of \$42 million was provided in early 2008, which was followed by an additional \$18 million. The funding has enabled all DECCs to recruit at least two social workers to work and provide assistance in the centres. Therefore, regarding the question raised by the Member earlier, we have actually been working towards this direction. I must nonetheless admit that more efforts should be made to tackle the issue in a focused manner. We should not remain at the present stage and have to constantly inject more resources.

On the other hand, we have made use of the Community Investment and Inclusion Fund to launch a number of network projects at the neighbourhood level, including the establishment of house captains. The house captain and floor captain of Wah Fu Estate are pretty famous. It is hoped that, by doing so, people can give play to the spirit of mutual help by providing love and care to the elderly.

DR PAN PEY-CHYOU (in Cantonese): *President, as I am a psycho-geriatrician, I am also very concerned about the issue of hidden elders. As pointed out in the main question, there have been a number of tragedies. While hidden elders may not necessarily have problems, from our working*

experiences, hidden elders who have problems may have genuinely suffered from mental illness. However, so far as I can see, the projects currently launched by the SWD to serve the hidden elders do not in any way relate to psychiatric services. Although I know that upon contact, social workers may refer the hidden elders in question to receive community psychiatric services as follow-up measure, the problem is that community psychiatric services have not been provided to elderly persons before. May I ask the Government, given the problem of these elderly persons, whether the SWD would collaborate closer with the Psychogeriatric Service of the Hospital Authority (HA) to help these hidden elders?

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Thanks to Mr PAN or Dr PAN for his sincere remarks. In respect of the focused services, such as psychiatric services as mentioned above, for treating people with mental problems, the HA and our Bureau had in 2002-2003 — which he might recall — introduced the Elderly Suicide Prevention Programme. This Programme was rather successful, under this programme, prompt psychiatric treatment would be provided to elders suspected to suffer from depression or with suicidal tendency. In other words, these elders would be treated as emergency cases.

Social workers and medical practitioners of the SWD, volunteer groups and NGOs can refer elderly persons suffering from these problems to join this programme for our follow-up actions. Members should take note of the number of cases handled under this programme. In 2009-2010, a total of 44 200 attendance have received our services. In addition, training was also provided to healthcare workers and our counterparts who might have contacts with elderly persons in their work, to facilitate their identification of elders suspected to have depression or suicidal tendency. As a result, prompt referrals can be made. We will consider Members' views to see what can be done to further refine and improve the existing mechanism, with a view to making it more intensive and specific.

MR FRED LI (in Cantonese): *President, I heard the Secretary say that there are 199 social workers, and tens of millions of dollars of funding have been provided for launching this programme. However, can the Secretary tell us clearly the number of hidden elders who are benefiting from this programme? Also, can he*

share with us the kind of assistance required by these elderly persons and assistance intended to be provided by the Government?

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): In my earlier reply, I have mentioned that the number of hidden elders in Hong Kong is unknown. In replying to one of the supplementary questions earlier, I said that there are a total of 143 500 singleton elders who aged 65 or above. And yet, living alone is not tantamount to hidden as some of them are visited by relatives. Then, how many people have benefited since the introduction of the programme? As I have mentioned in my reply, we are able to reach out and support an additional 12 000 singleton or hidden elders; various elderly centres are now providing support services to some 60 000 elders, among them 30 000 are singleton elders. In addition, we also have 23 000 cases of home-based care services. As the Government encourages "ageing in place", home-based services are also provided. Not all of these 20 000-odd elderly persons are singleton elders as some of them do have interaction with other people. Then, how many people actually belong to this category? I believe the number is not small. We definitely cannot say that the existing services are sufficient, and we agree that our services must be constantly improved and enhanced, especially outreach services.

What do elderly persons actually need? They often have health problems, they also have financial problems in terms of resources, as well as emotional problems. As a result of a lack of care, they might experience changes in their character and become unwilling to interact with other people. To address these problems, we can make good use of the spirit of mutual help at the neighbourhood level and bring these elderly persons to the community, say, bring them to the day-care centres and DECCs, thereby helping them to rebuild their social network. Through activities such as playing chess, singing, or outings, the elderly have chances to talk to other people. Once the elders reintegrate into the community, they know that there are someone who can provide them with support, and most important of all, they learn that should anything happen, they can call the SWD's telephone hotline on 2343 2255 for help. The elderly also learn about the kind of services that would be helpful to them, such as the personal emergency link service. As some elderly persons are pretty stubborn and are reluctant to do anything, the abovementioned services can provide specific support to them.

MR WONG KWOK-HING (in Cantonese): *President, there is currently an underlying problem with hidden elders, and that is, those coming from the Mainland, such as the new immigrants from Fujian Province. Since I have worked as an elected District Council member and a member of the former Municipal Councils for 17 years, I know very well that these people can neither understand nor speak Cantonese. In that case, there is no way they can learn of the various support services provided by the Government.*

So, I wish to ask the Secretary through the President, for this kind of hidden elders who encounter language difficulties, has the Government introduced any measures to help them? How many resources have been deployed for this purpose? Among the hidden elders mentioned by the Secretary, how many of them belong to the kind of elderly persons who encounter language difficulties and are in need of Government assistance?

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, thanks to Mr WONG for this supplementary question. I am aware of the challenges therein. Although I do not have the figures in hand, just as I said earlier, additional manpower has been provided for all DECCs. There are now a total of 199 social workers and a recurrent funding of \$60 million — not a one-off provision but on a recurrent basis.

Regarding the NAAP, "neighbourhood" by its name means townsman. In other words, if the elderly persons speak the Fujian dialect, we will find their townsman to speak to them, or perhaps social workers may provide the necessary translation and interpretation services. Neighbour is the unit of community network, and families derive their support from the community. This is our underlying concept. We have to mobilize the community. We cannot rely solely on the force of the Government as it is impossible for us to deploy one social worker for each building, which is beyond our capability. We will therefore continue to build up more community networks. Efforts will also be made in Tin Shui Wai, Tung Chung and old districts. Apart from the injection of resources, services will also be provided through the introduction of different programmes. The Community Investment and Inclusion Fund mentioned earlier is an example. It is hoped that our existing policies will be endowed with the spirit of community care, with a view to promoting mutual-help and self-help. This is our direction.

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

MR WONG KWOK-HING (in Cantonese): *President, yes, the Secretary has not answered about the figures and resources. I believe he might not be able to give a reply right now. May I ask him to provide supplementary information in writing after the meeting?*

PRESIDENT (in Cantonese): I think I have heard the Secretary saying that the relevant figures are not yet available. Secretary, please give a reply.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, it is rather difficult for us to provide the relevant figures. However, after the meeting, we will consult the DECCs about elderly persons with language barriers as mentioned by the Member earlier. For cases which were identified afterwards If they are really hidden, there is no way we can locate them because if they hide themselves up, we will not be able to find them. If they can be found, they will not be regarded as hidden, am I right? How many hidden elders have been found and how many of them are people coming from provinces outside Guangdong? We need to consult colleagues working at the district level to collect the relevant data, and a written reply will be provided later on. (Appendix I)

PRESIDENT (in Cantonese): This Council has spent nearly 21 minutes on this question. Third question.

Development of Hong Kong as an Offshore Renminbi Business Centre

3. **MR JEFFREY LAM** (in Cantonese): *President, in late October 2010, the Hong Kong Monetary Authority (HKMA) suddenly announced that the annual quota of RMB 8 billion yuan for conversion⁽¹⁾ of RMB of the Bank of China*

(1) Mr Jeffrey LAM pronounced the Chinese expression "兌'(deoi)換" (meaning conversion) as "稅'(seoi)換" throughout the main question.

(Hong Kong) Limited, which is the sole Clearing Bank for RMB Business in Hong Kong, has been fully depleted, and individual banks need to make use of their own positions to settle trade transactions for customers. In this connection, will the Government inform this Council:

- (a) whether the authorities will discuss with the People's Bank of China (PBoC) the review of and increase in the annual quota for RMB conversion, and propose to include other financial institutions in the list of Clearing Banks for RMB Business, so as to further strengthen Hong Kong's role as an offshore RMB centre;*
- (b) given that it has been reported that with the continuous growth in RMB trade settlement, coupled with the anticipated appreciation of RMB, the volume of RMB funds have been accumulating⁽²⁾ in overseas markets, whether the authorities will expedite the issue of RMB stocks in Hong Kong and urge the central authorities to expedite the launch of the small-scale Qualified Foreign Institutional Investors Scheme to make Hong Kong a platform to pool overseas RMB funds; and*
- (c) given that the United States has continued to adopt monetary easing policies and the RMB exchange rate has been hitting new highs, resulting in continuous inflow of hot money into Hong Kong and further aggravation of inflation, whether the Government will review its existing monetary relations with the State and the United States?*

PRESIDENT (in Cantonese): Mr LAM, I am accustomed to pronouncing the Chinese expression "兌換" as "對(deoi)換", and "囤積" as "團(tyun)積" in Cantonese. Secretary for Financial Services and the Treasury, please reply.

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

(2) Mr Jeffrey LAM pronounced the Chinese expression "囤'(tyun)積" (meaning accumulating) as "頓'(deon)積".

- (a) Following the substantial expansion of the geographical coverage of the cross-border RMB trade settlement scheme in June last year, the amount of cross-border RMB trade settlement has grown rapidly, from a monthly average of about RMB 4 billion yuan in the first half of 2010 to about RMB 30 billion yuan each month in August and September, and then to RMB 68 billion yuan in October. Under such circumstances, the amount of RMB purchased for trade settlement purpose by participating banks through the Clearing Bank in the China Foreign Exchange Trading System in Shanghai increased notably in October, resulting in the suspension of the conversion arrangement concerned in late October. In response, the HKMA promptly introduced a number of measures, and the RMB market in Hong Kong has been operating orderly and smoothly.

As cross-border trade settlement in RMB expands and deepens, RMB payments from the Mainland to Hong Kong will continue to increase and funds so accumulated will become the major source of supply in the local RMB market. For the first 11 months in 2010, cross-border trade payment from the Mainland to Hong Kong amounted to RMB 180 billion yuan while payments from Hong Kong to the Mainland amounted to RMB 50 billion yuan. In other words, the net inflow into Hong Kong was about RMB 130 billion yuan, which was much larger than the amount of RMB 10 billion yuan funds purchased in Shanghai through the Clearing Bank by participating banks during the same period. Under such circumstances, RMB deposits in Hong Kong increased steadily to about RMB 280 billion yuan at end November 2010. Hence, the pool of offshore RMB funds in Hong Kong has reached a level that is adequate to meet the demand from local firms. In other words, the conversion window in Shanghai is a supplementary rather than the main source of conversion for RMB trade settlement.

Taking into account developments in the Hong Kong RMB market since last October, the HKMA discussed with the PBoC and considered refinements to the arrangements for the conversion of RMB in relation to cross-border trade settlement, and a circular was issued on 23 December 2010 to participating banks in this regard. To maintain a steady supply of RMB, the HKMA clarified the

arrangement for the conversion of RMB conducted by participating banks through the Clearing Bank in Shanghai, and at the same time, RMB 20 billion yuan will be provided by the HKMA as a standing arrangement for cross-border trade settlements through its currency swap arrangement with the PBoC. The HKMA and the PBoC estimated that, after implementation of the refinements, the demand for RMB conversion in Shanghai by participating banks would be within RMB 4 billion yuan in the first quarter of 2011. The volume of conversion will be assessed after the first quarter taking into account the actual circumstances.

As the current arrangement of Clearing Bank has been operating smoothly, we do not consider that there is a need for making significant changes. The arrangement of having one RMB Clearing Bank is the same as the arrangements for the US dollar and Euro Real Time Gross Settlement (RTGS) systems in Hong Kong, each of which has only one settlement institution. As regards the issue of credit limits raised by the banking industry earlier (which arose from the increasing amount of RMB deposits being placed by participating banks with the Clearing Bank as RMB business in Hong Kong continued to expand and deepen), the HKMA and PBoC have discussed and considered that the issue can in principle be resolved by participating banks establishing custodian accounts with the Clearing Bank. The HKMA is in discussions with the PBoC, the Clearing Bank and participating banks on the details of such an arrangement including the related legal documents and operational procedures. It is hoped that the arrangement can be implemented as soon as early this year.

- (b) With the support from the Central Government and the relevant Mainland authorities, there was good development of offshore RMB business in Hong Kong in 2010. RMB financing activities became more active, especially after the expansion of the RMB trade settlement scheme in June and the amendment to the RMB Clearing Agreement in July 2010. The amount of RMB bonds issued in 2010 exceeded RMB 30 billion yuan, with issuers including local and multinational firms as well as international financial institutions such as the Asian Development Bank. Meanwhile, banks and

financial institutions in Hong Kong also launched a wide range of RMB denominated financial products. In terms of clearing infrastructure, the RMB RTGS system in Hong Kong is ready to handle the clearing and settlement for such transactions. Whether to raise funds in RMB through initial public offerings will be a commercial decision for individual firms, taking into consideration of their own circumstances and market conditions.

The market infrastructure (including the trading and clearing platforms operated by the Hong Kong Exchanges and Clearing Limited (HKEx), and the interbank clearing platform operated by Hong Kong Interbank Clearing Limited) are ready to support the listing, trading and clearing of RMB stocks. The existing rules and regulations have already provided for the listing of RMB stocks. In fact, there are RMB products listed on HKEx. Fully capitalizing opportunities arising from the development of RMB business has already been incorporated into HKEx Strategic Plan 2010-2012.

There is no concrete timetable as regards the launching of the measure of using RMB funds in Hong Kong to invest in Mainland securities market (also known as "Mini-QFII"). We will maintain close communication with the Mainland regulatory authorities on the early implementation of the measure.

- (c) The Linked Exchange Rate System (LERS) has served Hong Kong well since its establishment in 1983. It is the pillar of Hong Kong's monetary and financial stability. The Hong Kong Special Administrative Region Government has no intention to change it.

Given the small and externally-oriented nature of the Hong Kong economy and its role as an international trade and financial centre, maintaining exchange rate stability against the US dollar, which is still the most commonly used currency for conducting international trade and financial transactions, remains the most appropriate monetary policy for Hong Kong.

There is no evidence that the LERS is driving up inflation in Hong Kong. In fact, in terms of inflation, Hong Kong compares well

with other Asian economies that operate more flexible exchange rate and interest rate regimes.

In the meantime, we do not agree to the suggestion of linking Hong Kong dollar to RMB now. Hong Kong dollar can be linked to RMB only when certain important, fundamental conditions are met, including that RMB must be freely convertible, the capital account control must be removed by Mainland China, the financial and asset markets in Mainland China should be wide, deep and liquid enough, and so on. These fundamental conditions have not yet been fulfilled at the moment.

MR JEFFREY LAM (in Cantonese): *President, the Secretary has pointed out in part (c) of his reply that there is no evidence that the LERS is driving up inflation in Hong Kong. However, the truth speaks for itself. As a result of the LERS, Hong Kong must follow the United States and keep its interest rate low. Nowadays, everyone prefers the yuan over the greenback. As a result, Hong Kong must face the threat of an asset bubble and spiralling commodity prices in general. I would like to ask the Secretary whether the Government is still refusing to accept this truth? While I understand the vital importance of a stable monetary policy for Hong Kong, the problem of inflation caused as a result of the LERS should not be overlooked. I would like to ask the Secretary what does the SAR Government intend to do to tackle the problem?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, perhaps allow me to say this first. As to whether the LERS has indeed created greater inflationary pressures for Hong Kong as compared with other places which adopt more flexible monetary policies, I can give Members some figures for reference. As we know, there are other Asian economies which adopt more flexible interest rate regimes and monetary policies and one of them is Singapore. Members may note that as at November 2010, the headline inflation rate of Singapore was 3.8%, while that of Hong Kong was 2.9%. I can also provide the relevant figures of the Philippines, Taiwan, Thailand, and so on. From an actual or objective point of view, if we are to compare Hong Kong's current inflation with other places, our inflation is not higher. I am not precluding inflation as one of the factors of concern to Members, and considering the global economic environment this year, inflation

should also be one of the factors. But can we base on this point and say Hong Kong's inflation is higher than other places because of the LERS? Judging from our current data, I cannot see this situation. Moreover, according to the HKMA's earlier estimates, for every 10% appreciation of RMB, it will increase Hong Kong's Composite Consumer Price Index inflation rate by about 0.5%. Hence, looking from the statistics, we have yet to consider the LERS a major cause of our inflationary pressures. But I have not precluded the fact that inflationary pressures are currently faced by the global economy as a whole (and the Asian countries in particular).

MR ANDREW LEUNG (in Cantonese): *The Secretary has mentioned in paragraph 2 of part (b) in his reply that the clearing and trading platforms of the HKEx and the interbank clearing platform of the banking industry are ready to support the listing of RMB stocks. In addition, he mentioned in paragraph 2 of part (a) in his reply that RMB deposits in Hong Kong amounted to RMB 280 billion yuan as at the end of November 2010. However, we all understand that RMB 280 billion yuan is nowhere enough to support the listing of RMB bonds in Hong Kong because RMB 280 billion is not really a big sum. For example, if the amount to be raised is RMB 5 billion yuan and the offer is oversubscribed by 200 times, it will pretty much use up this pool of capital. I would like to ask the Government or the Secretary what support measures are available to allow for the listing of large volume of RMB denominated stocks in Hong Kong?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, thank you Mr LEUNG for the question. If we review the situation of increasing RMB deposits in Hong Kong, the pace of such increase is indeed very rapid. Members may recall that at end November 2009, RMB deposits in Hong Kong was only about RMB 60 billion or 70 billion yuan. But with the expansion of the geographical coverage of the cross-border RMB trade settlement scheme and the smooth implementation of clearing arrangements in Hong Kong, both the amounts of capital inflow to Hong Kong and capital which eventually stays in Hong Kong have increased substantially. Hence, we have reasons to believe that with the increasing volume of cross-border RMB trade settlement, the pool of RMB funds will be expanded. We are now working on the market infrastructure in Hong Kong so as to establish a framework and system that can support the clearing, launching and trading of RMB products. I

think both the HKEx and other relevant organizations are also working on the matter now. I have reasons to believe that as the pool of RMB funds in Hong Kong expands, these products will be launched successively. Of course, Members should bear in mind that the launching of specific products will depend on the actual need of the enterprises. Why have so many RMB bonds been launched in the past? It is because many enterprises invariably consider that the launching of RMB bonds with a term of several years can meet the needs of their investments in the Mainland, and that it is an excellent arrangement in terms of cost and other factors. Regarding the timing of launching these stocks and bonds, I think the decisions should be left to the market as well as the enterprises themselves after considering their own needs.

MRS REGINA IP (in Cantonese): *The Secretary has mentioned in part (c) of his reply that due to various reasons, mature conditions for linking Hong Kong dollar to RMB have yet to materialize for the time being. I would like to ask the Secretary whether consideration has been given to other alternatives? For example, instead of linking Hong Kong dollar to RMB in future, whether similar arrangement adopted in other neighbouring economies such as Singapore and South Korea will be considered to link Hong Kong dollar to a basket of currencies, that is, those of Hong Kong's major investment and trading partners? Moreover, under such a scenario and given that officials in Hong Kong have been operating the LERS since 1983, whether they will have the necessary experience and know-how to operate a floating exchange rate system for the local currency?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, thank you Mrs Regina IP for the question. First of all, we must understand that if a system is to be changed, there must be some intended objectives to be achieved. We can see that for many years in the past, the linking of Hong Kong dollar to the US dollar has served Hong Kong well in ensuring our financial stability and I need not repeat its benefits here.

Many people believe that with the internationalization of RMB, the linking of Hong Kong dollar to RMB is imminent. However, as I have pointed out, it is not the right moment now and many conditions have yet to be fulfilled. Regarding the benefits of linking Hong Kong dollar to a basket of currencies, I think it is indeed a question we must ponder on. If the objective is to target

inflation, then as I have mentioned in my earlier reply, I do not consider it a good measure. If the objective is to target the asset bubble, then based on the experience of some neighbouring economies, I do not think the pressures of rising values of economic assets caused by a capital overflow can be fundamentally resolved through a floating exchange rate or interest rate regime.

We must not forget that Hong Kong and many of our neighbours are small and externally-oriented economies. Many a times, small economies cannot implement the same measures adopted by large economies such as the United States and the Mainland because we are dealing with a substantial amount of foreign liquidity and an interest rate hike will only attract even more foreign capital to speculate in the local assets market. Hence, we must consider the relevant policies in an extremely prudent manner.

MR LAU KONG-WAH (in Cantonese): *President, one of the conclusions drawn by the Secretary just now is that at present, there is no evidence suggesting that the LERS has increased inflationary pressures in Hong Kong. Of course, the Secretary has also provided us with some statistics as supplement. But aside from the statistics, many people of Hong Kong have, in their daily lives, found that the prices of vegetables, meat and rice have risen. Under the circumstances, there are indeed tremendous inflationary pressures. We can feel that as RMB continues to appreciate, Hong Kong dollar has been depreciating relatively. That is why the pressures are created. But seemingly, the Secretary does not quite agree with this view. Hence, I would like to ask the Secretary why his saying is so different from the conventional wisdom of the people?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, thank you Mr LAU for the question. In my replies just now, I said I did not deny that Hong Kong and other neighbouring Asian economies would feel the pressures of inflation. This pressure is caused by the low-interest policies adopted not only in individual economies but also globally, as well as the strong economic rebound in Asia. Moreover, the increasing prices of certain food items or commodities have created inflationary pressures in the region. All these are undeniable facts. But the question is, whether inflationary pressures have been aggravated by the adoption of the LERS in Hong Kong? As such, I have quoted comparable figures of our neighbouring economies to illustrate that our inflationary pressures are not too high. My reply

is, we must not consider that by adopting a flexible interest rate or exchange rate policy, current inflationary pressures can be resolved fundamentally. While we are faced with such pressures, we cannot experiment with the solutions indiscriminately. Changing the LERS is not a solution to address inflation.

PRESIDENT (in Cantonese): This Council has already spent nearly 21 minutes on this question. Fourth question.

Protests Staged Outside Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region

4. **MR KAM NAI-WAI** (in Cantonese): *President, it has been reported that the Government, without consulting the public, constructed a planter at the through zone outside the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region (the Liaison Office) in May 2002, thereby reducing the width of the original through zone from 9 m to 3 m. This narrowed through zone does not meet the minimum width standard of 4.5 m for through zones of land uses of "government, institution or community facilities", recommended by the authorities in the Transport Planning and Design Manual updated in 2008. In this connection, will the Government inform this Council:*

- (a) *whether the Government will plan to alter and reduce or remove the planter at the through zone on Connaught Road West outside the Liaison Office so as to provide for a demonstration and press area outside the Liaison Office to facilitate the expression of opinions by members of the public; if it will, of the related arrangements; if not, how the Government will improve the space of the through zone outside the Liaison Office to enable members of the public to express their opinions orderly and safely;*
- (b) *of the number of petitions or demonstrations staged outside the Liaison Office in the past three years, the respective numbers of participants as estimated by the police and the police officers deployed in each of these petitions or demonstrations, the largest and smallest numbers of participants among these petitions/demonstrations, as well as the largest number of police officers deployed among these petitions/demonstrations; the number*

of times that the police had prosecuted those who had staged petitions or demonstrations outside the Liaison Office in the past three years; whether the police have assessed if excessive police manpower will trigger negative emotions among the protesters; and

- (c) *whether the Government will alter the through zone outside the Liaison Office so that the width of the zone can meet the planning standard as recommended by the authorities?*

SECRETARY FOR SECURITY (in Cantonese): President, the question raised by the Member covers two policy areas: namely, the planning standards and beautification facilities of a section of a footway in the Western District, and the figures of handling public assemblies and processions by the police in that area.

Regarding the planning standards and facilities of footway, information provided by the Transport and Housing Bureau shows that, in order to improve the traffic condition of the district, the Government proposed to carry out traffic improvement works on Connaught Road West in 2002. The proposed works included relocating the exit of a layby previously located at the section of Connaught Road West between Western Street and Water Street to a position that would provide a better driving sightline by moving the layby away from the stairs of the Western Street footbridge. The proposed works would improve the undesirable situation that vehicles weave in and out Connaught Road West in poor driving sightline at that location. As for the construction of the planter at the relevant section of Connaught Road West, it was part of the works project for appropriate streetscape improvement and beautification of the road section concerned. As pointed out by the Member in his question, the width of the footway is 3 m after the road improvement works, which is in line with the section of Connaught Road West connecting to it. In other words, the width of both road sections maintains at 3 m.

The Transport and Housing Bureau also confirms that the section of footway is in compliance with the design and planning standards. Information of the Transport Department shows that the actual pedestrian flow of that footway during the busiest hours in the morning is eight persons per minute on average. According to the Transport Planning and Design Manual, if the pedestrian flow at a footway is less than 60 persons per minute, the minimum width of the footway should be 2 m. As such, with a width of 3 m at present, the section of the

footway conforms to the transport planning and design standards. The authorities currently do not see any need to make further and particular alteration to that section of footway.

President, I would now turn to the Member's question on information about the public assemblies and processions held at the relevant road section. In response, I must first of all emphasize that the SAR Government respects the rights of the public to peaceful assemblies and processions and expressions of views. As Hong Kong is a crowded place, large-scale public assemblies and processions will affect other members of the public or road users, and may have impacts on public safety and order. In this connection, while facilitating the expression of views by participants of processions, the police are also responsible for maintaining public order. In striking the balance, the police should also take heed of the rights and safety of other members of the public in using public places or roads. Participants of public assemblies or processions, in expressing their views to the community, should also observe the laws of Hong Kong and social order, and proceed in a peaceful and safe manner.

The police maintain only the overall figures of public assemblies and processions. There is no information of any breakdown analysis of public assemblies and processions held in various districts, locations of individual institutions or their nearby areas. Therefore, neither is there breakdown of figures of participants and police officers on duty for each public event that took place at that road section.

Nevertheless, in handling public events, the police will maintain close contact with the organizers, having regard to the information and the expected number of participants provided by the latter. The police will, by taking into account possible public responses, strategies and experience in handling similar events in the past, details of the events and possible constraints on their operations, make comprehensive risk assessment and examination. During the whole process, the police will maintain communication with the organizers to decide on the necessary manpower deployment and implement appropriate crowd management measures, with a view to ensuring that each public event can be conducted in a safe and orderly manner.

MR KAM NAI-WAI (in Cantonese): *President, whenever issues related to organizations of the Central Authorities in Hong Kong, the Government will keep*

its mouth shut, refusing to respond in nine out of 10 occasions. I asked him about the number of participants in the petitions, he did not answer; I asked him about the police officers deployed, he did not answer; I asked him about the number of persons being prosecuted for their actions there, again, he did not answer; I asked him about the provision of a demonstration area outside the Liaison Office, he did not answer as well. President, my question is mainly about the reason for placing a planter outside the Liaison Office, which is obviously a political planter. The planter will obstruct Hong Kong people from expressing their views to the Central Government in an orderly and safe manner. I would like to ask the Government about a recent case, in which the Court has stated clearly that the Liaison Office is a public area. Why does the Government have no plan to remove or reduce the size of the planter outside the Liaison Office to provide more space for Hong Kong people to express their views in an orderly and safe manner?

SECRETARY FOR SECURITY (in Cantonese): President, I have to reiterate that the police always maintain the policy of facilitating the public to exercise their right of expression in a peaceful manner. The police adopt a fair, just and impartial attitude in law enforcement. We do not focus on the persons staging the demonstration or the location of the demonstration, these factors will in no way affect the enforcement of the police. Regarding the case mentioned by Mr KAM Nai-wai, the Government has applied to the Magistrate for a case stated on the verdict of acquittal of the defendant of the case. The incident may lead to another round of appeal or proceedings in future. Since the case is now handling by the Court, it is inappropriate for us to comment on it.

MR KAM NAI-WAI (in Cantonese): *President*

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

MR KAM NAI-WAI (in Cantonese): *I asked him the reasons for not removing the planters, and whether the place concerned was a public area. I asked him why it was not removed*

PRESIDENT (in Cantonese): Do you ask why the planter cannot be removed?

MR KAM NAI-WAI (in Cantonese): *this is a political planter. The Government should facilitate the public in expressing their views. He is not answering my question. When it comes to organizations of the Central Authorities in Hong Kong, he will give irrelevant answers.*

PRESIDENT (in Cantonese): Secretary, do you have anything to add about the reason for not removing the planter?

SECRETARY FOR SECURITY (in Cantonese): President, as I mentioned in the main reply earlier, this planter is not constructed by the police, and it was planned in 2002. As I said in the main reply, there is established policy under the Transport Bureau for the design and facilities of footway. Besides, the views of the residents of the district, particularly residents of nearby buildings, have to be taken into account.

According to my understanding, when the works of that road section were completed, the greening work was welcomed by residents of the district. After the completion of the project, in the period between 2003 and 2010, the authorities have not received any complaints from residents about the narrowed footway or any proposal on removing the greening facilities. Hence, the Government has no plan to remove the planter at present.

MR CHEUNG MAN-KWONG (in Cantonese): *President, why would the Government construct a political planter outside the Liaison Office out of the blue? Absolutely, it is because the Government has lost the case on the Falun Gong silent sit-in. According to the judgment of the Court at the time, the width of the footway in front of the Liaison Office was 9 m, and the sit-in of the Falun Gong did not cause obstruction. This had prompted the Government to construct a political planter. However, the crux of the problem is that the 9 m wide footway has been reduced to 3 m. In the event of a petition, there will be one row of police, two rows of mills barriers and one row of petitioners, and space has to be left for a passage way for pedestrians and for reporters to take photos. When five rows of people have to be accommodated in the 3 m footway,*

how can the demonstration be staged peacefully? This is the key point. This political planter has created a "political appendix" outside the Liaison Office. The Government gives approval for the public to stage peaceful demonstration, but they can in no way stand there peacefully. This is the crux of the problem. May I ask the Government if people are allowed to stage demonstration peacefully whether it means they are also allowed to stand there peacefully? Can the political planter, the "political appendix", be removed to enable the public to stage demonstration peacefully?

SECRETARY FOR SECURITY (in Cantonese): President, the planter is not constructed today. As I pointed out in the main reply, works were carried out there in 2002 out of transport needs, and some beautification facilities were included. Hence, the planter was built there.

Mr CHEUNG Man-kwong said earlier that with the construction of the planter, the public could not stage demonstration peacefully. I do not quite agree with this point. Demonstrations are not only staged outside the Liaison Office these days, but also in 2002, 2003 and this year. Demonstrations are staged every year, and I do not quite remember the number of demonstrations held. But if my memory has not failed me, a dispute had broken out in the past year or in the past couple of months. The latest incident involving a dispute happened on 25 December the year before last. At that time, some protesters ignored the advice of the police and broke the police line to enter the Liaison Office, which had resulted in a dispute. In the past, no one has ever made such a radical move. Hence, I have to appeal to the public, while the freedom of expression is respected in Hong Kong and the rights of peaceful and legal expression and demonstration of the public are protected under the Basic Law, the public has to respect other road users and should not adopt extremely radical moves to press against the police line. Before 2009, the police and protesters could cope with each other on such occasions, and the demonstrations and assemblies were held in a peaceful manner. In the few demonstrations staged recently, there were disputes. Were those disputes caused by narrowed footway? That road section is not narrowed recently but since 2003 when alteration and beautification works were carried out to the road. Hence, I urge protesters to observe the law and adopt peaceful tactics in expressing their views.

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

MR CHEUNG MAN-KWONG (in Cantonese): *President, my supplementary question has not been answered. The key of my question is that a 3 m-wide road has to accommodate five rows of people, including a row of police, two rows of mills barricades, one row of petitioners, one row of pedestrians and one row of reporters. Reporters cannot even get shots of the waist level of other parties. If the political planter is removed, and the "political appendix" is straightened, there will not be disputes, and protesters can stand there. Will the Government remove the planter to facilitate protesters to stage demonstrations peacefully? He has not answered whether the planter will be removed.*

PRESIDENT (in Cantonese): Mr CHEUNG, the Secretary has already answered. You may be dissatisfied with the answer of the Secretary, but you can only follow up the issue on other occasions.

DR PHILIP WONG (in Cantonese): *President, the right to marches and staging demonstrations should be properly protected. At the same time, it is extremely important that residents nearby can lead a quiet live and the business environment of shops nearby will not be excessively interrupted. May I ask the Secretary how a balance between the two is struck?*

SECRETARY FOR SECURITY (in Cantonese): President, this is exactly the responsibility of the police. When the police receive an application for staging an assembly or a march, it will discuss with the organizer on ways to facilitate their peaceful expression of views. We will discuss with them on various aspects, including the route of the march, the number of participants and the slogans they will use or other items they will bring along. After the discussion, if the police agree with their marches or assemblies, it will issue a "No Objection Letter" and state certain conditions. Certainly, we hope that protesters or people expressing their views in the assemblies will not affect other members of the public, nor produce noise or obstruct passages. The police will make judgment in these aspects. We notice from the past figures that between 1997 and 2010, more than 20 000 public assemblies and more 10 000 marches were held subject

to the "No Objection Letter" issued by the police, and most of them were carried out in a peaceful and orderly manner. The police also hope to ensure that other shop tenants will not be affected, or that the impact on road users will be minimized.

We hope other members of the public will understand that Hong Kong is a free and open society, and thus when some people exercise their constitutional rights to express their views, they have to tolerate it suitably. By the same token, I hope protesters will respect the right of other people by minimizing the impact of the marches or demonstrations on shop tenants or residents of the districts concerned.

DR RAYMOND HO (in Cantonese): *President, regarding the planning standard mentioned by the Secretary in the second paragraph of his main reply, I find it a bit strange. The Secretary said that works were carried out in 2002 to improve the exit of a layby located at the section of Connaught Road West between Western Street and Water Street. This was a safety issue involving the improvement of a driving sightline, which might be for the widening or improvement of the sight distance. In general, for the width of roads, diameter of tunnels and height of overhead bridges, and so on, the Government will adopt the so-called minimum standard in designing. Though the decision made in 2002 was based on the pedestrian flow of the footway, which was more than eight but less than 60 persons, where the width of 2 m would be regarded as adequate, it was decided at the time that the width of the road would be 3 m. In other words, despite the minimum standard adopted in general, the authorities decided at the time that the road should be slightly wider. If so, does it mean that the principle of adopting minimum standard has changed?*

SECRETARY FOR SECURITY (in Cantonese): President, when the Transport and Housing Bureau consulted the local residents about the alteration of the layby of that road section, some residents expressed the wish of including beautification measures in the project. The original width of that road section exceeded 3 m, which was 10 m in width as mentioned earlier, but the road sections in front of and behind that section were 3 m in width. During the implementation of the works, we found that the pedestrian flow was less than 60 persons and only eight persons during peak hours. According to the standard at the time, we considered that a footway of 2 m wide would be adequate. But since the width of the road

sections in front of and behind that section was 3 m, it was decided that the width of that section would be 3 m.

PRESIDENT (in Cantonese): This Council has spent more than 21 minutes on this question. Fifth question.

Registration for Minor Works Contractors

5. **DR RAYMOND HO** (in Cantonese): *President, the registration arrangement for contractors introduced by the Government for minor works has been implemented since 30 December 2009. Some members of the trade pointed out that the Government was slow in vetting and approving applications for registration of minor works contractors. In this connection, will the Government inform this Council:*

- (a) *whether the relevant experience of the electrical and mechanical professionals and technicians in the electrical and mechanical engineering professions will be recognized as the working experience required for attending the Technically Competent Person T1 Training Course organized by the Construction Industry Council Training Academy when they enrol in the course; if not, of the reasons for that;*
- (b) *whether the qualifications of practitioners in electrical and mechanical works and those in the construction industry will similarly be recognized under the registration arrangement for contractors in the minor works control system (control system); if not, of the reasons for that; and*
- (c) *of the details of the existing procedures for registration of minor works contractors; whether the Government will consider reviewing the existing registration system again so as to further expedite the vetting and approving process to facilitate the smooth implementation of the control system?*

SECRETARY FOR DEVELOPMENT (in Cantonese): President, the control system was implemented on 31 December 2010 after years of preparation. The simplified statutory requirements will help enhance the efficiency and flexibility in carrying out minor works, thereby promoting building safety in Hong Kong. To tie in with the implementation of the control system, the Buildings Department (BD) has made immense efforts in the past two years in areas such as registration of minor works contractors, training and publicity for practitioners and public education. As at 31 December 2010, a total of 2 796 minor works contractors were granted approval for registration, and over 14 000 persons have completed the training and top-up courses concerning the control system provided by various institutions.

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

- (a) Currently, the BD requires the presence of technically competent persons (TCPs) when carrying out specified building works (including some Class I minor works items) to ensure site safety. TCPs are divided into five grades, of which T1 is the lowest. As TCPs are mainly responsible for work concerning site safety and quality supervision, they must have sufficient building works-related working experience.

Generally speaking, for enrolment in the TCP T1 Training Course, the Construction Industry Council Training Academy and the Hong Kong Institute of Vocational Education will determine whether an applicant satisfies the requirement of "having at least five years' actual site supervision experience" on the basis of his actual working experience. Therefore, whether the electrical and mechanical professionals and technicians currently working in the electrical and mechanical engineering professions meet the requirement depends on whether their actual working experience is related to site supervision. According to the BD's observations, many electrical and mechanical professionals and technicians have been engaged in work related to site supervision in the past, thereby meeting the enrolment requirements of the concerned course.

- (b) In accordance with the Building (Minor Works) Regulation (the Regulation) (Cap. 123 sub. leg. N) and the Practice Note for Registered Contractors issued by the BD, for any person wishing to

be registered as a minor works contractor, the BD will consider the applicant's academic qualifications in the relevant fields and his actual work experience in building works. Simply put, regardless of whether the applicant is a practitioner in electrical and mechanical or construction fields, the application will be accepted as long as he has the relevant academic qualifications and experience.

Regarding qualifications, the BD accepts architecture, building studies, building surveying, civil engineering and structural engineering as relevant fields. If the application only involves carrying out Type E works under the control system, that is, works related to structures for amenities such as minor works involving supporting structures for air-conditioners, water cooling towers and associated air ducts, then the applicant's academic qualifications will also be accepted if the same include those in building services engineering courses with building technology modules.

As for experience, applicants must possess experience related to building works and have carried out the types of minor works for which they have applied for registration.

For practitioners in electrical and mechanical as well as construction fields who possess the relevant experience but not the required academic qualifications, they can enrol in top-up courses for the qualifications they lack if they wish to apply for registration as minor works contractors. Specifically, electrical and mechanical professionals qualified as registered specialist contractors (ventilation works category) are only required to complete a one-day top-up course before they can apply for registration as Type E minor works contractors.

- (c) Generally speaking, an application for registration as a registered minor works contractor involves two to three steps. Firstly, the applicant is required to submit the specified form to the BD, pay the prescribed application fee and provide the required documents, such as various documentary proofs and copies of certificates. The BD will then proceed with the preliminary vetting. Should there be any missing documents or non-compliances in the application, the BD will write to the applicant to ask for provision of the relevant

documents as soon as possible. If necessary, staff of the BD may call or make an appointment with the applicant so as to assist him to prepare or fill in the required documents. At present, applicants for Class II and Class III minor works are normally not required to go through an interview procedure. For applicants who wish to register as a Class I registered minor works contractor, the BD will, in accordance with the Regulation, refer them to the Minor Works Contractors Registration Committee for consideration and interviews. The Building Authority may accept or refuse an application based on the recommendation of the Committee.

In response to the concerns raised by Members and the industry on the progress of registration under the control system, the BD has implemented the following measures to assist practitioners in registration and to speed up the vetting process.

Under the existing regulations, the statutory processing time for applications submitted by individuals to register as Class III minor works contractors is three months. Nevertheless, to facilitate the implementation of the control system, the BD has undertaken that if all the supporting documents provided are in order and meet the registration requirements, all applications submitted by individuals by 31 March 2011 will be processed within one month. For applications by practitioners relying solely on experience, a subsidy on application fees will be provided to them if they submit their applications by the same date. Their application fees will be lowered from \$305 to \$155, the same as those applicants relying on academic qualifications. Regarding the training courses required for registration as Class III minor works contractors, the BD has been providing full subsidy on the courses since October 2009, and will extend this subsidy until October 2012. Also, the BD set up an information centre for minor works contractor registration on 28 May 2010, which holds three briefing sessions every week and answers enquiries from applicants. The BD has also reprioritized its work and deployed additional staff to expedite the processing of applications.

DR RAYMOND HO (in Cantonese): *President, the Regulation and the Practice Note concerned as well as the subsidiary legislation are endorsed after years of scrutiny by this Council. The Secretary's response today can clarify some of our queries. However, it seems that many practitioners in the industry, who assume that they are eligible to apply as registered TCPs, are unsure about the required qualifications of TCPs; and many practitioners in the electrical and mechanical fields and the building services engineering field think that they are ineligible to apply.*

Despite the situation has seemingly been clarified now, it was reported last week that some people and property management companies still mistook that all fitting-out works could only be conducted by the relevant practitioners. The misunderstanding has led to people flocking to enrol in the relevant courses provided by the institutes, resulting in practitioners who should attend such courses could not enroll or their waiting time is prolonged. Has sufficient publicity and public education been carried out in this regard by the Government? Can efforts be stepped up in this regard by the authorities to allow practitioners with the genuine need to attend the courses be able to do so as soon as possible, thereby the implementation of the control system will not be impeded and public demand for the courses can be satisfied?

SECRETARY FOR DEVELOPMENT (in Cantonese): *President, the control system has indeed turned a new page in the management of building safety in Hong Kong. The formulation of the control system has been scrutinized by the Legislative Council. In respect of its implementation, as I have just pointed out in the main reply, immense efforts have been made. Nevertheless, I cannot agree more that ongoing public education and publicity have to be conducted by the Government. Hence, in addition to the various efforts which I have just mentioned in the main reply, I will request the BD to continue making extra efforts in public education and publicity, as well as clarifying the situation with the industry. For instance, as Dr HO may know, the chambers of commerce once had a different understanding of the entry requirements of the TCP T1 Training Course from ours, but we have quickly sorted out the problem with them.*

MR IP WAI-MING (in Cantonese): *President, we are well aware of the problem which Dr Raymond HO just raised, because the Hong Kong Construction Industry Employees General Union (CIEGU) has long been saying that some property management companies may have some misunderstanding about the Regulation. They think that general fitting-out workers are required to register, resulting in many people waiting to enrol in courses and those with the genuine need to pursue further studies have to wait for a long time.*

According to information from the CIEGU, individual practitioners who wish to enrol in the training courses have to wait for three to five months. For those who wish to register as Class III minor works contractors, according to the information, the waiting time for them to study the relevant courses is nine months. Secretary, if they really have to wait for nine months before they can study the courses, even if the BD can expedite the vetting of applications to one month, they still need to wait for 10 months from course enrolment to successful registration.

Hence, may I know that, apart from stepping up manpower for publicity work which the Secretary just mentioned, whether additional resources will be deployed on training or educational courses, so as to shorten the waiting time of the people mentioned above who wish to study the courses?

SECRETARY FOR DEVELOPMENT (in Cantonese): *President, in order to continually improve building safety in Hong Kong, we very much welcome and encourage practitioners to devote their time on continual education, no matter their purpose is to comply with the implementation of the control system or purely to enrich their knowledge. Hence, if necessary, the Development Bureau will provide more courses in conjunction with the Construction Industry Council Training Academy and the Hong Kong Institute of Vocational Education to satisfy the needs of the industry and practitioners. However, regarding registration by individuals as Class III minor works contractors under the control system, which the CIEGU is most concerned about, the relevant training course, as I just mentioned, is very simple. Generally speaking, as long as the person concerned possesses the relevant experience, he only needs to enrol in a one-day top-up course lasting six to eight hours to acquire an understanding of the regulations under the control system. This should not generate a bottleneck effect, resulting in a large number of people waiting to enrol in the course.*

However, for those who wishes to register as Class I and Class II minor works contractors in the name of a company and do not possess the relevant qualifications, the relevant training course will be more intensive, possibly involving almost 100 hours. But this course is only applicable to those who wish to register as Class I and Class II minor works contractors in the name of a company. Moreover, given that Class I and Class II minor works involve a certain extent of complexity, the academic or training requirements for these contractors should not be relaxed.

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

MR IP WAI-MING (in Cantonese): *President, I did not hear her clearly. Regarding the training course required for registration as Class III minor works contractors which I just mentioned, the waiting time for studying the course is three to five months. May I ask the Secretary to clarify, perhaps I did not hear her clearly, whether the Government will step up resources as we requested, so as to shorten the waiting time for these students?*

SECRETARY FOR DEVELOPMENT (in Cantonese): President, simply put, the Government will definitely do so. However, I wish to clarify that there is no such a phenomenon at present. I will certainly follow up the matter with the BD after the meeting. The figures show that current efforts have been very effective in facilitating more individual practitioners to register as Class III minor works contractors, as long as they are willing to submit the applications and receive simple training. In December alone, 838 applications submitted by individual practitioners to register as minor works contractors have been vetted, which is equivalent to the total number of applications vetted in the first 10 months of last year. Hence, as long as they are willing to submit the applications and are able to enrol in the relevant course, they can be registered. However, if there is the phenomenon as mentioned by Mr IP, that is, people have to wait for course enrolment before making application, we will definitely provide more courses.

DR RAYMOND HO (in Cantonese): *President, in respect of applications to register as minor works contractors and TCPs, some people have reflected to me claiming that there are numerous application documents in the application process and the information is complicated and unclear. Can the Secretary expeditiously carry out a review in this regard, so as to speed up the application procedures?*

SECRETARY FOR DEVELOPMENT (in Cantonese): *President, I have also touched on this subject in the main reply. An information centre for minor works contractor registration was set up in the middle of last year by the authorities to provide the public with a better understanding of any matter relating to the registration of minor works contractors, such as the application process and preparation of the application documents, and the documents required to be submitted. Applicants can make full use of the service provided by the information centre.*

PRESIDENT (in Cantonese): *Last question seeking an oral reply.*

Protecting Hong Kong Journalists' Freedom of Press on the Mainland

6. **MS EMILY LAU** (in Cantonese): *President, at the Third Session of the Eleventh National People's Congress held in March 2010 when the Premier of the State Council presented the Report on the Work of the Government, he stated that the State would "create conditions for the people to criticize and oversee the Government, let the news media fully play their oversight role, and exercise power openly". Yet, Hong Kong journalists, while covering news on the Mainland in recent years, have been obstructed and treated rudely on many occasions. Some Hong Kong television reporters, while covering news in Xinjiang, were assaulted, handcuffed and detained by law-enforcement officers, and were even slanderously accused by the local information office of inciting disturbance and violating the rules on news coverage; another Hong Kong television reporter covering news in Sichuan was alleged by law-enforcement officers of suspected possession of drugs and prohibited from going out. In December 2010, while covering news in Beijing on a case concerning a human*

rights activist on the Mainland, a Hong Kong reporter was even slapped and objects were hurled at a photographer. In this connection, will the executive authorities inform this Council:

- (a) what actions the Government has taken to follow up the aforesaid incidents and other incidents concerning Hong Kong journalists being treated rudely, and the details of these follow-up actions;*
- (b) whether they have requested the Mainland authorities to investigate the aforesaid incidents; if they have, whether they know the progress and expected completion date of the investigation, as well as whether the investigation outcome will be released; and*
- (c) whether they will convey to the Mainland authorities the views of Members of this Council and some members of the public that it is the duty of the Mainland authorities to protect the rights of the press in Hong Kong to conduct reporting activities on the Mainland, and whether they will urge the Mainland authorities to ensure that Hong Kong journalists will not be treated rudely while conducting reporting activities?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, given the increasingly close relationship between the Mainland and Hong Kong, the reporting activities of Hong Kong journalists in the Mainland have become more frequent. The three cases mentioned in the question concerning Hong Kong journalists covering news in Xinjiang, Sichuan and Beijing occurred in August 2009, September 2009 and December 2010 respectively. The SAR Government has been very concerned about these cases and has followed up in an appropriate manner.

After the case in Xinjiang, we reflected the concerns and views of the Hong Kong media to the Xinjiang Autonomous Region Government through the Hong Kong and Macao Affairs Office of the State Council (HKMAO). When the Chief Executive met with the Minister of Public Security before the National Day in 2009, he expressed the SAR Government's concern over the case. The Minister stated that he understood the SAR Government's concern over the case,

and reiterated the stance of the Central Government to protect the rights of the Hong Kong journalists to conduct lawful reporting activities in the Mainland. Regarding the case in Sichuan, the SAR Government had communicated with the Sichuan Provincial Government on a number of occasions to reflect the views of the media and various organizations. Immediately after the case in Beijing, colleagues of the SAR Government's Beijing Office had contacted the journalist concerned to gain an understanding of the situation and the needs of the journalist. In response to the request of individual organizations of the media industry, the SAR Government had also reflected their views on the case to the Mainland authorities.

The Mainland authorities have reiterated several times the stance that they would protect the rights of the media to conduct lawful reporting activities. Under the principle of "one country, two systems", the SAR Government will endeavour to provide practical assistance to Hong Kong journalists covering news in the Mainland as necessary; on the part of the journalists, they would need to comply with the relevant Mainland laws and regulations when conducting reporting activities. The SAR Government will continue to maintain close contact with the Mainland authorities to ensure the personal safety of Hong Kong journalists and provide them with assistance in conducting lawful reporting activities in the Mainland.

MS EMILY LAU (in Cantonese): *President, my supplementary question is about the safety of Hong Kong reporters while covering news in the Mainland. I have cited three cases, but I want to say that there are numerous others He only needs to walk out of this Chamber and ask the reporters, and he will know there are many other cases, not just the three cases mentioned. The Secretary points out that the authorities have followed up the case in an appropriate manner. There is one obvious question: Has the Government requested the Mainland authorities to investigate those cases? More often than not, it is after the completion of an investigation that we know what actions have been taken and by whom, as well as what have gone wrong, so that rectification can be made. But he has not answered my question at all, and he only said that he would talk to them briefly. President, at the motion debate held on 21 October the year before last, certain Members of the Legislative Council, who are deputies to the National People's Congress, agreed that the Mainland authorities should investigate these*

cases. Hence, I would like to ask the Secretary again: Does he lack the courage to ask the Central Authorities and request them to investigate these cases to confirm whether malpractice was involved? Or does he lack the courage to ask them to investigate what they have done wrong? He dares not do so, does he?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, the SAR Government will definitely do what it should do. We also have grave concern about Hong Kong journalists covering news in the Mainland, and I believe departments in the Mainland will by all means facilitate Hong Kong journalists in conducting reporting activities in the Mainland. Hence, allow me to answer the supplementary question of Ms Emily LAU as follows: First, whenever members of the press are confronted with any incident in the Mainland, we will immediately express our concerns and opinions to the Mainland authorities, either to the ministries or committees of the Central Authorities or to governments of provinces and cities. Colleagues of the Office of the Government of the Special Administrative Region in Beijing and offices of the SAR Government in the Mainland will write to the Mainland authorities to express our concerns and follow up the issue.

Second, on the motion debate held on October 2009 at the Legislative Council as mentioned by Ms Emily LAU, I would like to point out that though the motion and amendments proposed on that day were negated, we had still reflected the views of Members to the HKMAO and put forth issues which Members considered that follow up and investigation were required. In a later reply from the HKMAO, it was stated that the Mainland Authorities had all along attached great importance to the reporting activities conducted by the Hong Kong press, and they would continue to facilitate reporting activities from various aspects and enhance the relevant work. Hence, President, the communication and reflection of views between Hong Kong and the Mainland will continue.

MR LEE WING-TAT (in Cantonese): *President, no matter how much our government officials dislike reporters, they will only evade their questions in a relatively civilized manner, and they will not beat reporters. However, the culture in the Mainland is different from ours. Nonetheless, I notice that the new Director of the HKMAO, Mr WONG Guangya, who has just assumed office,*

has for the first time taken the initiative to meet with reporters. May I ask the Secretary, if officers of Mainland municipalities and provinces responsible for news publicity understand how Hong Kong press workers and reporters conduct reporting work, will this help reduce the rude and uncivilized treatment? If it will, should the Constitutional and Mainland Affairs Bureau co-operate with Mainland provinces and municipalities to organize certain special training for Mainland officers concerned to explain to them the freedom of press, the reporting practices and the spirit to going all out of Hong Kong reporters. Explain these issues to them, so that they know reporting is conducted this way in civilized societies. Do you think it is a solution to let them understand these issues?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, as the Policy Bureau responsible for Mainland affairs, we surely maintain close contact with the relevant ministries and committees of the Central Authorities, as well as governments of provinces and cities. In response to the question of Mr LEE Wing-tat, I will reply that first, many activities facilitating exchanges are carried out every year, and leaders of Mainland provinces and cities and Central Government Departments are invited to visit Hong Kong. They will visit various departments and organizations during their visits to Hong Kong. Sometimes, they will have exchanges with the Hong Kong press. Hence, they have certain understanding about the practices in Hong Kong.

Second, it has been some 30 years since the reform and open policy was adopted by the State. Various sectors in Hong Kong, including the Hong Kong press, have paid visits to the Mainland and the exchanges between Hong Kong and the Mainland have become more frequent. I believe the working culture of Hong Kong has exerted some influence on the practice of the Mainland.

MS CYD HO (in Cantonese): *This Government adopts double standard. In Hong Kong, if people stage assemblies outside the Liaison Office of the Central People's Government (the Liaison Office) and wet the clothes of security guards when they open a bottle of champagne, they will be brought to the police station for interrogation and be charged with the offence of assault. However, when a Hong Kong reporter interviewed ZHAO Lianhai in Beijing — I mean when she*

wanted to interview ZHAO Lianhai — and she was slapped by a civilian member of a street committee, no law-enforcement procedure had been taken. According to the standard of the Hong Kong Government, this should be an offence of assault. Has the Government's Beijing Office helped the reporter to report the case? Why would you consider you have fulfilled your responsibility by simply reflecting the case to the Mainland? Why could the authorities be so cowardly in Beijing but so dictatorial in Hong Kong?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, on the day the incident occurred in Beijing, we immediately contacted the member of the press concerned, and colleagues of the Government's Beijing Office had called the reporter. As for reporting the case to the public security department, we respected the decision of the person involved. Apart from this, we had written to the Mainland authorities to express the concerns of the SAR Government and the relevant organization in Hong Kong about the incident.

MR ALBERT HO (in Cantonese): President, in the past, Hong Kong reporters had been intervened rudely on several occasions while covering news, and similar responses followed. Upon the receipt of complaints, the Government expressed to the Central Government its grave concern about the situation of Hong Kong reporters in covering news in the Mainland. Then, the Central Government would say that it attached great importance to the freedom of press and would safeguard the reporting right of reporters. The same responses are made every time. Whenever an incident happens, the Hong Kong Government will express its concern, and the Central Authorities will reiterate that freedom of press is protected. Next time, when an incident occurs, the situation will be the same. Up to date, the situation is still the same. The authorities concerned have not responded further to the concerns of Hong Kong people, and the Secretary circumvents the crux of the problem today. What is the crux of the problem? I hope the Secretary will state clearly whether he has expressed his position clearly to the Central Government that we request the Central Government to conduct an independent and impartial investigation to find out the truth and take follow-up actions. By now, we are still waiting for a confirmed reply from the Central Government on the results of the investigation. If this position has not been expressed, we will continue requesting the Central

Government to respond to the request for an investigation. Will the Secretary reiterate clearly that it is the position of the Government and put this on record today in front of the public that this is the position of the SAR Government? The Central Government still owes us the results of an investigation.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, in fact, at different points in time, the views inside and outside the Legislative Council and those of Hong Kong society have been reflected fully and comprehensively. Therefore, I mentioned in my earlier reply that the different views expressed in this Chamber in October 2009, including the view that relevant departments of the Central Authorities should investigate the Xinjiang incident, had all been reflected. Moreover, the SAR Government has repeatedly conveyed to the senior echelon of the Central Government the concerns of Hong Kong society about these incidents. Hence, in October 2009, when the Chief Executive met with the Minister of Public Security, Mr MENG Jianzhu, before the National Day, he conveyed these views to him again. Minister MENG expressed his understanding of the concern of the SAR Government and reiterated that the Central Government would protect Hong Kong journalists conducting lawful reporting activities in the Mainland. Hence, we will surely reflect the views when we can and will continue to do so. However, under the principle of "one country, two systems", the Mainland handle these incidents according to laws and the assistance to the Hong Kong press to conduct lawful reporting should be led by the Mainland under this system.

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

MR ALBERT HO (in Cantonese): *President, the Secretary has circumvented my supplementary question completely.*

PRESIDENT (in Cantonese): Please repeat your supplementary question.

MR ALBERT HO (in Cantonese): *My question is not about whether the authorities concerned have reflected the views of Hong Kong people. However, he keeps repeating that he has reflected the views of Hong Kong people.*

PRESIDENT (in Cantonese): Please repeat your supplementary question.

MR ALBERT HO (in Cantonese): *My question is: Is it the position of the Hong Kong Government to request the Central Government to conduct investigation? We are still waiting for a reply from the Central Government.*

PRESIDENT (in Cantonese): Secretary, the Member asked whether the Hong Kong Government would request the Central Government to conduct an investigation.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, our position is that we will fully reflect the views of Hong Kong society, including views expressed inside and outside the Legislative Council. We will continue to work on this. We have done so in the past and will do so in future.

MR LEE CHEUK-YAN (in Cantonese): *President, we can see that the Secretary is really a coward, and he dares not make the request. The Secretary said repeatedly earlier that views would be reflected and the Mainland would reiterate subsequently of its concern about the incidents. However, every time, the Government only reflects the views and the Mainland only expresses their concerns. Eventually, reporters continue to be treated rudely.*

May I ask the Secretary, are there any cases involving punishment for treating reporters rudely? If there are no such cases, it means that the views you reflected in the past are powerless and ineffective. The Secretary pointed out in his earlier reply that the Mainland Government should handle these incidents according to laws. If so, does the Secretary or the SAR Government consider that the Mainland Government has definitely not handled the case according to law? Has the Secretary reflected the views of Hong Kong people

that the Mainland has not handled the case according to law and has not protected Hong Kong reporters? Has the Secretary reflected these views? Or is it that he just makes a few polite remarks expressing the concern of Hong Kong people and then the Mainland simply expresses concern in return, and the case is closed? I want to know if this is the case. Is the Government simply powerless? We also consider that the Mainland can in no way assist and protect Hong Kong reporters.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, in the letter to the HKMAO in 2009 on the Xinjiang incident, the Government's Beijing Office stated clearly that though the original motion and the amendments were not agreed by the Legislative Council, Members had expressed clear wish during the motion debate, hoping the relevant Mainland authorities would conduct a fair investigation afresh on the incident and release the investigation results to the public. At the same time, the Mainland authorities should ensure the rights of Hong Kong journalists in conducting lawful reporting in the Mainland. Hence, President, our positions are crystal clear, and we have reflected the views of Hong Kong society. We believe the Mainland will follow up the incidents concerned according to its laws and regulations.

MR IP KWOK-HIM (in Cantonese): *Regarding the experience of reporters while covering news in the Mainland, I heard that many Members hope the SAR Government would come forward for these reporters. However, Members should understand whether a regional government has the authority to request certain regional governments or the Central Government to take certain actions. Members have to analyse this from an objective angle.*

The Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) has always been concerned about the protection of the right of Hong Kong journalists in conducting lawful reporting activities in the Mainland. Hence, the deputies to the National People's Congress and the representatives of the Chinese People's Political Consultative Conference of the DAB raised the relevant issue at the meeting of the National People's Congress in 2008, requesting the Central Authorities to deal with the issue correctly. We had received a reply from the State Council Information Service and the General Administration of Press and Publication. Allow me to quote part of the reply here, which gave particular

mention to the following: "Regarding the work surrounding media coverage and reception, the Central Government and the relevant regional departments have provided extensive training and case studies to government officials of various ranks and staff concerned to help to change their mindset, to enhance their news awareness and the service quality of the media." We can see that the Central Authorities are concerned about this issue too.

However, I would like to ask the SAR Government, has it provided practical support and assistance to the media and journalists of Hong Kong under the principle of "one country, two systems", so that they can have a better understanding and a good grasp of the relevant rules and regulations of the Mainland? In this way, they enjoy can their statutory rights while covering news in the Mainland.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, the Government's offices in the Mainland will provide assistance to the Hong Kong press from three aspects. First, we are willing to provide information on the relevant laws and regulations on reporting work. Second, if the press needs to contact any Mainland department, be it ministries or committees of the Central Authorities or governments of provinces and cities, we will assist the press to communicate and liaise with the local departments concerned. Third, if Hong Kong people, including journalists, are confronted with an incident in the Mainland, colleagues from the Immigration Department, the Government's Beijing Office and the Government's Guangdong Office will provide assistance by all possible means. In addition, the Information Service Department of SAR Government will maintain contact with the Liaison Office. I understand that they have a set of procedures for reporters of Hong Kong and Macao to follow when they cover news in the Mainland, and we know that the Liaison Office will speed up or skip the relevant procedures or facilitate the Hong Kong press to apply for reporter passes expeditiously according to needs, and so on.

PRESIDENT (in Cantonese): This Council has spent more than 21 minutes on this question. Oral questions end here.

WRITTEN ANSWERS TO QUESTIONS**Regulation of Development Projects for Conservation Purpose**

7. **MR ALAN LEONG** (in Chinese): *President, since the Nam Sang Wai development project was approved by the Town Planning Board (TPB) in 1996, development works have not yet commenced. In the meantime, public awareness of conservation of the environment and ecology has been raised. The Environmental Impact Assessment Ordinance (Cap. 499) was implemented in 1998 followed by the issuance of the TPB Guidelines concerning the planning in Deep Bay Wetland Conservation Area in 1999. The TPB has also introduced the "no-net-loss on wetland" principle for considering development proposals in order to protect the wetlands and fish ponds in areas around Lut Chau. Yet, there are comments that as the developer had applied for three times in 2001, 2004 and 2007 respectively and was approved each time to extend the time for commencement of Nam Sang Wai development project, and statutory regulations which were enacted after the approval of the layout plan of the project in 1994 do not have any retrospective effect on the project, the project is therefore not required to undergo the existing statutory Environmental Impact Assessment process, hence the current conservation standard cannot be reflected in the project. In this connection, will the Government inform this Council:*

- (a) *given that the developer only holds less than 80% of the land for the Nam Sang Wai development project, and it needs to obtain the remaining some 20% of land by means of land exchange with the Government in order to commence the project, whether the Bureau concerned will approve the exchange of land; if it will, of the conditions to be imposed;*
- (b) *whether it knows the respective justifications for the TPB to approve the previous three applications for extending the time for commencement of the Nam Sang Wai project;*
- (c) *whether it knows, in the past five years, the total number of projects approved by the TPB for which application for extension of the time for commencement had been made for more than once; the percentage of such number in the total number of projects for which applications for such extension had been made; whether the TPB will issue new guidelines to prohibit automatic extension of the*

validity period of the layout plans of development projects after approval is given to extend the time for their commencement; if it will, of the details; if not, the reasons for that; and

- (d) *whether the Bureau concerned will review the planning in the New Territories to focus on the development of the "brownfield" sites which have already been damaged in order to preserve wetlands and farmlands from destruction; if it will, of the timetable for the review; if not, the reasons for that?*

SECRETARY FOR DEVELOPMENT (in Chinese): President, regarding the Nam Sang Wai case, the applicant submitted a planning application to the TPB in 1992 for residential development and golf course at Nam Sang Wai, and a nature reserve at Lut Chau. The application was rejected by the Rural and New Town Planning Committee (RNTPC) of the TPB and the TPB itself in 1992 and 1993 respectively. It was subsequently allowed with conditions by the Town Planning Appeal Board (TPAB) in 1994, and the TPAB's decision was upheld by the Privy Council in 1996. There were a total of 27 conditions attached to the planning permission, including but not limited to the submission of environmental impact assessment reports and habitat creation/management plan. The applicant had been granted extension of time (EOT) for commencement of the development project for three times, and the planning permission was valid until 18 December 2010.

On 29 October 2010, the applicant submitted an application under section 16A(2) of the Town Planning Ordinance for further EOT for three years until 18 December 2013. On 10 December 2010, after considering all relevant planning considerations, the RNTPC rejected the application for extension.

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

- (a) The Lands Department has not received any land exchange application. There is thus no basis for it to consider any such arrangement.
- (b) Approval for EOT had been granted three times to the applicant in the past. The details are set out as follows.

On 14 December 2001, the TPB approved the first EOT application and the validity of the planning permission was extended for three years (instead of the five years sought by the applicant) up to 18 December 2004. The major considerations were that the applicant required considerable time to process the various submissions to address the comments from relevant government departments and the applicant had demonstrated efforts to fulfil the approval conditions (including submission of master layout plan and assessment reports on environmental impact, drainage impact and traffic impact, and so on, between March 2000 and October 2001).

On 8 October 2004, the TPB approved the second EOT application and the validity of the planning permission was extended for another three years up to 18 December 2007. The major consideration was that the applicant had made submissions to fulfil the approval conditions (including submission of master layout plan, master landscape plan and environmental impact assessment report, and so on, as well as fulfillment of three approval conditions between December 2002 and September 2004).

The third EOT application by the applicant was made under section 16A of the Town Planning (Amendment) Ordinance as a Class B amendment to the above planning permission. On 28 September 2007, the Director of Planning (D of Plan) approved the application under delegated authority of the TPB and further extended the validity of the planning permission for three years up to 18 December 2010. The major considerations were that the applicant had demonstrated efforts to make submissions (including the submission of master landscape plan and assessment reports on environmental impact and traffic impact between August 2005 and September 2007) to fulfil the approval conditions since the 2004 EOT approval; more time was required to resolve outstanding issues and reach agreement with the concerned government departments on the technical reports under the relevant approval conditions. Nevertheless, the applicant had been informed in the letter of EOT approval that a further extension of the validity of the planning permission would be outside the scope of Class B amendments, and any request for further extension would need to be submitted in the

form of a fresh planning application under section 16 of the Town Planning Ordinance.

- (c) The purpose of specifying a validity period for commencement of development when granting a planning permission is to ensure that approved development proposals will be implemented within a certain time frame. If an applicant fails to commence the approved development proposal within the specified period, the planning permission will lapse. While application can be made to the TPB for EOT, it is not an arrangement for "automatic extension of the validity period".

To facilitate implementation of the Town Planning (Amendment) Ordinance 2004 (Amendment Ordinance), the Administration drew up a series of the TPB Guidelines in 2005 after consultation with stakeholders at the drafting stage. The proposals were detailed in a paper submitted to the Legislative Council Panel on Planning, Lands and Works in 2005. The TPB Guidelines on EOT for Commencement of Development and Guidelines for Class A and Class B Amendments to Approved Development Proposals have clearly spelt out the considerations in handling applications for EOT for commencement of development. The Amendment Ordinance came into effect on 10 June 2005 and the TPB subsequently promulgated these Guidelines.

Generally speaking, the time for commencement of a development project approved by the TPB is four years, so as to keep pace with the development of Hong Kong. While an applicant may apply for EOT, the period of extension or the aggregate of all the periods of extension shall not exceed the original duration for commencement of the approved development proposal. The Administration considers it fairly adequate to allow the applicant eight years (that is, four years of the validity period plus a period of extension not exceeding another four years) to commence the approved development proposal. As there may be major changes in planning considerations and community aspirations, the Administration considers it reasonable to require the applicant to submit a fresh planning application after eight years to allow members of the public to express their views on the application. Applications with "period

of extension, or aggregate of all the periods of extensions not exceeding the original duration for commencement of the approved development proposal" fall within Class B Amendments. The applicant shall apply to the TPB under section 16A(2) of the Town Planning Ordinance. If the original permission for extension had been granted prior to the commencement of the Amendment Ordinance, according to the Practice Note for Professional Persons No. 5/2005 on "Basis for Determining Class A and Class B Amendments Under Section 16A of Town Planning Ordinance" promulgated by the Planning Department, the duration allowed in the last approval given by the TPB or the D of Plan under delegated authority of the TPB shall be taken as the maximum duration for further extension of the planning permission.

In the past five years (as of 15 December 2010), the TPB approved a total of 163 EOT applications, among which 52 involved request for EOT for more than once. All the EOT applications approved met the requirement regarding the duration for commencement of development for Class B amendments above.

- (d) The TPB has prepared statutory plans for most areas in the New Territories, specifying the respective land use and planning intention. In preparing the plans, the TPB has followed the statutory procedures and attended to local concern and planning considerations of the various districts, including nature conservation. Apart from the determination of appropriate zoning for land suitable for development, some environmentally/ecologically sensitive areas have been brought under due regulation, such as through designation as "conservation areas" or "sites of special scientific interest".

Town planning is an ongoing task. The Administration duly reviews land use in different areas having regard to the individual circumstances, with a view to striking a balance between the environment, development and social needs. To meet the overall development needs of Hong Kong, the Administration will identify new development areas with a view to converging developments systemically in suitable areas subject to environmental impact, traffic and infrastructure feasibility to be ascertained through detailed planning and engineering studies, while avoiding negative impacts to

the natural environment and achieving sustainable development. At present, the North East New Territories New Development Areas Planning and Engineering Study is currently underway, and the planning and engineering study for the Hung Shui Kiu New Development Area, which is located in North West New Territories, is expected to commence this year.

Assistance for Victims of Fire at Fa Yuen Street

8. **DR PRISCILLA LEUNG** (in Chinese): *President, in the early morning of 6 December 2010, an arson attack occurred at Fa Yuen Street in Mong Kok, causing a No. 3 alarm fire, in which 50 hawker stalls were burnt down and some neighboring shops and residents living upstairs were affected. The fire has caused serious damages to neighbouring buildings and ground floor shops. Owners of open-air stalls have lost all their properties and goods, and their businesses have been seriously affected. The affected stall owners, flat owners, tenants, residents and owners' corporations (OCs), and so on, have to face heavy financial burden after the fire as they need to repair their residential units and shops urgently. Some fire victims have indicated that as most residents and stall owners in the district are elderly persons, the grassroots or traders running small businesses, they have considerable difficulties in paying for the huge expenses in repairing and re-establishing their businesses within a short time. In this connection, will the Government inform this Council:*

- (a) *what financial support or assistance have been provided by the authorities to the affected stall owners and tenants of ground floor shops since the outbreak of fire at Fa Yuen Street; and given that traders have no money to purchase goods for sale again and owners have no money to repair their homes, whether the authorities will provide subsidies or interest-free loans to them;*
- (b) *whether the authorities will request the Urban Renewal Authority or the Hong Kong Housing Society (HKHS) to, under the Operation Building Bright and the Building Management and Maintenance Scheme, and so on, provide express vetting service as a matter of urgency to buildings (with or without OCs) suffering serious damages in this fire, so that OCs and flat owners of these buildings*

will receive subsidies to repair all damaged public areas and private residential areas of the buildings as soon as possible;

- (c) whether the authorities will consider asking the Community Care Fund Steering Committee, which is chaired by the Chief Secretary for Administration, to examine allocating funds raised from the business sector to provide emergency assistance to the fire victims, in case the current assistance schemes cannot offer help to these victims; and*
- (d) given that there are comments that this fire has highlighted the problems of fire safety, management and security arising from the concentration of a large number of open-air hawker stalls on the same street, whether the authorities will learn from this lesson and take effective measures to enhance the fire safety of streets with a large number of open-air hawker stalls in various districts in Hong Kong, so as to prevent recurrence of fire?*

SECRETARY FOR FOOD AND HEALTH (in Chinese): President, a No. 3 alarm fire broke out at some hawker stalls in the Fa Yuen Street Hawker Permitted Area near Nullah Road at around five o'clock in the morning of 6 December 2010. A total of 66 hawker stalls and more than 30 street shops were affected, among which 49 hawker stalls were seriously damaged by fire. The residents of several buildings in the vicinity needed to be evacuated. The Government cared about the condition of the victims. It took immediate action after the fire with the relevant organizations (including a charitable organization and the electricity company) and communicated with the hawker associations concerned and the stall traders and shop operators affected, with a view to making concerted efforts to facilitate reconstruction and provide various assistance. Our reply to the four parts of the question is as follows:

- (a) Our first priority has been to assist the stall traders and shop operators affected to resume business as soon as possible, and to help the residents affected to resume their normal living. The assistance provided includes the following:

- (i) Emergency Aid: The Yau Tsim Mong District Office (YTMDO) set up an inter-departmental help desk at the scene immediately after the fire to assist those victims in urgent need of cash, including stall traders, shop operators and residents, to apply for assistance under the General Chinese Charities Fund administered by the Home Affairs Department. The YTMDO arranged for disbursement of grants on the same day. In parallel, the Social Welfare Department also liaised with the Lok Sin Tong Benevolent Society, Kowloon, which also provided emergency relief grants to victims in need. Besides, the YTMDO opened the Henry G. Leong Yau Ma Tei Community Centre on the same day to provide temporary shelter for the residents in need;
- (ii) Clearance of the fire site: The Food and Environmental Hygiene Department (FEHD) immediately arranged additional manpower and vehicles to assist stall owners and shop operators to clean up their stalls and goods damaged by the fire. The Highways Department also resurfaced the street promptly to enable stall traders to undertake reconstruction work as soon as possible;
- (iii) Electricity supply and electrical installations: The Electrical and Mechanical Services Department (EMSD) contacted the China Light & Power Company Limited, the Hong Kong and Kowloon Electrical Engineering and Appliances Trade Workers Union and the Hong Kong Electrical Contractors' Association. With their assistance, electricity supply was resumed and electrical installations were reinstalled for the stall traders; and
- (iv) Cash flow: If the affected shop operators encounter cash flow problems, they may consider joining the SME Loan Guarantee Scheme administered by the Trade and Industry Department to apply for loans from the participating lending institutions for acquiring business installations and equipment or meeting working capital needs.

The stall traders and shop operators have largely resumed all their business by now and those residents seeking temporary shelter have also returned to their homes by the end of last year.

- (b) The HKHS has been providing assistance to the building owners. After the incident, the HKHS and the YTMDO have liaised with the affected owners incorporations and visited the affected owners and residents. Also, the HKHS has attended the briefing session organized by the YTMDO to introduce and explain the HKHS's Building Management and Maintenance Scheme (the scheme includes the Building Maintenance Incentive Scheme and the Home Renovation Loan Scheme) and the Building Maintenance Grant Scheme for Elderly Owners. According to information, out of the nine buildings affected, six satisfy the requirements for application under the Building Maintenance Incentive Scheme and/or the Home Renovation Loan Scheme. Of these, four have already applied for or been included in the Operation Building Bright. One of these buildings has received the "approval-in-principal" letter while the applications of the remaining three buildings are being processed by the relevant departments. The HKHS will try to meet the residents' requests as far as possible and will expedite the processing of the residents' applications for subsidies and loans. In addition, the owners can also consider applying for the Buildings Department's Building Safety Loan Scheme for financial support.
- (c) The Steering Committee on the Community Care Fund will take into account the views and demands from various quarters when mapping out the target beneficiaries and assistance programmes, having regard to the existing assistance and services already provided by the Government or other charitable funds.
- (d) In respect of the fire safety and management problems arising from the concentration of stall structures (commonly known as "Pai Dong") in the Fa Yuen Street Hawker Permitted Area, the FEHD contacted the Fire Services Department (FSD) and the EMSD immediately after the fire to discuss practicable ways of enhancement. The enhancement proposals include: ensuring sufficient space in the carriageway for fire appliances and firemen; reserving sufficient space between hawker stalls to facilitate

evacuation of residents of buildings in the vicinity; reserving proper separation space between hawker stalls which are not joined together so as to prevent the spread of fire; ensuring that the stalls are erected with fire-resisting materials; and requiring that the electricity supply for lighting should be obtained from legal and independent sources, and so on.

Concerning the above proposals, the FEHD, together with the FSD and the EMSD, has discussed the implementation details with the Federation of Hong Kong, Kowloon and New Territories Hawker Associations, the Fa Yuen Street Hawker Association and all licensed hawkers in the Fa Yuen Street Hawker Permitted Area. When formulating the details, the FEHD's principle is to strive to meet the operational needs of the traders as far as possible without compromising the fire safety principle.

After a consensus has been reached with the trade associations and stall traders concerned, the enhancement proposals have started to be implemented in phases. The FEHD also calls for self-discipline on the part of the stall traders. Strict enforcement actions will surely be taken against traders who are found to have violated the proposed enhancement arrangements, in order to prevent the unauthorized obstruction of access.

As for other hawker permitted areas with a large number of open-air hawker stalls in the street, the FEHD will continue to communicate with the FSD and liaise with the stall traders. Having regard to the specific circumstances of different locations, appropriate stall specifications and the relevant requirements would be worked out, with a view to enhancing fire safety through the licensing mechanism and the enforcement action.

Training Activities of Insurance Industry Taken over by Employees Retraining Board

9. **MR CHAN KIN-POR** (in Chinese): *President, since December 2009, the insurance courses in the Government's Skills Upgrading Scheme (SUS) have been taken over by the Employees Retraining Board (ERB). There is information*

indicating that before the ERB took over the courses, the number of classes for insurance courses had to be reduced because of the imminent exhaustion of the resources allocated for organizing such courses, thus causing enrolment to drop from some 1 800 for the period between April and September 2008 to 148 for the period between October 2009 and March 2010. In this connection, will the Government inform this Council:

- (a) of the situation of classes convened for insurance courses since the ERB has taken over them, whether enrolment has rebounded and whether the authorities can ensure sufficient places for insurance practitioners and members of the public who are interested in joining the industry to enrol;*
- (b) whether the authorities have assessed the effectiveness and benefits of the aforesaid courses (including whether such courses could achieve the objective of enhancing incumbent insurance practitioners' actual working skills apart from allowing them to apply for Continuing Professional Development (CPD) credits after completing the courses); and*
- (c) whether the authorities have assessed how many trainees, who are interested in development a career in the insurance industry, had joined the insurance industry after completing the aforesaid courses in the past three years, and whether the authorities have offered them assistance?*

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

- (a) The ERB started taking over SUS courses in phases since December 2009 by launching its SUS Plus. The first batch of courses taken over by the ERB included 16 courses for the insurance industry. The ERB set up the Industry Consultative Network (ICN) for the insurance industry in August 2009. The ICN comprises representatives of trade organizations, labour unions and professional associations and advises the ERB with a view to ensuring that the courses will meet market demand. In accordance with the recommendation of the ICN for the insurance industry, the ERB relaxed the entry requirements for 13 of the migrated courses

by accepting non-trade practitioners so as to facilitate them to join the insurance industry.

After going through the application and bidding processes of the ERB, six training bodies have gradually rolled out the 16 insurance courses under SUS Plus since March 2010. As at December 2010, 1 163 trainees had been admitted to these courses. Depending on market demand for classes, training bodies may apply to the ERB for additional training places under the existing allocation mechanism.

- (b) The Government conducts evaluation of SUS from time to time. The views of trainees from various industries (including insurance) and their employers are collected. The results have shown that the trainees and employers were generally content with the effectiveness of SUS courses in improving the skills and employability of trainees.

The ERB also places a lot of emphasis on the quality and effectiveness of its courses. The ICNs of various industries advise the ERB on manpower demand, training needs, as well as the design of and entry requirements for training courses. Taking the insurance courses of SUS Plus as an example, prior to the commencement of a training course, the training body concerned has to vet the qualifications of its trainers and seek accreditation of the related CPD training by the Hong Kong Council for Accreditation of Academic and Vocational Qualifications. All courses have their respective class assessments and course-end examinations. A trainee is required to pass the examinations and attain an attendance of at least 80% before he may be awarded a certificate. Trade practitioners in the insurance industry can obtain CPD credits after completing SUS Plus courses.

The ERB undertakes course evaluation to collect feedback from trainees from time to time. As far as the training courses of the insurance industry under SUS Plus are concerned, 98% of trainees rated the courses as "satisfactory" or "very satisfactory", indicating their general appreciation of the overall arrangements and benefits of the courses. The ERB also plans to review the courses in conjunction with the ICN of the insurance industry in the second quarter of 2011, that is, about one year after the launching of

insurance courses under SUS Plus. The review will cover enrolment situation, course design, training mode and overall effectiveness. Existing courses will be revamped and new courses will be developed as necessary in light of the review findings.

- (c) As SUS Plus courses, including those of the insurance industry, are part-time courses which target at those in employment, no placement service is offered to trainees. As such, the ERB does not keep any statistics on the number of trainees who have joined the insurance industry.

To benefit more trainees with different employment needs, the ERB also offers full-time placement-tied courses for the unemployed and those who wish to change jobs. Trainees of these courses receive pre-employment training and placement services. At present, the ERB offers a full-time placement-tied course entitled Certificate in Insurance Agent Training which seeks to equip trainees with the knowledge and skills for employment as insurance agents. The course was first launched in 2009-2010. Altogether 59 trainees were admitted to the course in that year. Of these, 46 successfully secured a job upon completion of training, with 19 working for the insurance industry. In 2010-2011, the ERB launched two new full-time placement-tied courses entitled Certificate in Insurance Administration Assistant Training and Diploma in Insurance Management which aim to help trainees to seek employment as supporting personnel or managerial staff in the industry. As both new courses are still at the enrolment stage, statistics on employment situation of the graduates are not yet available.

Incidents of Fatal Poisoning of Dogs

10. **MISS TANYA CHAN** (in Chinese): *President, it has been reported that incidents of dogs killed by poisoned meat occurred from time to time at Bowen Road in Mid-Levels, and more than 100 dogs have been fatally poisoned so far. Recently, some members of the public have found poisoned baits again in the vicinity of the aforesaid area, indicating that the problem has not yet been solved. In view of the suspected wilful poisoning of and cruelty to dogs, will the Government inform this Council:*

- (a) *of the number of cases the Government received in the past four years on dogs fatally poisoned or poisoned meat found in the vicinity of Bowen Road; whether it had followed up on these cases; if so, of the details and results; if not, the reasons for that;*
- (b) *given that it has been reported that most of the dogs fatally poisoned in the aforesaid area had owners, whether the Government has stepped up publicity among the dog owners in that area in view of the above incidents, so as to raise their concern and awareness of fatal poisoning of dogs, and to inform them what they should do if they encounter such situations; if it has, of the details; if not, the reasons for that;*
- (c) *whether the Government will consider stepping up patrol in the aforesaid area and other popular locations for walking dogs, so as to prevent the law-breakers from continuing to fatally poison dogs; if it will, of the details; if not, the reasons for that; and*
- (d) *in view of the fatal poisoning of dogs or other serious infringement of animals' rights and safety, whether the Government will consider reviewing the existing legislation and law enforcement guidelines on protection of animals' rights, so as to achieve greater deterrent effect; if it will, of the details; if not, the reasons for that?*

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

- (a) The numbers of reports received by the police over the past four years on dog poisoning and finding of poisoned bait on Hong Kong Island are as follows:

<i>Type of Cases</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>	<i>Total</i>
Cases of dogs being poisoned (Numbers in brackets indicate fatal cases)	9 (4)	3 (1)	3 (1)	4 (1)	19 (7)
Incidents in which only poisoned bait was found	5	1	4	4	14

The police always attach great importance to such cases. Recent cases of dog poisoning and finding of poisoned bait that happened in the vicinity of Bowen Road are being investigated by the regional crime unit of the Hong Kong Island Police Region.

(b) and (c)

The police has stepped up patrols in the crime scenes and the nearby areas to prevent the recurrence of these cases. Meanwhile, in order to solve the crimes quickly and to alert the public to the incidents, police officers have been deployed to distribute leaflets and to put up posters in the vicinity of the crime scenes. The public are encouraged to provide information for the investigation and dog owners are reminded to take proper care of their dogs and muzzle them while walking them. The Agriculture, Fisheries and Conservation Department also calls on dog owners to take good care of their dogs when taking them out, for example, keeping them on a leash and muzzling them whenever necessary in order to prevent them from eating food left on roadsides.

(d) The Government reviews from time to time whether animal rights are adequately protected under the existing legislation. In 2006, the Government substantially increased the penalty for cruelty to animals from a fine of \$5,000 and imprisonment of six months to a fine of \$200,000 and imprisonment of three years. Since the implementation of the revised penalties, the overall figures relating to complaints and reports of suspected cruelty to animals have declined, reflecting the strong deterrent effect of the relevant legislation. We consider that the best way to combat dog poisoning cases is to step up patrol and encourage the public to provide information for assisting the police investigation. Besides, as stated above, dog owners should also take good care of their dogs.

Measures to Reduce Consumption of Shark's Fin

11. **MS AUDREY EU** (in Chinese): *President, some environmental groups have pointed out that as only three species of shark are at present protected under the Convention on International Trade in Endangered Species of Wild*

Fauna and Flora (CITES), more than a hundred shark species and closely related species included by the International Union for Conservation of Nature (IUCN) in its Red List of Threatened Species may still face the danger of extinction due to overfishing. In this connection, will the Government inform this Council:

- (a) of the number of banquets and dining parties the Government hosted at public expenses last year, the amount involved, and the number of such banquets in which the menu included shark's fin, with a breakdown by government department;*
- (b) whether the various government departments had formulated guidelines on suspending the consumption of shark's fin in banquets hosted at public expenses in the past five years; if not, whether they will consider formulating such guidelines; and*
- (c) whether last year the Government had educated members of the public and promoted the message of reducing consumption of shark's fin in order to safeguard the ecological balance; if it had, of the resources devoted in this regard; if not, the reasons for that?*

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

- (a) In respect of using public funds on official banquets and meals, the Government has internal guidelines that set their budgets which departments need to observe. When organizing official entertainments, we also emphasize that the occasion should be decent but not give an impression that it is extravagant. Hence, when departments use public funds to organize banquets and meals, the menus do not generally include shark fin.

As regards information on the number of banquets and meals the Government organized using public funds last year, the amount involved, the number of such banquets in which the menu included shark fin, and with a breakdown by government departments, such extensive information involves all departments and their offices, and covers a wide scope. And since we also do not keep information on

menus for banquets and meals of different scales held in the past, we are not in a position to provide such detailed information.

- (b) Currently, there are about 320 shark species, most of which could be freely traded in Hong Kong. Three shark species, that is, Great White Shark, Basking Shark and Whale Shark, have been listed in the CITES. The CITES is an international agreement among governments of different states, which seeks to ensure that the survival of wild animals and plants will not be threatened because of international trade. The Government is committed to protecting endangered species. We implement the Protection of Endangered Species of Animals and Plants Ordinance (Cap. 586) to strictly regulate the trade of species listed in the Appendices of the CITES to fulfil the CITES requirements. At present, the laws of Hong Kong regulate the trading of shark species in accordance with the CITES requirements. With regard to the shark species not yet listed in the CITES, the laws of Hong Kong do not restrict its commercial trade. The IUCN is an international conservation organization, and its works include compiling a list which lists out the conservation status of different species around the world. In considering whether to list certain species in the CITES Appendices, the CITES Conference of the Parties will consider a number of factors including the specie's quantity, management status, and will also draw reference from the list compiled by the IUCN.

The Government all along abides by the CITES and the local legislation. We do not think it is appropriate to lay down guidelines to regulate the kind of food to be consumed in official banquets and meals.

- (c) Paying heed to the principle of sustainable development, the Government adheres strictly to the CITES requirements. We also conduct public education on the CITES, which is one of the most important elements in implementing the CITES in Hong Kong. Specifically, the Agriculture, Fisheries and Conservation Department (AFCD) has paid considerable efforts in publicity and education, in order to raise the awareness of the members of the public on protecting endangered species. The AFCD organizes a series of educational and publicity activities every year, which include

dissemination of relevant information through the media and Internet, distribution of leaflets and posters, organization of exhibitions and seminars; and operation of the Endangered Species Resources Centre for educational purpose, and so on. In 2010, the AFCD has organized 32 exhibitions, 37 relevant seminars, and received over 7 000 visitors at the Endangered Species Resources Centre. Apart from public education, the AFCD also has specific publicity programmes that target at traders. The AFCD has produced and handed out a series of leaflets that focuses on trade of endangered species (including trade of marine species). Moreover, the AFCD sends circular letters to traders, organizes consultation meetings as well as seminars, in order to disseminate information about legislative control of endangered species to the trade.

Operation Building Bright

12. **MR LEE WING-TAT** (in Chinese): *President, since 2009, the Government has, in collaboration with the Hong Kong Housing Society (HKHS) and the Urban Renewal Authority (URA), launched the \$2.5-billion "Operation Building Bright" (the Operation) to help owners of old buildings to carry out repair and maintenance works. In this connection, will the Government inform this Council:*

- (a) *of the respective numbers of applications the authorities have received in the first round of the Operation (application deadline fell on 6 June 2009) and the second round (application deadline fell on 24 December 2010) for Category 1 target buildings (that is, buildings with owners' corporations (OCs) established); among the applications received in these two rounds, the respective numbers of those which meet the eligibility criteria or have not been withdrawn by the applicants, and the respective numbers of those which have been granted "approval-in-principle";*
- (b) *of the total number of buildings selected by the authorities as Category 2 target buildings under the Operation (that is, buildings having difficulties in co-ordinating repair works, and with structural safety problems and defective sanitary facilities) as at the end of*

December 2010, and among these buildings, the number of those which need the Buildings Department (BD) to arrange their repair works, and the number of those for which the repair works have been organized/will be organized by the owners/OCs themselves;

- (c) of the total number of buildings involved in the cases under Category 1 and Category 2 target buildings in parts (a) and (b); as at to date, among these buildings, the respective numbers for which the repair works have been completed in the first and second rounds, are being carried out or are under preparation, and those the applications in respect of which are still being processed; among the approved cases, the largest, smallest and average amounts of grants for consultancy fees and for the works to be granted as estimated by the authorities, and the differences between such estimates and the original estimates as assessed by the authorities;*
- (d) among the cases in part (c) where repair works have been approved, of the respective numbers of Authorized Persons (APs) and contractors involved; the respective percentages of these numbers in the total numbers of APs and contractors in the market; among these APs and contractors, the respective numbers of those who have been included in the approved lists of the HKHS or URA;*
- (e) as at the end of December 2010, of the respective numbers of target buildings the applications in respect of which have been approved by the HKHS and URA, and the consultancy fees and costs of works involved, the respective amounts of grants for repair works that have been released for target buildings by the HKHS and URA, and the respective percentages of these amounts in the total fundings for the HKHS and URA under the Operation; and*
- (f) among the repair works that have been or are being carried out under the Operation, whether the authorities have identified any cases of suspected irregularities; if they have, of the number of such cases with a breakdown by type; the total number of such cases in which the authorities have issued notices and demanded rectifications; the number of such cases that have been referred to the Independent Commission Against Corruption for follow up; and*

the number of OCs that have decided to terminate their contracts with the consultants involved in irregularities?

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

- (a) A total of 1 128 applications for Category 1 target buildings have been received in the first round of the Operation. Among which, 988 meet the eligibility criteria or have not been withdrawn, and have been granted "approvals-in-principle".

In the second round of the Operation, 550 applications have been received. The implementation agencies of the Operation, that is, the HKHS and URA are conducting preliminary screening on the applications to see if they meet the basic eligibility criteria.

- (b) As at the end of December 2010, a total of 879 buildings were selected as Category 2 target buildings (that is, buildings having difficulties in co-ordinating repair works, such as those without OCs). Among which, 409 buildings have been confirmed requiring the BD to arrange repair works for them, and the owners or OCs of 163 buildings are organizing repair works or have expressed that they would arrange repair works by themselves. For the remaining buildings, the BD, HKHS and URA are continuing to consult the owners to see if they intend to carry out repair works by themselves. If the owners concerned are unable to carry out repair works by themselves, the BD will arrange the repair works for them.
- (c) Among the 988 cases of Category 1 target buildings which have been granted "approvals-in-principle" in the first round of the Operation, 55 have basically completed their repair works and another 204 have commenced repair works. For the remaining buildings, they are at different stages of work involving selection and appointment of APs, carrying out of building surveys, preparation of tender documents for the selection and appointment of contractors, and so on. Among these cases, it is preliminarily estimated that the highest, lowest and average amounts of grants (covering consultancy

and works costs) for each building/case are around \$8.9 million, \$120,000 and \$1.6 million respectively. The average amount of grant is about 15% higher than the amount that we estimated for each building by sampling in mid-2010. As mentioned in our reply in part (a), the HKHS and URA are conducting preliminary screening to see if the applications submitted in the second round meet the basic eligibility criteria and therefore cannot accurately estimate the amounts of grants for Category 1 target buildings in the second round at this stage.

Among the Category 2 target buildings whose owners are unable to carry out repair works by themselves and need the BD to arrange repair works for them, 128 have basically completed their repair works and another 281 have commenced repair works. It is preliminarily estimated that the highest, lowest and average amounts of grants are about \$1.2 million, \$20,000 and \$220,000 respectively. The average amount of grant is similar to the amount we estimated for each building by sampling in mid-2010.

As for Category 2 target buildings whose owners/OCs are willing to organize repair works by themselves, 19 have basically completed their repair works and another 35 have commenced repair works. It is preliminarily estimated that the highest, lowest and average amounts of grants are about \$4.2 million, \$120,000 and \$700,000 respectively. The average amount of grant is about 40% higher than the amount we estimated for each building by sampling in mid-2010.

- (d) As for the 313 Category 1 and Category 2 target buildings whose owners/OCs are carrying out or have completed repair works by themselves, a total of 73 consultant companies with APs and 88 registered general building contractors (RGBCs) are involved, amounting to about 5% (assuming that each consultant company has only one AP) and 14% of the total numbers of APs on the Authorized Persons' Register and RGBCs on the General Building Contractors' Register of the BD respectively. These figures also amount to 16% and 20% of the numbers of APs and RGBCs respectively who are interested in providing services in building

repair and maintenance works. Sixty three consultant companies and 85 contractors involved in the Operation have also been included in the relevant registers of the HKHS.

- (e) As at the end of December 2010, the HKHS and URA scrutinized applications for grants from 643 and 450 target buildings and the grant amounts involved are about \$1 billion and \$630 million respectively. The HKHS and URA have partially or fully released the grants to 26 and 40 buildings, involving about \$10 million and \$35 million respectively, amounting to about 3% of the total amount of grants involved in the cases already approved by the HKHS and the URA.
- (f) As at the end of December 2010, the HKHS and URA issued warning letters or reminders to a total of 35 cases of suspected non-compliance with the requirements of the Operation, requesting the persons concerned to rectify the irregularities. A breakdown of the irregularities involved (some cases may involve more than one irregularity) is as follows:

<i>Type</i>	<i>Number</i>
Cases suspected of failing to comply with the requirements set out in the Operation Building Bright Maintenance Guidelines or breaching the conditions of relevant professional services.	23
Cases suspected of contravening the Building Management Ordinance (Cap. 344) or the requirements set out in the code for procurement of supplies, goods and services.	3
Cases suspected of unreasonable estimation of the costs of works and tender prices.	11

Among the cases mentioned above, 14 have been referred to the Independent Commission Against Corruption for information or follow-up actions. In addition, 18 OCs have decided to terminate their contracts with the consultant companies which have committed irregularities and reappointed new ones to proceed with their repair works.

Return of Library Materials and Fines for Late Return

13. **MR CHEUNG HOK-MING** (in Chinese): *President, it has been reported that public libraries had made little effort in recovering overdue fines for late return of books and their accounts were messy. A member of the public also claimed that although she had already returned the book she borrowed, this was not recorded in the computer system of the public library concerned and, as a result, she was asked by the library to pay a fine for late return of the book. In this connection, will the Government inform this Council:*

- (a) *of the amount of fines recorded for late return of books in each of the past three years, and among such fines, the amount yet to be recovered to date;*
- (b) *what mechanism the Leisure and Cultural Services Department (LCSD) has put in place for recovering overdue fines for late return of books;*
- (c) *of the details of the arrangement for conducting regular inventory checks of library materials, and of the measures in place to ensure the accuracy of readers' loan records; and*
- (d) *given that public libraries in general have book drops installed near the entrances to facilitate readers to return books when the libraries are closed or after the library opening hours, and that some books were found to be missing earlier, apart from installing closed-circuit televisions near the book drops, what other measures the LCSD has put in place to enhance safety in order to prevent theft of books?*

SECRETARY FOR HOME AFFAIRS (in Chinese): President,

- (a) The number of overdue library materials and the amount of overdue fines involved (including the collected amount and the outstanding amount) as recorded by public libraries in the past three years are tabulated below:

<i>Year</i>	<i>Number of overdue library materials</i>	<i>Amount of overdue fines collected</i>	<i>Amount of outstanding overdue fines as at December 2010</i>
2008	4 016 200	\$18,018,800	\$1,406,800
2009	4 182 500	\$19,272,700	\$1,216,400
2010	4 155 300	\$19,893,500	\$1,563,200

- (b) The Libraries Regulation requires that all library materials borrowed from a library must be returned to the library within 14 days after the day upon which it was borrowed, and an overdue fine will be imposed on all overdue library materials. The Hong Kong Public Libraries reserve the right to take legal action to recover any outstanding fines or costs of unreturned items. The relevant requirements are displayed within the precincts of all libraries and shown on all library materials available for loan for the attention of borrowers. With regard to enforcement, in the event that a library item is not returned on the due date, the library will make use of the computer system to issue an "overdue notice" 15 days after the due date, demanding the borrower to return the overdue library material immediately and pay the overdue fine. If, on the 45th day after the due date, the borrower still fails to return the loan item and pay the overdue fine, a "final overdue notice" will be issued indicating the amount of overdue fine calculated as at the date of the notice and the replacement cost of the loan item in case of loss. The borrower is also reminded that if he fails to pay the overdue fine, or report loss of the loan item and pay the replacement cost as well as the overdue fine within two weeks from the date of the notice, his library card will be temporarily suspended. If the borrower still fails to return the loan item and pay the overdue fine, a "payment notice" will be issued in accordance with the relevant procedures to urge the borrower to pay the outstanding amounts payable. Legal action will be considered on a case-by-case basis to recover the outstanding amounts payable by the borrower.
- (c) Inventory checks of library materials are conducted annually in all the LCSD libraries in the way as recommended by the Audit Commission. Generally, the computer system will generate an

inventory checklist for individual libraries by drawing a certain number of library materials from their respective catalogues of library collections. All libraries are required to complete the inventory checks within one month.

Services relating to patron registration as well as circulation and searching of library items in the LCSD libraries have been fully automated. The computer system, which is also widely adopted by major libraries overseas, serves to provide strong support in handling readers' information, lending services, library catalogue and online public access catalogue services in the past decade. The department also carries out system maintenance on a regular basis to ensure the effective provision of library services and the accuracy of the information (including readers' loan records) kept in the system. To cope with the provision of new services and the use of Radio Frequency Identification (RFID) technology, the LCSD is carrying out an upgrading exercise of the computer system and the whole process is expected to complete in 2013.

- (d) Book drops are provided in 64 LCSD libraries to facilitate the return of non-overdue books outside library opening hours. The design of the book drops has taken into account security factors. The slots only allow patrons to deposit books but not to take away any item. Library staff will make a thorough check to ensure that no book is left behind when they collect the books from the book drops. They will scan the barcodes of the books immediately to update the computer records and repeat the scanning procedure to ensure that every item has been recorded correctly. Apart from installing closed-circuit televisions near the book drops with due regard to the physical environment of individual libraries, the LCSD engages contractors for regular maintenance and inspection to ensure the proper service of book drops. In addition, library staff are deployed to empty the book drops during long holidays when libraries are closed to ensure that the book drop service operates effectively.

To remind patrons the proper way to use the service and deposit books for return, users' guide and points to note are posted on each

book drop for patrons to follow and to deposit books into the book drops according to the instructions. To avoid damage or loss of books, patrons are also reminded not to force books into or leave books outside book drops when the book drops are full.

Safety of Students and Persons with Intellectual Disability on School Buses and Coaches

14. **MR PAUL CHAN** (in Chinese): *President, from time to time in recent years, there have been cases in which students or persons with intellectual disability (ID) were left inside school buses or coaches. In this connection, will the Government inform this Council:*

- (a) *of the number of reported cases that the authorities had received in the past five years on suspected violation of the Guidelines for Ensuring Safety of Students on Student Service Vehicles (the Guidelines) issued by the Transport Department (TD) and, among these cases, the number of substantiated cases; how these reported cases have been followed up and the results;*
- (b) *given that the Guidelines are at present of an advisory nature and do not require schools to report cases of suspected violation of the Guidelines, whether the authorities will consider further refining the Guidelines, including requiring schools to report cases of suspected violation of the Guidelines and even rendering the Guidelines to have legal effect; if they will, of the details; if not, the reasons for that;*
- (c) *of the number of cases the authorities had received in the past five years that involved persons with ID being left inside coaches; whether the authorities have any mechanism in place to follow up such cases; if they have, of the details of the follow-up results; if not, the reasons for that, and how the authorities prevent the recurrence of similar incidents; and*

- (d) *whether the authorities will consider organizing training courses through the TD or training institutes, and requiring drivers and escorts of school buses and coaches to attend such courses, so as to raise their safety awareness; if so, of the details; if not, the reasons for that?*

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

- (a) and (b)

In operating student transport services (STS), operators and drivers must comply with the relevant provisions/requirements under the Public Bus Services Ordinance (Cap. 230), the Road Traffic Ordinance (Cap. 374) and the Passenger Service Licence (PSL) conditions. The authorities will institute prosecution or proceedings against any persons found violating statutory requirements or the PSL conditions.

The TD has compiled the Guidelines to serve as a concise code of practice and user guide for service providers (including operators, drivers and escorts) and users (including schools, parents/guardians and students) of STS to facilitate effective operation of such services by the service providers. The TD has been monitoring the operation and performance of the STS providers. The TD will immediately write to the STS provider concerned to urge for compliance of the Guidelines once violation of the Guidelines is noticed. For instance, in respect of an incident in which a child was left inside a school bus in October last year, the TD wrote to the concerned STS provider to request for its compliance with the Guidelines.

The TD reviews the Guidelines at the end of every academic year, taking into consideration actual operational experiences and road traffic situation. The Education Bureau is consulted to ensure that the Guidelines can address the issues and concerns raised by schools

and parents. Before the start of each academic year, the TD distributes the latest Guidelines to all the PSL holders who provide STS and reminds them to comply with the Guidelines at all times. From time to time, the TD, through such channels as regular meetings with the student service vehicles (SSV) trade and periodical issue of a bulletin for the non-franchised bus trade, calls on trade members to comply with the Guidelines in providing STS. As observed by the TD, STS users and providers at large accept and follow the existing regulatory arrangements on STS. The TD does not have statistics on cases of suspected violation of the Guidelines. The TD will keep a close watch on the operation of STS and review the related arrangements when necessary.

(c) and (d)

On receiving a report of case of persons being left or trapped inside vehicles, the police will send police officers to the scene as soon as possible to understand the situation and, if necessary, immediately call for fire services and ambulance personnel for on-the-spot assistance. The police will conduct follow-up investigation depending on the individual circumstances of the cases. Should any offences be committed, prosecution will be initiated. The police do not have statistics on cases involving persons with ID being left inside coaches.

All along, the Government has been enhancing safety awareness of drivers and instilling in them proper driving attitudes through professional training, education and publicity. The relevant measures are as follows:

On professional training, the TD introduces driver improvement courses to instill a stronger sense of road safety and a better understanding of good driving behaviour. Separately, the Government has also introduced legislative amendments to the Road Traffic Ordinance (Cap. 374) and the Road Traffic (Driving Offence-Points) Ordinance (Cap. 375) to require traffic offenders who have accumulated 10 or more driving offence points within a period of two years, or persons convicted of serious traffic offences

to attend driving improvement courses on a mandatory basis. In addition, the TD encourages drivers and escorts to attend courses on the SSV, road safety and driving improvement under the Skill Upgrading Scheme jointly organized by the Labour and Welfare Bureau and various training institutes. The courses mainly aim at improving driving attitudes and assisting operators to enhance the quality of STS. A 70% fee subsidy is provided to attendants to these courses by the Government.

On publicity and education, the TD will arrange the SSV drivers to attend safety seminars, talks, workshops and exhibitions to update their knowledge on the latest road safety requirements, new legislation relating to traffic offences and road safety, and occupational health information. Moreover, every year the police launch a territory-wide campaign to promote the SSV safety. Regional Road Safety Teams distribute promotional leaflets in various districts to remind the SSV drivers, teachers and parents of student transport safety. Representatives from the police also give talks in schools to educate students on safety precautions when travelling on the SSVs.

The TD will continue to introduce appropriate measures as circumstances so warrant to promote stronger safety awareness among professional drivers.

Section 39E of Inland Revenue Ordinance

15. **DR LAM TAI-FAI** (in Chinese): *President, regarding section 39E of the Inland Revenue Ordinance (IRO) (Cap. 112) (section 39E), will the Government inform this Council:*

- (a) *given that the Secretary for Financial Services and the Treasury indicated in his reply to my question on 24 November 2010 that "according to our understanding, in the course of upgrading and restructuring the processing trade in the Mainland, considerable Hong Kong enterprises have opted to transfer the title of their machinery and plant to the newly established Mainland enterprises*

as capital injection", and the Secretary for Financial Services and the Treasury also indicated on 8 December of the same year that the authorities learnt about this situation from the relevant authorities of the Guangdong Province, yet the relevant authorities of the Guangdong Province did not have data that indicated the number of "considerable Hong Kong enterprises", which Mainland authorities are actually referred to as "relevant authorities of the Guangdong Province", when the Secretary for Financial Services and the Treasury asked them for such information, together with copies of the relevant correspondences and information documents; in the absence of support by actual data, how the Government proves whether the views of the "relevant authorities of the Guangdong Province" are correct;

- (b) given that the Joint Liaison Committee on Taxation (JLCT) recommended in its review report to amend the definition related to "lease" in section 2 of the IRO, why the Government refuses to accept such recommendation;*
- (c) whether it has assessed if it is too loose an interpretation for the Inland Revenue Department (IRD) to indicate that the definition related to "lease" in section 2 of the IRO covers the situation of Hong Kong enterprises making available their machinery and plant for use by Mainland enterprises free of charge under "import processing"; if it has, of the details; if not, the reasons for that, and whether it will make such an assessment;*
- (d) given that the review report of JLCT pointed out that when section 39E was amended in 1992, the situation in which Hong Kong enterprises made available their machinery and plant for use by Mainland enterprises free of charge under "import processing" was not prevalent, and therefore the amendments to section 39E at that time were not aimed at handling this situation, whether the Government has assessed if this view is substantiated; if it has assessed, of the details; if not, the reasons for that, and whether it will make such an assessment;*

- (e) *given that the Secretary for Financial Services and the Treasury indicated on 24 November 2010 that JLCT had not proposed effective measures to plug possible tax avoidance loopholes, whether the Secretary for Financial Services and the Treasury is responsible for studying how possible tax avoidance loopholes can effectively be plugged; if so, why the Secretary for Financial Services and the Treasury has not proposed any measure; if not, of the work for which the Secretary for Financial Services and the Treasury is responsible in respect of section 39E;*
- (f) *given that the Secretary for Financial Services and the Treasury also indicated on 24 November 2010 that "we are worried that if we accede to the request of some enterprises and provide depreciation allowances in Hong Kong for such machinery and plant, we may be perceived as encouraging transfer pricing so as to avoid any perception that we are acting in violation of the 'arm's length principle', and that we are in a way encouraging transfer pricing arrangements disapproved by the tax authorities around the world", whether there were other commercial activities that had aroused similar concerns about transfer pricing in the past three years; if so, of such commercial activities, and how the Government handled them;*
- (g) *whether it has assessed if there are similarities between the cost-effectiveness resulting from the amendments to section 39E and losses in tax revenue claimed by the Government, and the cost-effectiveness and losses in tax revenue resulting respectively from the abolition of estate duty and profits tax from offshore funds in 2006 and the abolition of duty on wine in 2008 by the Government; if it has assessed, of the details; if not, the reasons for that, and whether it will make such an assessment;*
- (h) *given that the Government announced in the 2010-2011 Budget a series of measures to broaden tax relief and amend the tax legislation in order to develop the financial business, including the measures to "extend the stamp duty concession in respect of the trading of exchange traded funds", "amend the provisions under the IRO that require such debt instruments to be issued to the public in*

Hong Kong "to better meet market requirements", "further clarify the definition of 'central management and control' to address the industry's concern about the residency requirement for directors of the management committee of offshore funds in their applications for profits tax exemption" by the Commissioner of Inland Revenue (the Commissioner), and "update the lists of recognized stock exchanges and futures exchanges under the IRO so as to extend the application of tax exemption for offshore funds engaged in futures trading", whether the Government has assessed if there are similarities between the cost-effectiveness to commerce and industry generated by the amendments to section 39E and the cost-effectiveness generated respectively by the aforesaid relief measures; if it has, of the details; if not, the reasons for that, and whether it will make such an assessment;

- (i) *given that the Secretary for Financial Services and the Treasury indicated in his reply to my question on 27 October 2010 that at the hearing of the case of the Board of Review (BoR) with reference number D61/08, the Commissioner was represented by a barrister appointed by the Department of Justice (DoJ), demonstrating that the implementation of section 39E by the IRD is in accordance with the legislation, whether the Government has assessed if the fact that the Commissioner was represented by a barrister appointed by the DoJ at the hearing equals to the fact that the current interpretation of section 39E is recognized by the independent legal opinion of the DoJ; if the outcome of the assessment is in the affirmative, of the reasons for that; if the outcome of the assessment is in the negative, why the Secretary for Financial Services and the Treasury made such a reply;*
- (j) *given that the Secretary for Financial Services and the Treasury indicated on 27 October 2010 that BoR had pointed out in its written decision on the case with reference number D61/08 that section 39E had not stipulated that there should be "an intention to avoid tax" for the application of the provision, however, according to section 19 of the Interpretation and General Clauses Ordinance (Cap. 1), an Ordinance "shall receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of*

the Ordinance according to its true intent, meaning and spirit", whether the Government has assessed if the aforesaid interpretation of section 39E by BoR is inconsistent with the principle adopted by the Court in the construction of legislation; if it has assessed, of the details; if not, the reasons for that, and whether it will make such an assessment; and

- (k) *given that the Chief Executive indicated at the Question and Answer Session of this Council on 13 July 2010 that he expected me to follow up the issue of section 39E with the Secretary for Financial Services and the Treasury and the Financial Secretary, whether the Secretary for Financial Services and the Treasury has discussed this issue with the Financial Secretary and consulted his opinion; if the Secretary for Financial Services and the Treasury has done so, of the details; if not, the reasons for that?*

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

- (a) to (e), (g), (h) and (k)

We have completed our review on whether the restriction in section 39E of the IRO should be relaxed. We have also reported timely to the Financial Secretary on the outcome of our review. In our reply to the oral question raised by Dr LAM Tai-fai on 24 November 2010, we have already pointed out clearly that our review has come to a conclusion that there are no justifiable grounds to relax the existing restriction in section 39E and explained in detail the reasons for not relaxing the relevant restriction. Hence, we do not see the need to assess the economic benefits that the relaxation of section 39E would bring about.

During the course of deliberations, we have already taken into consideration the views of the industrial and commercial sector, the accounting sector and tax experts. We have also communicated with the relevant Mainland authorities with a view to understanding

the operation and related taxation matters of the processing trade in the Mainland.

- (f) In our reply to the oral question raised by Dr LAM Tai-fai on 24 November 2010, we have clearly pointed out the concern of the international community about the transfer pricing issue involved in cross-border trading activities between associated enterprises, and the stance taken by the tax authorities around the world on this issue. Given that the Hong Kong enterprises and the Mainland enterprises are associated parties in many cases, we have to examine the proposal relating to depreciation allowance comprehensively from the perspective of transfer pricing. To address the transfer pricing issue, in the course of negotiating comprehensive avoidance of double taxation agreements (CDTAs), Hong Kong will discuss with negotiation partners the inclusion of provisions stipulating the taxing rights of the two contracting parties for transactions between associated enterprises of the two places according to the "arm's length principle" advocated by the Organization for Economic Co-operation and Development. As a responsible tax jurisdiction, Hong Kong has to comply with all the provisions in the CDTAs. As such, we should not ignore the possibility of transfer pricing arrangements in the transactions between Hong Kong enterprises and their associated enterprises in the Mainland.

- (i) and (j)

As the legal representative of the Commissioner, the DoJ has to consider thoroughly the legal points of view involved in a case, and to give appropriate instructions to the barrister who will represent the Commissioner at the hearing. Similarly, in the BoR case with reference number D61/08, the barrister appointed by the DoJ to represent the Commissioner at the hearing has already examined the legal points of view involved. The decision of the BoR, which could be downloaded from the BoR's website, has already covered the legal grounds submitted by the two parties to the case for the BoR's consideration as well as the reasons and relevant legal principles adopted by the BoR in concluding that section 39E does not stipulate that there should be "an intention to avoid tax" for the

application of the provision. The BoR is an independent statutory body to determine tax appeals. We respect the BoR's decision on the abovementioned case.

Regulation of Pesticide Residues in Food

16. **MR FRED LI** (in Chinese): *President, an environmental concern group recently took 18 samples of the vegetables and fruits on sale in local supermarkets for tests, and the result was that 38 different kinds of pesticide residues were detected in these samples, some of which even contained highly toxic pesticide residues. The Government stated in its paper to this Council in November 2010 that it would enact legislation, and was "further refining the proposed regulatory framework for pesticide residues in food, and setting statutory maximum residue limits for different kinds of food involving about 400 pesticides". The authorities also proposed to develop a list of "exempted substances". In addition, under the Directive (2009/128/EC) of the European Union (EU) on establishing a framework for Community action to achieve the sustainable use of pesticides, individual Member States of the EU are required to set quantitative objectives, specific measures and timetables accordingly to reduce risks and impacts of pesticide use on human health and the environment. In this connection, will the Government inform this Council:*

- (a) *of the anticipated time for introducing the aforesaid bill into the Legislative Council for scrutiny;*
- (b) *whether the authorities had studied in the past three years if the effects of mixed pesticide residues in vegetables and fruits which contain more than one type of pesticide residue would exceed the aggregation of the individual effects of such pesticide residues; if they had conducted such a study, of the outcome; how the Government will regulate the level of pesticide residues in vegetables and fruits which contain more than one type of pesticide residue;*
- (c) *of the names of the 400 pesticides which the Government intends to regulate;*

- (d) *of the number of the types of the exempted substances to be proposed, together with a list of the names of such substances; and*
- (e) *whether it will follow the approach of EU by requiring local registered vegetable farms and those on the Mainland which supply vegetables to Hong Kong to reduce using pesticides; if it will, of the details; if not, the reasons for that?*

SECRETARY FOR FOOD AND HEALTH (in Chinese): President, the Government has always been concerned about the possible effects of pesticide residues in food to public health. The Centre for Food Safety (CFS) regularly takes food samples, including fruits, vegetables and cereals at import, wholesale and retail levels to assess whether the pesticide residues are hazardous to human health. To better protect public health, facilitate effective regulatory control and promote harmonization between local and international standards, the Government proposes to introduce new legislation to regulate pesticide residues in food in Hong Kong.

The responses to each part of the question are set out below:

- (a) We will consult stakeholders and the public regarding our proposed regulatory framework and plan to introduce the relevant legislation into the Legislative Council towards the end of 2011.
- (b) On the potential combined toxicity effects of more than one pesticide residues present in fruits and vegetables, international organizations including the World Health Organization (WHO) and the Food and Agriculture Organization (FAO) are still exploring suitable scientific assessment methods. At present, there is no consensus internationally. However, the Joint FAO/WHO Meeting on Pesticide Residues considered that the safety factors used for establishing acceptable daily intakes for pesticides have already provided a sufficient margin of safety to cope with the potential combined toxicity effects and protect public health. These factors will be considered in establishing the residue limits for pesticides in the proposed new legislation.

We will closely monitor the research development in this area.

- (c) The list of pesticides for which residue limits will be established in the proposed new legislation was set out in the consultation document entitled "Proposed Regulatory Framework for Pesticide Residues in Food in Hong Kong" published in 2007 (see Annex).

Prior to introducing the relevant legislation into the Legislative Council, the Government will update the proposed list of pesticides and residue limits, making reference to the latest standards adopted by the Codex Alimentarius Commission (Codex), the Mainland and other major food supplying countries. The number of pesticides to be regulated may then be adjusted.

- (d) In order to encourage the use of natural pesticides by the trade, we propose to provide for a list of "exempted substances" in the regulatory framework. An "exempted substance" must fall under the definition of pesticide laid down by the Codex and meet one of the following criteria:
- (i) the use of the pesticides does not result in residues occurring in food;
 - (ii) the residues are identical to or indistinguishable from natural food components; or
 - (iii) the residues are of no toxicological significance or will not pose any public health risk.

Although a list of "exempted substances" is not available from the Codex, the CFS has taken the initiative in conducting researches and made reference to the lists adopted by our major food supplying countries. On this basis, the CFS is preparing the proposed list of "exempted substances" in accordance with the above criteria.

- (e) At present, in respect of local vegetable farms, since the introduction of the Local Vegetable Farms Registration Scheme in 2006, the Agriculture, Fisheries and Conservation Department (AFCD) has been educating local farmers on the proper and safe use of pesticides

and providing them with guidance and technical assistance with a view to reducing the use of pesticides under this scheme. The AFCD also actively encourages farmers to participate in the Accredited Farm Scheme and practise organic farming with a view to helping them produce, in a sustainable manner, vegetables and fruits which are safe and healthy for consumption.

Regarding the registered vegetable farms in the Mainland, the existing requirement is that farms and production and processing establishments which supply vegetables to Hong Kong must be registered with the inspection and quarantine authorities in the Mainland. In accordance with the Administrative Measures on Inspection, Quarantine and Supervision for Vegetables Supplied to Hong Kong and Macao (《供港澳蔬菜檢驗檢疫監督管理辦法》), clear requirements on the registration conditions for vegetable farms have been laid down by the Mainland authorities and food safety management measures, including management and control of the use of pesticides and provision of testing capability of pesticide residues, must be implemented by dedicated departments or personnel. Processing establishments must be equipped with instruments for testing pesticide residues, and must conduct testing on incoming raw materials. The Mainland has also strengthened supervision and control at source in respect of vegetable farms and processing establishments which supply vegetables to Hong Kong by improving the product tracing system, introducing electronic monitoring and increasing penalties for non-compliance.

The residue limits for pesticides in food in the proposed new legislation mentioned in part (a) above are based on the application of Good Agricultural Practice with a view to reducing the use of pesticides. In applying pesticides approved by the relevant government authorities for effective pest control at any stage in the production, storage, transportation, distribution and processing of food and animal feed, efforts should be made to ensure that the level of pesticide residues is minimized. If the proposed legislation is passed and comes into effect, all local farms and those registered in the Mainland which supply vegetables to Hong Kong are required to comply with the prescribed standards of pesticide residues.

Proposed List of Pesticides to be Included in the New Legislation

1. 1-Naphthaleneacetic acid^d
2. 2-(Thiocyano-methylthio)benzothiazole^d
3. 2,4-D^{a,b,c,d}
4. 2-methyl-4-chlorophenoxyacetic acid (MCPA)^d
5. 2-Phenylphenol^a
6. 4-(2,4-Dichlorophenoxy) butyric acid^d
7. 4-(2-Methyl-4-chlorophenoxy) butyric acid^d
8. 5-Ethoxy-3-(trichloromethyl)-1,2,4-thiazole^d
9. Abamectin^{a,c,d}
10. Acephate^{a,b,c,d}
11. Acequinocyl^d
12. Acetamiprid^d
13. Acetochlor^d
14. Acibenzolar-S-methyl^d
15. Acifluorfen^{b,d}
16. Alachlor^{b,d}
17. Aldicarb^{a,b,d}
18. Aldrin and dieldrin^{a,b,c,d}
19. Aluminium phosphide^{b,d}
20. Ametryn^{c,d}
21. Amicarbazone^d
22. Aminoethoxyvinylglycine^d
23. Aminopyralid^d
24. Amitraz^{a,b,d}
25. Amitrole^{a,d}
26. Ammoniates for [ethylenebis-(dithiocarbamate)] zinc and ethylenebis [dithiocarbamic acid] bimolecular and trimolecular cyclic anhydrosulfides and disulfides^d
27. Anilazine^b
28. Asulam^d
29. Atrazine^{b,c,d}
30. Avermectin B1 and its delta-8,9-isomer^d
31. Azinphos-methyl^{a,d}
32. Azocyclotin^{a,b}
33. Azoxystrobin^d
34. Basic copper carbonate^d
35. Benalaxyl^a
36. Benfluralin^d
37. Benfuracarb^b
38. Bensulfuron methyl^{b,d}
39. Bentazone (Bentazon)^{a,b,d}
40. Benthiavalicarb-isopropyl^d
41. Bifenazate^{a,d}
42. Bifenthrin^{a,b,d}
43. Bioresmethrin^a
44. Bispyribac-sodium^d
45. Bisultap^b
46. Bitertanol^{a,d}
47. Boscalid^{a,d}
48. Bromacil^d
49. Bromide ion^{a,d}
50. Bromopropylate^{a,b}
51. Bromoxynil^d
52. Buprofezin^{a,b,d}
53. Butachlor^b
54. Butafenacil^d
55. Butylate^d
56. Cacodylic acid^d
57. Cadre^d
58. Cadusafos^{a,b,d}
59. Captan^{a,b,c,d}
60. Carbaryl^{a,b,c,d}
61. Carbendazim/Benomyl^{a,b,c,d}
62. Carbofuran^{a,b,c,d}
63. Carbon disulfide^d
64. Carbosulfan^{a,b,c}
65. Carboxin^d
66. Carfentrazone-ethyl^d
67. Cartap^b

68. Chlorbenzuron^b
69. Chlordane^{a,c,d}
70. Chlorfenapyr^d
71. Chlorimuron ethyl^d
72. Chlormequat^{a,b}
73. Chloroneb^d
74. Chloropham^{a,d}
75. Chloropicrin^b
76. Chlorothalonil^{a,b,c,d}
77. Chlorpyrifos^{a,b,c,d}
78. Chlorpyrifos-methyl^{a,b,d}
79. Chlorsulfuron^d
80. Chlortoluron^b
81. Clethodim^{a,d}
82. Clodinafop-propargyl^d
83. Clofencet^d
84. Clofentezine^{a,b,d}
85. Clomazone^d
86. Clopyralid^d
87. Cloquintocet-mexyl^d
88. Cloransulam-methyl^d
89. Clothianidin^d
90. Coumaphos^d
91. Cyanide^b
92. Cyazofamid^d
93. Cyclanilide^d
94. Cycloate^d
95. Cycloxydim^a
96. Cyfluthrin^{a,b,d}
97. Cyhalothrin^{a,b}
98. Cyhexatin^{a,d}
99. Cymoxanil^d
100. Cypermethrin^{a,b,c,d}
101. Cyprodinil^{a,d}
102. Cyromazine^{a,b,d}
103. DDT^{a,b,c,d}
104. Deltamethrin^{a,b,c,d}
105. Diazinon^{a,b,c,d}
106. Dicamba^d
107. Dichlobenil^d
108. Dichlofluanid^a
109. Dichlorvos^{a,b,c,d}
110. Diclofop-methyl^d
111. Dicloran^{a,d}
112. Diclosulam^d
113. Dicofof^{a,b,c,d}
114. Dicrotophos^d
115. Difenconazole^d
116. Difenzoquat^{b,d}
117. Diflubenzuron^{a,b,d}
118. Diflufenzopyr^d
119. Dimethenamid (including
Dimethanamid-P)^d
120. Dimethipin^{a,d}
121. Dimethoate and omethoate^{a,b,c,d}
122. Dimethomorph^d
123. Dimethyl tetrachloroterephthalate^d
124. Diniconazole^b
125. Dinocap^{a,d}
126. Dinotefuran^d
127. Diphenylamine^{a,b,d}
128. Dipropyl isocinchomeronate^d
129. Diquat^{a,b,d}
130. Disulfoton^{a,d}
131. Dithianon^{a,d}
132. Dithiocarbamates^{a,c}
133. Diuron^d
134. Dodine^{a,d}
135. Edifenphos^b
136. Emamectin^d
137. Endosulfan^{a,b,d}
138. Endothall^d
139. Endrin^{a,c}
140. Epoxiconazole^d
141. EPTC (S-Ethyl dipropylthiocarbamate)^d
142. Esfenvalerate^{a,b,d}
143. Ethaboxam^d
144. Ethalfluralin^d
145. Ethametsulfuron-methyl^d
146. Ethepon^{a,b,c,d}

147. Ethion^{a,b,c,d}
148. Ethofumesate^d
149. Ethoprophos (Ethoprop)^{a,b,d}
150. Ethoxyquin^{a,d}
151. Ethylene oxide^d
152. Etofenprox^a
153. Etoxazole^d
154. Famoxadone^{a,d}
155. Fenamidone^d
156. Fenamiphos^{a,b,d}
157. Fenarimol^{a,b,d}
158. Fenbuconazole^{a,b,d}
159. Fenbutatin oxide^{a,b,d}
160. Fenhexamid^{a,d}
161. Fenitrothion^{a,b,c,d}
162. Fenobucarb (BPMC)^b
163. Fenoxaprop-ethyl^d
164. Fenpropathrin^{a,b,d}
165. Fenpropimorph^{a,d}
166. Fenpyroximate^{a,b,d}
167. Fenthion^{a,b,d}
168. Fenvalerate^{a,b,c,d}
169. Ferbam^d
170. Fipronil^{a,d}
171. Flonicamid^d
172. Fluazifop-butyl^{b,d}
173. Fluazifop-P-butyl^b
174. Fluazinam^d
175. Flucythrinate^b
176. Fludioxonil^d
177. Fluefenacet^d
178. Flufenoxuron^d
179. Flufenpyr-ethyl^d
180. Flumethrin^a
181. Flumetsulam^d
182. Flumiclorac pentyl^d
183. Flumioxazin^d
184. Fluometuron^d
185. Fluopicolide^d
186. Fluorine compounds^d
187. Fluoxastrobin^d
188. Fluridone^d
189. Fluroxypyr^{b,d}
190. Flusilazole^{a,b}
191. Fluthiacet-methyl^d
192. Flutolanil^{a,d}
193. Fluvalinate^{b,d}
194. Folpet^{a,c,d}
195. Fomesafen^{b,d}
196. Forchlorfenuron^d
197. Formetanate hydrochloride^d
198. Fosetyl-Al^d
199. Fosthiazate^d
200. Fthalide^b
201. Furilazole^d
202. Glufosinate-ammonium^{a,d}
203. Glyphosate^{a,b,d}
204. Halosulfuron-methyl^d
205. Haloxyfop^a
206. Heptachlor^{a,b,c,d}
207. Hexachlorobenzene^c
208. Hexachlorocyclohexane^{b,c,d}
209. Hexazinone^d
210. Hexythiazox^{a,b,d}
211. Hydramethylnon^d
212. Hydrogen cyanide^d
213. Hydrogen Phosphide^a
214. Hydroprene^d
215. Imazalil^{a,b,d}
216. Imazamethabenz^d
217. Imazapyr^d
218. Imazaquin^d
219. Imazethapyr, ammonium salt^d
220. Imidacloprid^{a,d}
221. Indoxacarb^{a,d}
222. Iodosulfuron-methyl-sodium^d
223. Iprodione^{a,b,d}
224. Iprovalicarb^d
225. Isocarbophos^b
226. Isofenphos-methyl^b

227. Isoprocarb^b
228. Isoprothiolane^b
229. Isoxadifen-ethyl^d
230. Isoxaflutole^d
231. Kasugamycin^d
232. Kresoxim-methyl^{a,d}
233. Lactofen^d
234. Lambda-cyhalothrin^{c,d}
235. Lindane^{a,b,c,d}
236. Linuron^d
237. Malathion^{a,b,c,d}
238. Maleic hydrazide^{a,d}
239. Mancozeb^{b,d}
240. Maneb^d
241. Mefenoxam^d
242. Mefenpyr-diethyl^d
243. Mepanipyrim^d
244. Mepiquat chloride^d
245. Mesosulfuron-methyl^d
246. Mesotrione^d
247. Metalaxyl^{a,b,c,d}
248. Metaldehyde^d
249. Metconazole^d
250. Methamidophos^{a,b,d}
251. Methanearsonic acid^d
252. Methidathion^{a,b,c,d}
253. Methiocarb^a
254. Methomyl^{a,b,c,d}
255. Methoprene^a
256. Methoxyfenozide^a
257. Methyl bromide^{b,d}
258. Methoxyfenozide^d
259. Metolachlor^{b,d}
260. Metrafenone^d
261. Metribuzin^d
262. Metsulfuron methyl^d
263. Mevinphos^{a,d}
264. Mkg-264^d
265. Mineral oil^d
266. Molinate^{b,d}
267. Monocrotophos^{b,d}
268. Myclobutanil^{a,d}
269. N,N-diethyl-2-(4-methylbenzoyloxy)
ethylamine hydrochloride^d
270. Naled^d
271. Napropamide^d
272. Naptalam^d
273. Nicosulfuron^d
274. Nitrapyrin^d
275. Norflurazon^d
276. Novaluron^{a,d}
277. o-Phenylphenol and its sodium salt^d
278. Orthoarsenic acid^d
279. Orthosulfamuron^d
280. Oryzalin^d
281. Oxadiazon^b
282. Oxamyl^{a,d}
283. Oxydemeton-methyl^{a,d}
284. Oxyfluorfen^d
285. Oxytetracycline^d
286. Paclobutrazol^b
287. Paraquat^{a,b,c,d}
288. Parathion^{a,b,d}
289. Parathion-methyl^{a,b,d}
290. p-Chlorophenoxyacetic acid^d
291. Pebulate (S-Propyl
butylethylthiocarbamate)^d
292. Penconazole^a
293. Pendimethalin^{b,d}
294. Penoxsulam^d
295. Pentachloronitrobenzene^d
296. Permethrin^{a,b,d}
297. Phenmedipham^d
298. Phenthoate^{a,b}
299. Phorate^{a,b,d}
300. Phosalone^{a,b,c,d}
301. Phosmet^{a,b,d}
302. Phosphamidon^{b,d}
303. Phosphorothioic acid^d
304. Phoxim^b

305. Picloram^d
306. Pinoxaden^d
307. Piperonyl butoxide^{a,d}
308. Pirimicarb^{a,b}
309. Pirimioxyphos^b
310. Pirimiphos-methyl^{a,b,c,d}
311. Prallethrin^d
312. Pretilachlor^b
313. Primisulfuron-methyl^d
314. Prochloraz^{a,b}
315. Procymidone^{a,b,d}
316. Profenofos^{a,b,c,d}
317. Prohexadione calcium^d
318. Prometryn^d
319. Propachlor^d
320. Propamocarb^{a,d}
321. Propanil^{b,d}
322. Propargite^{a,b,d}
323. Propazine^d
324. Propetamphos^d
325. Propiconazole^{a,b,d}
326. Propoxycarbazone^d
327. Propylene oxide^d
328. Propyzamide^d
329. Prothioconazole^d
330. Prothiofos^c
331. Pymetrozine^d
332. Pyraclostrobin^{a,d}
333. Pyraflufen-ethyl^d
334. Pyrazon^d
335. Pyrethrins^{a,d}
336. Pyridaben^d
337. Pyridate^d
338. Pyrimethanil^d
339. Pyriproxifen^{a,d}
340. Pyriothiobac sodium^d
341. Quinalphos^b
342. Quinclorac^d
343. Quinoxyfen^{a,d}
344. Quintozene^{a,b}
345. Quizalofop ethyl^d
346. Resmethrin^d
347. Rimsulfuron^d
348. S-(O,O-Diisopropyl phosphorodithioate)
of N-(2-mercaptoethyl)
benzenesulfonamide^d
349. Semiamitraz^b
350. Sethoxydim^{b,d}
351. Simazine^d
352. Spinosad^{a,d}
353. Spirodiclofen^d
354. Spiromesifen^d
355. Spiroxamine^d
356. Streptomycin^d
357. Sulfentrazone^d
358. Sulfosate^d
359. Sulfosulfuron^d
360. Sulfur dioxide^d
361. Sulfuryl fluoride^{a,d}
362. Tebuconazole^{a,b,d}
363. Tebufenozide^{a,d}
364. Tebuthiuron^d
365. Tecnazene^a
366. Teflubenzuron^a
367. Tefluthrin^d
368. Tepraloxym^d
369. Terbacil^d
370. Terbufos^{a,b,d}
371. Tetrachlorvinphos^d
372. Tetraconazole^d
373. Thiabendazole^{a,b,d}
374. Thiacloprid^{a,d}
375. Thiamethoxam^d
376. Thiazopyr^d
377. Thidiazuron^d
378. Thifensulfuron methyl^d
379. Thiobencarb^d
380. Thiocyclam^b
381. Thiodicarb^{b,d}
382. Thiophanate-methyl^d

- 383. Thiram^d
- 384. Tolclofos-methyl^a
- 385. Tolyfluanid^{a,d}
- 386. Topramezone^d
- 387. Tralkoxydim^d
- 388. Tralomethrin^d
- 389. Triadimefon^{a,b,d}
- 390. Triadimenol^{a,b,d}
- 391. Triallate^d
- 392. Triasulfuron^d
- 393. Triazophos^{a,b,c}
- 394. Tribenuron methyl^d
- 395. Tribufos^d
- 396. Trichlorfon^{b,d}
- 397. Triclopyr^d
- 398. Tricyclazole^b
- 399. Tridemorph^d
- 400. Trifloxystrobin^d
- 401. Trifloxysulfuron^d
- 402. Triflumizole^d
- 403. Trifluralin^{b,d}
- 404. Triflusulfuron methyl^d
- 405. Triforine^a
- 406. Triphenyltin hydroxide^d
- 407. Triticonazole^d
- 408. Vamidothion^b
- 409. Vinclozolin^{a,b,d}
- 410. Zinc phosphide^d
- 411. Ziram^d
- 412. Zoxamide^d
- 413. α -Naphthaleneacetamide^d

Notes:

- a. MRLs available in Codex Alimentarius
- b. MRLs available in the Mainland
- c. MRLs available in Thailand
- d. MRLs available in the United States of America

Fraudulent Claims of Traffic Accident Victims Assistance

17. **MS MIRIAM LAU** (in Chinese): *President, according to a government press release, in November last year, the police arrested 48 people suspected of*

making fraudulent claims of Traffic Accident Victims Assistance (TAVA). Those involved in the cases claimed that they had sustained twisting injuries of various degrees of severity in traffic accidents. After obtaining the sick leave certificates, they submitted falsified information to the Social Welfare Department (SWD) to obtain TAVA by deception, which involved more than \$2 million in public money. In this connection, will the Government inform this Council:

- (a) of the total amount of TAVA paid out under the Traffic Accident Victims (Assistance Fund) Ordinance (Cap. 229) (the Ordinance) to road traffic accident victims or dependants of deceased victims in the past five years; among these cases, of the number of cases in which the recipients were prosecuted for allegedly making fraudulent claims of TAVA, the amount of money involved in such cases, the number of cases in which the people involved were convicted and their penalties;*
- (b) to ensure that TAVA can help those who are genuinely in need, of the measures that the authorities have in place to combat fraudulent claims of TAVA by law-breakers; targeting specially at dishonest behaviour of submitting falsified information to the SWD after obtaining sick leave certificates, whether the authorities will establish a task force in collaboration with the Hospital Authority (HA), SWD and other relevant government departments to review the current system for providing TAVA, including the means for strengthening the vetting of sick leave certificates and information provided by applicants to the SWD, and so on;*
- (c) given that some members of the public have pointed out that the financial assistance offered under the TAVA Scheme (implemented in accordance with the Ordinance) is non-means tested and does not take into account the element of fault leading to the accident, and this may give law-breakers opportunities to obtain TAVA by deception, whether the authorities will consider reviewing the eligibility requirements for the TAVA Scheme; if they will, of the details; if not, the reasons for that; and*
- (d) whether the authorities will consider imposing heavier penalties on offences of fraud or conspiracy to defraud on TAVA so as to enhance deterrent effect, and stepping up publicity to urge the public not to*

commit such an offence out of momentary greed; if they will, of the details; if not, the reasons for that?

SECRETARY FOR LABOUR AND WELFARE (in Chinese): President, the TAVA Scheme aims to provide speedy financial assistance to injured victims or kin of deceased victims in road traffic accidents. It is non-means tested, and does not take into account the element of fault leading to the accident. Payments are made for personal injuries while loss of or damage to property is not covered. Any applicant who obtains TAVA by deception commits a criminal offence. Apart from being ineligible for assistance, that applicant is also liable on conviction of fraud to imprisonment for a maximum of 14 years under section 16A of the Theft Ordinance, Cap. 210 of the Laws of Hong Kong.

My reply to the four parts of the question raised by Ms Miriam LAU is set out below:

- (a) In the past five years, the amount of various TAVA grants disbursed under the Ordinance is at Annex.

During the five years between 2005-2006 and 2009-2010, the SWD referred 123 cases of suspected fraud to the police for investigation and follow-up action. Of these, 77 cases are still under investigation. During the period, five persons involved in five cases of suspected fraud involving a sum of \$138,016 had been prosecuted. All of them were convicted and sentenced to imprisonment for two to six months.

In end-2010, the police conducted an operation in which a total of 102 persons suspected to have obtained TAVA by deception in the past two years (including suspected cases of fraud referred by the SWD) were arrested or are still wanted. Investigation and follow-up action by the police are underway.

- (b) and (c)

The TAVA Scheme is a social welfare initiative which aims to provide speedy financial assistance to injured victims or kin of deceased victims in road traffic accidents.

To prevent abuse of public money and fraud, an applicant will only be eligible for TAVA if the following conditions are fulfilled:

- (i) the accident has to be reported to the police and determined by the police as a road traffic accident; and
- (ii) the victim is injured or killed in the accident. In case of injury, the injured victim must be certified by a registered doctor that such injury requires hospitalization of no less than three days or with proof for medical leave of no less than three days issued by a registered doctor or a registered Chinese medicine practitioner.

The SWD staff will carefully review and consider each application before disbursing TAVA grants to an eligible applicant.

The SWD has an established mechanism to verify the information and documents submitted by applicants to ensure that TAVA can help those with genuine needs. The SWD also collaborates and maintains close liaison with the police, the HA and the Department of Health (DH) to thoroughly review suspicious traffic accidents, medical proof and medical reports. Depending on circumstances, medical proof and medical reports will also be passed to the HA and DH for re-assessment and suspected cases of fraud will be referred to the police for investigation and follow-up action.

In addition, the TAVA Advisory Committee holds meetings regularly to discuss the operation of the TAVA Scheme and, on a need basis, advise the Director of Social Welfare on matters related to the TAVA Scheme, including the guidelines for application of the TAVA Scheme.

- (d) When processing an application, the SWD will clearly explain to the applicant that obtaining TAVA by deception is a criminal offence. Apart from being ineligible for assistance, the applicant is also liable on conviction to imprisonment for a maximum of 14 years under section 16A of the Theft Ordinance. A warning, with the relevant section of law cited, is printed on the application form and leaflets of

the TAVA Scheme to make it clear that obtaining TAVA by deception is a criminal offence.

To facilitate members of the public to report suspected cases of fraud, the SWD has prepared report forms for distribution at government offices where application forms of the TAVA Scheme are available. The report form has also been uploaded onto SWD's website. People may also provide information to the TAVA Section of SWD by phone (Tel.: 2832 4603/2834 7472). When the SWD receives such a report and finds that any person has provided untrue information in an attempt to obtain TAVA by deception, it will refer the case to the police for investigation and follow-up action. If unlawful acts are involved, the police will take out prosecution.

Annex

Amount of grants disbursed under the Ordinance
between 2005-2006 and 2009-2010

<i>Type of Assistance</i>	<i>Amount (million HK\$)</i>				
	<i>2005-2006</i>	<i>2006-2007</i>	<i>2007-2008</i>	<i>2008-2009</i>	<i>2009-2010</i>
Burial grant	1.2	1.0	1.1	1.1	0.9
Death grant	5.4	3.5	3.6	4.8	3.8
Disability grant	2.4	1.9	1.4	1.6	1.6
Injury grant	106.1	104.8	113.6	110.9	122.2
Interim maintenance grant	56.8	48.8	55.5	61.6	69.6

Plans Deposited in Land Registry

18. **DR DAVID LI:** *President, a large number of plans referred in various Ordinances of the Hong Kong SAR (Ordinances) are deposited in The Land Registry (LR) and open for public inspection. While all Ordinances can now be viewed online using the Bilingual Laws Information System (BLIS) of the Department of Justice, such plans are not available on the BLIS and members of the public need to make an appointment to visit the LR in person in order to inspect them. Moreover, while members of the public may purchase the copies*

of some of these plans from the Government, they cannot do so for other plans or make copies of them. In this connection, will the Government inform this Council:

- (a) *of the short titles of all the Ordinances under which plans are required to be deposited in the LR, whether copies of such plans are available for public sale or by special order, or whether copying of the plans is prohibited, and set out the information in the following table format;*

<i>Chapter and short title of Ordinance under which plan(s) is/are required to be deposited in the LR</i>	<i>Copies of plan(s) available for public sale and location(s) of sales points</i>	<i>Copies of plan(s) available by special order</i>	<i>Copying of plan(s) prohibited</i>

- (b) *why copying of some of the plans in part (a) is prohibited;*
- (c) *whether any plans deposited in the LR under the Ordinances in part (a) had been found lost in the past five years; if so, of the titles of such lost plans; and*
- (d) *whether the Government will take the opportunity of the implementation of a verified, authenticated and searchable electronic database of Hong Kong legislation, for which funding was approved by the Finance Committee of this Council on 14 May 2010, to make the plans in part (a) available online and/or provide information on how to purchase copies of all those plans which are available for sale?*

SECRETARY FOR DEVELOPMENT: President, under regulation 21(1)(g) of the Land Registration Regulations (Cap. 128A), the Land Registrar shall, upon request by any person, make available plans deposited under the provisions of any Ordinance for inspection in LR during specified hours. Such plans are available for inspection free of charge at LR's office on 19th floor, Queensway Government Offices during office hours (8.30 am to 12.40 pm and 1.40 pm to 5.45 pm, Monday to Friday). If members of the public request copies of the

plans deposited by bureaux/departments in LR, the Registry will advise them to contact the bureaux/departments concerned to purchase the relevant plans at the public sales points or arrange for special orders of copies of the plans.

The reply to the four-part question is as follows:

- (a) The relevant information provided by the bureaux and departments concerned is listed in the Annex.
- (b) As revealed from the information listed in the Annex, no plans deposited in LR in accordance with the relevant Ordinances are prohibited from copying.
- (c) No plans deposited in LR had been found lost in the past five years.
- (d) The new legislation database will provide the public with a website facilitating free and convenient access to accurate and up-to-date Hong Kong legislation with legal status. The system design will allow capacity for other add-on information to be provided in the database. LR would remind the relevant bureaux and departments to examine whether they should take the opportunity of the creation of an electronic database of Hong Kong legislation to consider supplying online the existing plans listed respectively in the Annex, including information on sale of the maps, and if so, how to set out such information in the database in future.

Annex

<i>Chapter and short title of Ordinance under which plan(s) is/are required to be deposited in the LR</i>	<i>(a) Copies of plan(s) available for public sale (b) location(s) of sales points</i>	<i>Copies of plan(s) available by special order</i>	<i>Copying of plan(s) prohibited</i>
Antiquities and Monuments Ordinance (Cap. 53)	-	Plans of monuments	-
Port Control (Cargo Working Areas) Ordinance (Cap. 81)	-	Plans of public cargo working areas	-
Waterworks Ordinance (Cap. 102)	-	Maps of gathering grounds	-

<i>Chapter and short title of Ordinance under which plan(s) is/are required to be deposited in the LR</i>	<i>(a) Copies of plan(s) available for public sale (b) location(s) of sales points</i>	<i>Copies of plan(s) available by special order</i>	<i>Copying of plan(s) prohibited</i>
Buildings Ordinance (Cap. 123)	-	Plans of Scheduled Areas	-
Town Planning Ordinance (Cap. 131)	-	Approved master layout plans	-
	(a) Approved Outline Zoning Plans, Development Permission Area Plans and Development Scheme Plans (b) Map Publications Centre (Hong Kong), Map Publications Centre (Kowloon) and District Survey Offices (DSOs) of the Lands Department (LandsD)	-	-
Public Health and Municipal Services Ordinance (Cap. 132)	-	Plans of (a) stadia; (b) civic centres; (c) public pleasure grounds; and (d) cemeteries	-
Wild Animals Protection Ordinance (Cap. 170)	-	Plans of (a) restricted areas; and (b) places at which the feeding of any wild animal is prohibited	-

<i>Chapter and short title of Ordinance under which plan(s) is/are required to be deposited in the LR</i>	<i>(a) Copies of plan(s) available for public sale (b) location(s) of sales points</i>	<i>Copies of plan(s) available by special order</i>	<i>Copying of plan(s) prohibited</i>
Country Parks Ordinance (Cap. 208)	(a) Plans of country parks and special areas (b) The Headquarters of the Agriculture, Fisheries and Conservation Department	-	-
Eastern Harbour Crossing Ordinance (Cap. 215)	-	Plan of road tunnel area	-
Peak Tramway Ordinance (Cap. 265)	-	Plan of the Peak Tramway	-
Mass Transit Railway (Land Resumption and Related Provisions) Ordinance (Cap. 276)	(a) Resumption plans (b) Map Publications Centre (Hong Kong), Map Publications Centre (Kowloon) and DSOs of the LandsD	-	-
Hong Kong Airport (Control of Obstructions) Ordinance (Cap. 301)	(a) Plans of control of obstructions (b) Map Publications Centre (Hong Kong), Map Publications Centre (Kowloon) and DSOs of the LandsD	-	-
Air Pollution Control (Air Control Zones) (Declaration) (Consolidation) Order (Cap. 311E)	-	Plans of air control zones	-
Air Pollution Control (Fuel Restriction) Regulations (Cap. 311I)	-	Map of Sha Tin fuel restriction area	-

<i>Chapter and short title of Ordinance under which plan(s) is/are required to be deposited in the LR</i>	<i>(a) Copies of plan(s) available for public sale (b) location(s) of sales points</i>	<i>Copies of plan(s) available by special order</i>	<i>Copying of plan(s) prohibited</i>
Waste Disposal Ordinance (Cap. 354)	-	Maps of (a) livestock waste control areas; (b) livestock waste restriction areas; and (c) livestock waste prohibition areas	-
Electricity Networks (Statutory Easements) Ordinance (Cap. 357)	-	Plans of electricity network schemes	-
Water Pollution Control Ordinance (Cap. 358)	-	Plans of water control zones	-
Road Tunnels (Government) Ordinance (Cap. 368)	-	Plans of tunnels	-
Road (Works, Use and Compensation) Ordinance (Cap. 370)	(a) Resumption plans (b) Map Publications Centre (Hong Kong), Map Publications Centre (Kowloon) and DSOs of the LandsD	-	-
	-	Plans of works areas	-
Smoking (Public Health) (Designation of No Smoking Areas) Notice (Cap. 371D)	-	Plans of public transport interchanges designated as no smoking areas	-
Kowloon-Canton Railway Corporation Ordinance (Cap. 372)	(a) Railway vesting plans (b) Map Publications Centre (Hong Kong), Map Publications Centre (Kowloon) and DSOs of the LandsD	-	-

<i>Chapter and short title of Ordinance under which plan(s) is/are required to be deposited in the LR</i>	<i>(a) Copies of plan(s) available for public sale (b) location(s) of sales points</i>	<i>Copies of plan(s) available by special order</i>	<i>Copying of plan(s) prohibited</i>
Road Traffic Ordinance (Cap. 374)	(a) Plans of expressways (b) Map Publications Centre (Hong Kong), Map Publications Centre (Kowloon) and DSOs of the LandsD	-	-
Tate's Cairn Tunnel Ordinance (Cap. 393)	-	Plan of tunnel area	-
Noise Control (Construction Work Designated Areas) Notice (Cap. 400L)	(a) Plans specified in the Noise Control (Construction Work Designated Areas) Notices (b) Map Publications Centre (Hong Kong), Map Publications Centre (Kowloon) and DSOs of the LandsD	-	-
Western Harbour Crossing Ordinance (Cap. 436)	-	Plan of tunnel area	-
Sewage Tunnels (Statutory Easements) Ordinance (Cap. 438)	-	Plans of sewage tunnels	-
Land Drainage Ordinance (Cap. 446)	(a) Drainage Authority Area Plans (b) Land Drainage Division of the Drainage Services Department	-	-
Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Cap. 474)	-	Plan of toll area	-

<i>Chapter and short title of Ordinance under which plan(s) is/are required to be deposited in the LR</i>	<i>(a) Copies of plan(s) available for public sale (b) location(s) of sales points</i>	<i>Copies of plan(s) available by special order</i>	<i>Copying of plan(s) prohibited</i>
Marine Parks Ordinance (Cap. 476)	(a) Plans of marine parks and marine reserves (b) The Headquarters of the Agriculture, Fisheries and Conservation Department	-	-
Tsing Ma Control Area Ordinance (Cap. 498)	-	Plans of tunnel areas	-
Railways Ordinance (Cap. 519)	(a) Plans of railway schemes (b) Railway Development Office of the Highways Department	-	-
	(a) Resumption plans, easement plans and plans of creation of rights (b) Map Publications Centre (Hong Kong), Map Publications Centre (Kowloon) and DSOs of the LandsD	-	-
Discovery Bay Tunnel Link Ordinance (Cap. 520)	-	Plan of tunnel area	-
Mass Transit Railway Ordinance (Cap. 556) or Mass Transit Railway Corporation Ordinance (Cap. 270) (repealed)	(a) Resumption plans (b) Map Publications Centre (Hong Kong), Map Publications Centre (Kowloon) and DSOs of the LandsD	-	-
	-	Plans delineating area of transport interchange	-
	-	Plans of Mass Transit Railway	-

<i>Chapter and short title of Ordinance under which plan(s) is/are required to be deposited in the LR</i>	<i>(a) Copies of plan(s) available for public sale (b) location(s) of sales points</i>	<i>Copies of plan(s) available by special order</i>	<i>Copying of plan(s) prohibited</i>
Tung Chung Cable Car Ordinance (Cap. 577)	-	Plan of Cable Car System area and route projection area	-
Tsing Sha Control Area Ordinance (Cap. 594)	-	Plan of tunnel area	-

Rail Services Provided by MTR Corporation Limited

19. **MR IP WAI-MING** (in Chinese): *President, in order to complement the development of new towns and tie in with the transport policy of using railway as the backbone in the long run, several railway lines have been commissioned in recent years in Hong Kong to serve residents in remote areas. Yet, quite a number of residents have relayed that in respect of some railway lines, train frequency is low, the train compartments are crowded with insufficient seats and, as a result, they find it inconvenient to take a long-distance train ride. Besides, the surveys conducted by some groups have indicated that 80% of the cases of women being sexually harassed on public transport occurred inside MTR train compartments. In this connection, will the Government inform this Council:*

- (a) *whether it knows the respective frequency, number of cars, patronage, occupancy rate and number of seats of the trains on various railway lines at different time slots (set out in the table below);*

<i>Railway line</i>	<i>East Rail Line</i>	<i>West Rail Line</i>	<i>Tung Chung Line</i>	<i>Ma On Shan Line</i>	<i>Tseung Kwan O Line</i>	<i>Light Rail</i>
<i>Peak hour frequency</i>						
<i>Off-peak frequency</i>						
<i>Design capacity of the line</i>						
<i>Current average daily patronage</i>						
<i>Current average peak hour occupancy rate</i>						

Railway line	East Rail Line	West Rail Line	Tung Chung Line	Ma On Shan Line	Tseung Kwan O Line	Light Rail
Current average off-peak occupancy rate						
Number of cars						
Number of train seats						

- (b) *whether at present the authorities have a set of assessment criteria or an assessment mechanism requiring the MTR Corporation Limited (MTRCL) to make improvement to the lines on which train compartments are crowded because of a high occupancy rate (for example, requiring the MTRCL to increase train frequencies and the number of cars), so as to alleviate such situation;*
- (c) *given that the number of cars of the trains on the Ma On Shan Line and West Rail Line has not yet reached its maximum, whether the authorities will request the MTRCL to increase the number of cars of the trains on these lines as soon as possible in order to complement the future development of the new towns along the lines and cope with the increasing population in the districts;*
- (d) *given that there is an upward trend in the number of cases of indecent assault and sexual harassment occurring in the compartments of the MTR trains, and that female passengers are more likely to fall victim in crowded train compartments during peak hours, whether the authorities will urge the MTRCL to introduce women-only compartments for rush hours as soon as possible to reduce such sex crimes; if not, of the reasons for that; and*
- (e) *given that in recent years, the MTRCL has removed some seats in the train compartments and replaced them with additional handrails and perch seats in order to create more multipurpose space inside the compartments, whether it knows the total number of seats removed by the MTRCL from the trains of various railway lines since the implementation of the scheme and the number of cars involved; whether passengers had been consulted before the conversion scheme was conducted on various railway lines, and whether the MTRCL will continue to implement the scheme in the future?*

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

- (a) The MTRCL provides a convenient and efficient mass transit railway service for its passengers. At present, the MTR operates nine railway lines within the boundary of Hong Kong, carrying an average of 3.9 million passengers every weekday (that is, Monday to Friday). The MTR also provides the Light Rail service in the Northwest New Territories by operating 12 routes, carrying more than 400 000 passengers every weekday.

As MTR is a mass transit system, its design has to cope with the need of a large volume of passengers. Therefore, the MTRCL sets its service levels based on passenger travelling patterns and patronage in different areas in order to provide a level of service that meets the need of passengers. Moreover, the MTRCL closely monitors the service level of each railway line and will adjust its service where necessary to meet the overall passenger demand.

Information provided by the MTRCL on train frequencies of railway lines in different periods, number of cars on each train, train carrying capacity, train loading rates and number of seats is tabulated below:

	<i>East Rail Line</i>	<i>West Rail Line</i>	<i>Tung Chung Line</i>	<i>Ma On Shan Line</i>	<i>Tseung Kwan O Line</i>	<i>Light Rail</i>
Peak hour train frequency (morning peak)	three to four ⁽¹⁾ minutes (Hung Hom — Sheung Shui) six to eight minutes (Hung Hom — Lo Wu) 10 to 12 minutes (Hung Hom — Lok Ma Chau)	three minutes	four minutes (Hong Kong — Tsing Yi) four/eight minutes (Hong Kong — Tung Chung)	three minutes	2.5 minutes (North Point — Tseung Kwan O) 2.5/five minutes (North Point — Po Lam) 10 minutes (North Point — Po LOHAS Park)	Route 505: six to nine minutes Route 507: six to eight minutes Route 610: six to eight minutes Route 614: 12 to 15 minutes Route 614P: 10 to 12 minutes Route 615: 12 to 15 minutes Route 615P: 10 to 12 minutes

	<i>East Rail Line</i>	<i>West Rail Line</i>	<i>Tung Chung Line</i>	<i>Ma On Shan Line</i>	<i>Tseung Kwan O Line</i>	<i>Light Rail</i>
						Route 705: five to six minutes Route 706: five to six minutes Route 751: six to 10 minutes Route 751P: seven to 14 minutes Route 761P: four to six minutes
Non-peak hour train frequency	four to eight minutes (Hung Hom — Sheung Shui) six to eight minutes (Hung Hom — Lo Wu) 12 to 14 minutes (Hung Hom — Lok Ma Chau)	six to 9.5 minutes	eight to 12 minutes (Hong Kong — Tsing Yi) eight to 12 minutes (Hong Kong — Tung Chung)	five to eight minutes	four to six minutes (North Point — Po Lam) four to 5.8 minutes (North Point — Tseung Kwan O) 10.5 to 13.8 minutes (Tiu Keng Leng — LOHAS Park)	Route 505: seven to 14 minutes Route 507: seven to 14 minutes Route 610: eight to 17 minutes Route 614: 15 to 23 minutes Route 614P: 10 to 20 minutes Route 615: 15 to 23 minutes Route 615P: 10 to 20 minutes Route 705: five to 10 minutes Route 706: five to 10 minutes Route 751: six to 20 minutes Route 761P: five to 14 minutes
Design capacity ⁽²⁾	Maximum one-direction capacity per hour: 101 000	Maximum one-direction capacity per hour: 64 000	Maximum one-direction capacity per hour: 66 000	Maximum one-direction capacity per hour: 32 000	Maximum one-direction capacity per hour: 85 000	Maximum capacity per hour: 33 000 ⁽³⁾
Current average weekday ridership ⁽⁴⁾	942 000	333 000	192 000	120 000	263 000	441 000

	<i>East Rail Line</i>	<i>West Rail Line</i>	<i>Tung Chung Line</i>	<i>Ma On Shan Line</i>	<i>Tseung Kwan O Line</i>	<i>Light Rail</i>
Current average train loading during peak periods ⁽⁵⁾	68%	58%	59%	53%	70%	88% ⁽⁶⁾
Current average train loading during non-peak periods ⁽⁷⁾	23%	17%	19%	20%	17%	37% ⁽⁶⁾
Number of cars per train	12 cars per train	seven cars per train	eight cars per train	four cars per train	eight cars per train	one to two cars
Number of train seats	52 seats per car and 72 seats for First Class Compartment	52 seats per car	48 seats per car	52 seats per car	45 seats per car	26 to 43 seats

Notes:

- (1) A Through Train departs from Hung Hom at 8.18 am, when the Through Train passes through the stations, the track on the East Rail Line will be occupied, hence the headway of the East Rail Line train following the Through Train would be eight minutes.
- (2) Calculated in terms of the highest train frequency allowed with the existing signalling system.
- (3) The figure is the current maximum carrying capacity of Light Rail. Different from heavy railway systems, Light Rail adopts an open design and its operations are affected by other road vehicles and traffic signals at road junctions. Therefore design capacity is not applicable to Light Rail.
- (4) As the MTR is a railway network and the system is open within the network, passengers can change to different railway lines after entering the network. Therefore there is no ridership for each individual railway line. The above figures were calculated based on passengers' entry stations.
- (5) Calculated in terms of the busiest one hour during the morning peak hours.
- (6) As Light Rail adopts an open design, there may be Light Rail vehicles of more than one route calling at the same stop. There is no information on which route a passenger will take after he/she purchases a ticket or validates his/her Octopus card. Therefore, the ridership is obtained through observation surveys. In addition, 13 new Light Rail vehicles will have been deployed for passenger service by the end of the first quarter of 2011, further improving the carrying capacity of the system.
- (7) The ridership before 7 am and after 11 pm is very low. To make the figures meaningful, the quoted figures are calculated based on the ridership in the period between 3 pm and 4 pm which is the busiest period during non-peak periods.

- (b) In drawing up the service timetable for each railway line, the MTRCL has already taken into consideration the travelling patterns of passengers and patronage of different areas and stations. The Transport Department (TD) would examine the reports submitted by the MTRCL regularly on its service performance. The TD would

also conduct on-site investigations and inspections to ensure that railway service meets passenger demand. If necessary, the TD will urge the MTRCL to adjust its service arrangements based on changes in passenger demand within the constraints of the operational system (such as the signalling system and track available).

- (c) Currently, the average loading of the Ma On Shan and West Rail Lines are 53% and 58% respectively, even at the busiest period of the morning peak hours, which shows that service is sufficient to cater for passenger demand. As such, there is no need to increase the number of train cars at this stage. However, when the Tai Wai to Hung Hom section of the proposed Shatin to Central Link (SCL) is commissioned in 2018, SCL will be linked up with the West Rail and Ma On Shan Lines without inter-changing, forming the East-West Corridor. The entire section of the railway would allow operation of eight-car trains.
- (d) Hong Kong is one of the world's safest cities. The security of passengers travelling on the MTR network is looked after by the Railway District of the Hong Kong Police Force (the Police) and the MTR staff. The number of crimes that happened in the railway accounts for about 1.3% of the total number of crimes in Hong Kong in 2009, which is low taking into account that an average of about 3.9 million passengers ride on the MTR each day.

The MTR staff are trained to be on the alert for crime and they provide support and co-operation to the Police. Furthermore, the MTRCL and the Police regularly hold joint anti-crime campaigns to raise passenger awareness on looking after their own safety as well as taking care of their belongings. The MTRCL also puts up posters at MTR stations to encourage passengers not to remain silent and report incidents of indecent assault immediately to station staff or the Police should they encounter such occurrence.

The MTRCL has looked into the suggestion of introducing female-only compartments. Drawing reference to overseas experiences, the MTRCL noted that female-only train compartments are not a feature in most of the world's major railways. Only a few

jurisdictions in the world such as Japan, Indonesia and Dubai offer them. Even then, female-only compartments are provided only during weekdays or during rush hours.

As most MTR trains are of an open design, introducing female-only compartments would reduce the flexibility of passenger movement between train compartments and affect evacuation arrangements. Staff will also have practical difficulties in controlling passengers from passing through train compartments. Furthermore, with trains calling in at platforms every two minutes or so during peak periods, it would be difficult for staff to physically stop male passengers from entering female-only compartments. Strict enforcement would also inevitably cause delay to train service.

Introducing female-only compartments on trains is not a practicable solution in Hong Kong's MTR system, which is one of the busiest railways in the world. The MTRCL has no current plans to introduce female-only compartments on its railway lines. The Corporation would continue to work closely with the Police to take all reasonable measures to prevent crime within the railway premises for the security of passengers.

- (e) The MTRCL has all along been studying ways to provide better service to passengers (including persons with disabilities). For the convenience of passengers in wheelchair and those with baby prams or luggage, the MTRCL launched a trial in May 2008 to introduce additional multipurpose areas on three trains on the Island Line to allow four passengers in wheelchair to travel together in the same train car. After the launch of the trial, the MTRCL interviewed about 360 passengers in July 2008 to gauge their views on the extended multipurpose areas. Ninety percent of the respondents was satisfied with the additional multipurpose areas while 95% was of the view that the multipurpose areas offered more convenience to passengers in wheelchair as well as those travelling with baby prams and luggage.

The MTRCL announced at the end of 2008 that it would add three more multipurpose areas in the middle four train compartments in each of the 106 trains operating on the Island Line, Tsuen Wan Line,

Kwun Tong Line and Tseung Kwan O Line. This would bring the total number of multipurpose areas to 20 on each train. In December 2009, MTRCL introduced fare concessions for recipients aged between 12 and 64 of the Comprehensive Social Security Assistance with 100% disability and Disability Allowance. The fare concessions encourage persons with disabilities to get out more and take part in outside activities, helping them to further integrate into the society. The extended multipurpose areas bring added convenience to persons with disabilities travelling on the MTR.

The MTRCL interviewed 584 passengers again in October 2010 to collect their views on the addition of multipurpose areas in train compartments. The results showed that some 80% of the respondents were supportive of the increased multipurpose areas and more than 80% indicated that they would like to see more multipurpose areas installed.

The MTRCL has been closely monitoring the use of the new multipurpose areas and observed that they are able to meet the needs of passengers, with smooth passenger flow being maintained while passengers in wheelchairs have found it easier to move around inside train compartments. For the convenience of other passengers, leaning ledges and straphangers are also being retrofitted in the multipurpose areas as part of the programme.

The MTRCL will gradually introduce additional multipurpose areas to the trains on the Tsuen Wan, Kwun Tong and Tseung Kwan O Lines. The enhancement programme is expected to be completed within 2011.

Environmental Impact of Construction of Third Airport Runway

20. **MR ALBERT CHAN** (in Chinese): *President, recently, quite a number of members of the public have relayed to me that they are worried that more members of the public in Hong Kong will be affected by the nuisance caused by aircraft noise upon the construction of the third runway of the Hong Kong International Airport at Chek Lap Kok. In this connection, will the Government inform this Council:*

- (a) *whether the authorities have completed the feasibility study on the construction of the third runway; if so, of the details of the study report; if not, the reasons for that;*
- (b) *whether it has assessed if the commissioning of the third runway will aggravate the aircraft noise problem in Tung Chung, Ma Wan and Tsing Lung Tau; if the outcome of study is in the affirmative, of the details; if the outcome indicates otherwise, the reasons for that; and*
- (c) *which other districts will also be affected by aircraft noise upon the commissioning of the third runway; of the details about the areas which will be exposed to aircraft noise from the third runway, together with a Noise Exposure Forecast (NEF) 25 Contour map of the third runway indicating such areas; if such a contour map is not available, of the reasons for that?*

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

- (a) The Airport Authority Hong Kong (the AA) is formulating the Hong Kong International Airport Master Plan 2030 on airport developments in the next 20 years, exploring different development strategies and options, including the feasibility of building a third runway, and conducting preliminary feasibility studies on these options. These studies are substantially completed, and the AA is drafting a study report.

The AA expects the public consultation on the Hong Kong International Airport Master Plan 2030 to begin in the first half of 2011. It will release a *consultation paper* and the study report, and invite the public and stakeholders to comment on the strategies and directions of airport development.

- (b) and (c)

The NEF contours, which are an aircraft noise-related standard in land planning, are used to define areas where certain noise sensitive land uses should not be located. The NEF 25 contours previously published are based on the maximum design capacity of the airport

in forecasting the impact of aircraft noise on the areas in the vicinity of the airport. The studies related to the Hong Kong International Airport Master Plan 2030 include preliminary environmental impact assessment, which includes reviewing and updating the NEF 25 contours on the basis of the latest airport design capacity. The *consultation paper* and study report to be released by the AA will include the updated information, which needs to be further confirmed by the AA in the statutory environmental impact assessment to be conducted in the future.

MEMBERS' MOTIONS

PRESIDENT (in Cantonese): Members' Motions. Proposed resolution under Rule 78(1) of the Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region.

I now call upon Mr James TO to speak and move the motion.

PROPOSED RESOLUTION UNDER RULE 78(1) OF THE RULES OF PROCEDURE OF THE LEGISLATIVE COUNCIL OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

MR JAMES TO (in Cantonese): President, I move that the motion, as printed on the Agenda, be passed.

President, many people, colleagues and reporters ask me why I still have to propose forming a select committee to inquire into the Octopus incident. Have we already known a lot about the incident? My answer is: Today, I propose the forming of a select committee to seek the truth, to ensure accountability and to prevent the recurrence of similar incidents.

In reviewing all the relevant documents, I notice a peculiar point worth sharing with you all. On 29 July 2010, at that time the incident had aroused heated discussion and caused a furore in society as a whole, the Deputy General Manager, Corporate Relations of the MTR Corporation Limited (MTRCL), Ms May WONG, said in a radio programme, and I quote to the effect that,

"According to the minutes of meetings, the MTRCL Board did actually ask the Octopus Holding Limited (OHL) whether it had complied with the Personal Data (Privacy) Ordinance (PDPO) in using customers' personal data for marketing purposes, and the OHL replied in the affirmative repeatedly." (End of quote). In other words, the OHL claimed to have complied with the PDPO.

Why do I consider this a special point? Since members of the MTRCL Board had asked the OHL whether its practice was lawful, may we ask when the query was made. Regarding the phrase "according to the minutes of meeting", which meeting was it referring to? Was the meeting held in 2002, at the time when the OHL intended to expand the data businesses? Was it held in 2005, when McKenzie Company proposed to the OHL the need to conduct a review? Or was the meeting held after the review, when it was considered that it was not cost-effective to invest substantial funds to open up business in this field, and started to think about closing the business in 2007? Was the query made in 2009 after the business was closed? Or, was the query made after the incident was revealed in 2010? No one knows the answer.

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

This Council had requested the MTRCL and the OHL to provide the minutes of meeting for examination, but the two companies had only provided part of the documents in strict confidence, and the information provided was piece-meal and fragmented in nature. I am one of the few Members who have read those documents. At that time, I spent six hours reading the documents, three hours at the solicitor's firm and the remaining time in the Legislative Council premises. Actually, we can in no way figure out the causes and sequence of events. Which member of the Board had queried whether the OHL's practice was lawful? Was it Secretary Prof K C CHAN or Secretary Eva CHENG, now present in this Chamber, or was it the Commissioner for Transport? What questions had been asked? Was it because the MTRCL had stated repeatedly that the practice was lawful and in compliance with the rules, so they simply accepted the remark? What were their concerns?

Let us look at the nature of the incident. It involved selling the personal data privacy of several millions of Hong Kong people. Our privacy is sold by

the OHL, the largest shareholder of which is the MTRCL, with the Hong Kong Government being the largest shareholder. Only a handful of people do not have an Octopus card, it is almost impossible not to have one. Moreover, since the MTRCL is a public corporation, we generally consider that the company will handle privacy issues in a relatively prudent manner. Besides, since certain government officials sit on the Board to monitor the businesses of the company, the public are relatively assured in providing their personal data to the MTRCL, and they may adopt relatively lax criteria in considering these issues. However, in the end, our privacy was sold.

In 2002, the OHL considered it inadequate to focus only on the development of payment business and started thinking about the development of data business by making use of the data. Was it an individual decision or a collective decision of the company? Certainly, if the issue had been discussed at the Board meeting of the OHL, it would be a collective decision. To what extent had the issue been reported to the MTRCL Board? Since the MTRCL Board had appointed a representative to the OHL to audit the accounts, what was the view of the representative towards the incident? Or in appointing the Chairman of the OHL, was the MTRCL Board already aware of the situation and was prepared to set tough targets, or would the Board even press the OHL to expand other businesses apart from payment business?

This incident has significantly jeopardized the interest of the public, affecting several millions of people. Honestly, in other societies with democracy and accountability, the officials concerned — the ministry of transport perhaps or other officials — would have to step down. However, when we review the incident now, we notice that only one person, Ms Prudence CHAN, had resigned. When Ms Prudence CHAN took office in 2007, the company had already decided to end these businesses. In other words, she entered the company to close but not expand these businesses. Is this world ridiculous? Why would things happen this way?

As we all know, the Board of the OHL agreed in 2002 that the data businesses should be expanded. We also know that after the decision was passed in 2002, the Board of the OHL, for some unknown reasons, suddenly commissioned McKenzie Company to conduct a review in 2005. If you ask me why this would happen, I really cannot tell, though I have made strenuous effort to review those minutes of meetings. What was the sequence of events? I had

read all the minutes of meeting, but they were in bits and pieces, failing to state the causes and results. This was strange. Had the viability of these businesses, or the so-called reputation risk — a point mentioned in the McKenzie report, been called into doubt at the time? Was it because someone had already identified the problem, or was it because of other reasons? The causes and sequences of the entire incident were unclear.

In 2002, the OHL obtained the banking licence. When it started considering developing other businesses, for instance, the insurance business, it had correspondence with the Hong Kong Monetary Authority (HKMA) — I learnt this from the minutes — but I do not know whether they had held any meetings. Eventually, the HKMA was of the view that since the OHL was running the payment business, it should continue to develop this business, and if it intended to carry out other businesses, it should split and undergo a reorganization. The development was indeed along this line. Between 2002 and 2005, the non-payment businesses under the OHL had been restructured. However, after the restructuring, the incident occurred in 2010, and the HKMA stated in its document that as the Octopus Rewards Limited (ORL) did not have a bank licence, the HKMA could not monitor the company. This was so written on the documents on 26 July last year. How then should we interpret the advice given by the HKMA to the OHL in 2002 on splitting its businesses, or the advice that the OHL should not develop businesses other than payment business under its banking licence? Was the HKMA trying to wash its hands of the issue, claiming that this was beyond its control? Were there other arrangements and ideas? After the incident was brought to light, the HKMA said that the ORL was beyond its scope of supervision. Did the HKMA make such a remark because it foresaw in 2002 that the operation of non-payment services would bring other risks, and that it did not want to get involved or simply want to turn a blind eye to it? As an institute responsible for monitoring banks, can the HKMA simply turn a blind eye to the practices of banks in handling data privacy, as well as the businesses run by the subsidiary and associated companies of banks? How many guidelines had the HKMA issued in the past to address this type of problems?

This time, I request for an investigation, not just for meeting the restrictive objectives of identifying the number of complaints against the OHL on violating the PDPO, nor for confirming whether the company had violated the PDPO, for the Privacy Commissioner for Personal Data (the Commissioner) had already investigated on these issues. The previous Commissioner, Mr Roderick WOO,

mentioned at the hearing that he had no power to summon witness — I believe he said so deliberately. He even said in front of witnesses giving evidence that he had no power to summon them but he hoped they would co-operate. Did it imply that the information Mr Roderick WOO thought of and wanted to get was inadequate for him to acquire a complete understanding? Certainly, he did submit an interim report in the end.

So, I cannot but ask one question, do Hong Kong people think that they already have a clear understanding of the entire incident? Do they know whether government officials sitting on various Boards have fulfilled their responsibilities in safeguarding public interest? Particularly, have they attained the required standard in safeguarding significant public interest? If there were members of the MTRCL Board raising concerns about violating the PDPO, who were these members? When government officials on the Board heard such a query, had they been prompted to ask reasonable follow-up questions? Should they not at least request for a two to three page document, explaining why the practice was lawful? Had they done so? We have no information at all in this respect.

The issue now under discussion not only relates to one single company, it may also involve corporate governance. We are not discussing the problem of corporate governance of a general company, but that of a company with government officials sitting on the Board to safeguard significant public interest. If we may get enlightenment and understanding through this case I am not saying that certain officials must be held accountable and step down, but at least, the performance of the officials concerned can be improved. Directors appointed by the Government must stay vigilant, they should play a good gate-keeping role on important and crucial issues, as well as on issues involving significant public interest.

Regardless of the outcome of today, will the Government or the two officials in this Chamber are going to reply after my speech have the courage to tell us how they fulfil their public service duties? Will they have the courage to say whether they have raised those questions at the Board? When they noticed from the accounts that the business was expanding, had they tried to discharge their duties properly in conducting public service? If they had not, will they give reasons for not doing so? Had they just fallen asleep at the time or had they been absent?

I have also participated in certain public organizations or committees attended by government officials. I have observed whether they have fulfilled their duties. According to my observation, most of the officials will give their views on issues related to their areas of work. For instance, in discussing issues relating to land, officers from the Lands Department will usually voice their views, they may even remind the organization concerned that certain issues are illegal, approval may not necessarily be granted for certain issues, or that the alteration of plans may cause concerns under certain circumstances, and so on. They will give due regard to the issues related to their areas of work. However, if two Directors of Bureaux join the same committee, will this result in the situation that "everybody think it is somebody's job"? In other words, they will only be concerned about their own area of works, say finance affairs or transport affairs. If so, will anyone consider the issue at the macro level? When the issue of privacy was involved, would the Commissioner of Transport or the two Directors of Bureaux consider that the issue was completely unrelated to them? We will examine this issue thoroughly when the select committee is formed.

Deputy President, other Members have expressed support for invoking the Legislative Council (Powers and Privileges) Ordinance to summon the persons concerned to obtain information. May I ask them, have we already obtained all the information up to this moment? Why should we disagree with the forming of a select committee with mandatory power to obtain the missing information, dig out the truth on behalf of the public, ensure accountability and prevent the recurrence of similar incidents?

Mr James TO moved the following motion:

"That this Council appoints a select committee to inquire into the collection and transfer of customers' personal data to third parties for monetary gains by Octopus Holdings Limited and its subsidiaries, including the roles of the Board of Octopus Holdings Limited and the Board of MTR Corporation Limited as the biggest shareholder of Octopus Holdings Limited in the above matter, the process of decision making and execution of such collection and transfer of data, the possibility of further disclosure of those personal data by the third parties, and the duties and roles of related government bureaux, departments and public agencies in the above matter, and based on the results of the above inquiry, to look into whether any related legislation and monitoring and regulatory mechanism should be improved and if necessary make recommendations to enhance

protection of the privacy of members of the public; and that in the performance of its duties the committee be authorized under section 9(2) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to exercise the powers conferred by section 9(1)."

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr James TO be passed.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Deputy President, since this motion is related to the work of the Transport and Housing Bureau and the Financial Services and the Treasury Bureau, today, I will speak on behalf of the Secretary for Transport and Housing as well. The Secretary for Transport and Housing will provide additional information if required.

The Government has all along kept a close watch on the development of the Octopus incident. We understand clearly the concerns of the public about the incident. At the initial stage of the incident, the Chief Executive had already expressed grave concern about the provision of personal data by Octopus to third parties for marketing purposes. He requested that a thorough investigation of the case be conducted and stressed that similar incident should not recur. The Government has taken follow-up actions on the Octopus incident.

The Octopus Holdings Limited (OHL) is a non-controlled subsidiary of the MTR Corporation Limited (MTRCL). There are three government officials on the Board of the MTRCL, namely, the Secretary for Transport and Housing, the Secretary for Financial Services and the Treasury, and the Commissioner for Transport. The OHL reports its financial and business overview to the MTRCL Board every one or two years. Through these reports, the MTRCL Board has learnt that the OHL has been using customers' personal data for marketing purposes. The management of the OHL had assured the MTRCL Board that the practice concerned was legal in the context of personal data privacy protection. However, the OHL had not reported to the MTRCL Board that the personal data concerned would then be transferred to third parties. In fact, the MTRCL Board does not participate in the specific operations and individual commercial decisions of the OHL.

As a member of the MTRCL, the Secretary for Transport and Housing and I had written to the Chairman of the MTRCL as early as 27 July 2010 to express our grave concern of the Octopus incident. We requested that the MTRCL, being the major shareholder of the OHL, should ensure that the OHL would take proper and prompt follow-up actions to address the concern of the public on the OHL's practice in handling personal data.

On the other hand, the Privacy Commissioner for Personal Data (the Commissioner) and the Monetary Authority have conducted investigations and taken follow-up actions according to the Personal Data (Privacy) Ordinance (PDPO) and the Banking Ordinance respectively; the relevant investigation reports have also been published.

The Office of the Privacy Commissioner for Personal Data (PCPD), being the statutory body responsible for overseeing and monitoring the compliance of requirements under the PDPO by various sectors, has followed up the incident proactively. At the initial stage of development of the incident, the former Commissioner initiated an interview with the Chief Executive Officer of the OHL. On 22 July, the Commissioner commenced official investigation on the OHL according to the PDPO, to ascertain whether the collection and disclosure of personal data for direct marketing purpose under the Octopus Rewards Programme have contravened the requirements of the relevant ordinance.

The former Commissioner published the interim report on 30 July 2010, announcing the preliminary findings and recommendations of the investigation. The incumbent Commissioner issued the final investigation report on the incident on 18 October 2010, pointing out that the OHL had contravened three Data Protection Principles under the PDPO. The Commissioner had put forth a number of recommendations to the OHL in the report.

Concerning the Octopus incident, the Hong Kong Monetary Authority (HKMA) had required the OHL to co-operate closely with the PCPD during the initial stage of the incident. On 22 July 2010, it announced that the Monetary Authority had, pursuant to Banking Ordinance, issued a notice to the OHL, requiring the OHL to submit to the Monetary Authority a report prepared by external auditors appointed by the OHL and approved by the Monetary Authority. The HKMA announced the interim and final reports submitted by the

independent auditors to the Monetary Authority on the incident on 18 October and 29 November respectively.

In response to the request of the Government, the PCPD and the HKMA, the OHL has implemented a series of measures. The Special Committee appointed by the Board of the OHL announced the results of its review on 19 October 2010. The Board of the OHL has accepted all the recommendations proposed by the Commissioner, the Monetary Authority and the Special Committee appointed by the Board; it has also undertaken to implement a series of follow-up measures.

Deputy President, Mr James TO proposes in the motion recommendations on improving the relevant legislation and the monitoring and regulatory mechanism, so as to enhance personal data privacy protection. It is evident that the Member is extremely concerned about personal data privacy protection and relevant issues.

Actually, the Government also attaches great importance to the protection of the privacy of personal data. Hence, the Constitutional and Mainland Affairs Bureau, with the assistance of the Commissioner, had conducted a comprehensive review of the PDPO, and a public consultation was carried out in 2009. The Bureau published the Report on Public Consultation on Review of the Personal Data (Privacy) Ordinance and put forth recommendations for enhancing the protection of privacy of personal data. Public discussions on the recommendations had just finished on 31 December 2010, and the Government is examining in detail the views collected.

At the meeting of the Legislative Council on 20 October 2010, a motion debate was held on personal data privacy protection and relevant issues, including the Octopus incident. At the respective meetings of the House Committee of the Legislative Council held on 22 October and 26 November 2010, Members had discussed the proposal on the appointment of a select committee to inquire into issues relating to the transfer of customers' personal data by commercial organizations, which include following up the Octopus incident. Members in general consider the appointment of an independent investigation committee unnecessary.

Deputy President, since all the independent investigations on the Octopus incident have been completed, and the OHL has accepted all the recommendations and undertaken to implement relevant measures, we consider it unnecessary to appoint a select committee on the incident. However, we are willing to listen to the views of Members. After Members have expressed their views on the motion, I will give a concluding reply.

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

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

MR IP KWOK-HIM (in Cantonese): Deputy President, regarding the Octopus incident, Mr CHAN Kam-lam, the spokesman on financial affairs of the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB), has participated in many discussions and has expressed the views of the DAB on the Octopus incident. Hence, today, I will only speak briefly to reiterate the views of the DAB on the forming of a select committee.

Regarding the motion moved by Mr James TO, discussion has been held earlier at the House Committee. The DAB had stated clearly at the time that it opposed invoking the Legislative Council (Powers and Privileges) Ordinance to inquire into the Octopus incident. Regarding the Octopus incident, the Office of the Privacy Commissioner for Personal Data, the Hong Kong Monetary Authority and the Special Committee appointed by the Board of the Octopus Holdings Limited (OHL) have intervened separately and have submitted reports on the incident, as mentioned by the Secretary earlier. As such, the DAB considers that the forming of a select committee by the Legislative Council to inquire into the incident will be a duplication of efforts and resources.

The Legislative Council is empowered by law to invoke the Legislative Council (Powers and Privileges) Ordinance to inquire into incidents involving significant public interest in society. There are many incidents involving significant public interest in society. The issue on the chaotic accounts of Direct

Subsidy Scheme schools revealed recently is one of the examples involving significant public interest. The accident resulting in radiation leakage at Daya Bay Nuclear Power Plant may also involve significant public interest. The Legislative Council cannot invoke the Ordinance to inquire into every incident considered to be involving significant public interest in society. Hence, before drawing this "imperial sword", we should give due regard to an important spirit behind, that is, the sword should be drawn with great cautiousness and as the last resort when no other alternatives are available. In the Octopus incident, the DAB does not think that there is ample justification for invoking the Ordinance as the last resort.

The Octopus incident on the whole involved only two core issues. First, it was the sale of customers' personal data. Second, it was the self-contradictory remarks made by the former Chief Executive Officer (CEO) of the OHL, Ms Prudence CHAN, which raised doubts about the credibility of Ms CHAN and the OHL. Hence, at present, the most urgent task should be to introduce expeditious amendment to Personal Data (Privacy) Ordinance (PDPO) to enhance the protection of personal data privacy. Actually, the Government has already put forth proposed amendments to the PDPO, and the consultation period expired at the end of last month. I believe a bill will be submitted to the Legislative Council later this year.

As Ms Prudence CHAN had resigned to take the blame of this incident, it can be regarded that accountability has been ensured. Legally, the subsidiary company and the mother company are two independent entities. If the Legislative Council forms a select committee to inquire into the case and extend the scope of investigation to the mother company of the OHL, that is the MTR Corporation Limited (MTRCL), it is obviously unreasonable. Unless there is compelling and clear evidence at present indicating that the MTRCL Board is the mastermind behind the OHL's "data sale", it will be inappropriate and a waste of public money to commence an inquiry involving the mother company without reasonable doubt.

According to the motion of Mr TO, the objective for forming a select committee is not to attribute blame for the "data sale" incident but to collect information. The conclusion of the motion is so worded, "..... based on the results of the above inquiry, to look into whether any related legislation and monitoring and regulatory mechanism should be improved and if necessary make

recommendations to enhance protection of the privacy of members of the public” If the objective of the inquiry is really not to attribute blame for the incident, is it necessary to invoke the Ordinance to conduct an inquiry? If the objective is to collect some general information to lay the foundation for the legislative work of the Legislative Council, there are many feasible alternatives. For instance, the relevant work can be carried out by the Law Reform Commission. When compared with the invoking of the Ordinance by the Legislative Council, these alternatives may be more justified, more proper and more effective. Thus, the DAB opposes the motion.

I so submit. Thank you, Deputy President.

MR WONG KWOK-HING (in Cantonese): Deputy President, I speak on behalf of the several Members of the Hong Kong Federation of Trade Unions to oppose the proposed resolution of Mr James TO.

Deputy President, in July 2009, I received complaints from the public and started following up the Octopus incident. I had spent 16 months to follow up the case. At the meeting of the Legislative Council on 20 October last year, I proposed the first motion debate of this Legislative Session. As I spoke on that day, I did give an account of the development and progress of the incident, which could be divided into three stages.

On 20 October last year, I pointed out that the Octopus incident had entered the third stage. At this stage, I think we should make all-out effort to press the Government to legislate to criminalize irregularities as soon as possible to protect personal data privacy. Then, we should press the Octopus Holdings Limited (OHL) and the MTR Corporation Limited (MTRCL) to honour their undertakings in implementing the publicization of the OHL and ensuring transparency in its operation. These are the three areas of work proposed by me.

Deputy President, on that day, I also stated at the meeting that after undergoing these three stages, we had attained seven results. Allow me to repeat the content briefly here.

First, the Government will amend the legislation to criminalize irregularities, so as to protect personal data privacy. Second, the MTRCL has

fulfilled its undertaking by requiring Octopus to accept all the recommendations of the Privacy Commissioner for Personal Data (the Commissioner). In fact, the recommendations concerned had been fully accepted. Third, the MTRCL has undertaken to revamp Octopus. As seen from the current situation, the MTRCL has indeed carried out a restructuring. It has not only replaced the Chief Executive Officer (CEO) but also the Non-executive Chairman of the Board; even the CEO of the MTRCL, Mr CHOW Chung-kong, will leave on completion of his term of office. Are these personnel arrangements related to the Octopus incident? I do not have any information to prove that, however, one may guess from the related issues.

The fourth result is urging Octopus to refocus on its original business of electronic currency, which is also an undertaking of the company. The fifth result is that the company is urged to donate all the profit made from the sale of personal data to the Community Chest. The sixth result is that the MTRCL has undertaken to instruct Octopus to thoroughly delete all the personal data collected in violation of the requirements of laws. The last result is that the Octopus incident has brought to light that the problem of protecting personal data privacy is not unique to Octopus. Many problems are found in the protection of personal data privacy in other industries, which require follow-up actions by the Government.

Deputy President, by recapping the seven results today, I wish to give an account to Members that I have all along been following up the incident. I have made every effort to urge the MTRCL and Octopus to explain whether they have honoured the various undertakings mentioned above. Last week, I took up the issue again with Octopus. The CEO of Octopus did not only give a verbal report but also a written account of the progress made in fulfilling the undertakings.

The outgoing CEO of Octopus, David TANG, had replied in writing to the nine questions I raised relating two aspects. First, Octopus stated that most of the undertakings it made to the Office of the Privacy Commissioner for Personal Data (PCPD) have been honoured. As for the remaining undertakings, it is working proactively on them. It will comply with the request of the Privacy Commissioner for Personal Data (the Commissioner) and complete the two major tasks on or before 14 January this year. The first task is that the company should stop all business involving the transfer of personal data to third parties for their marketing initiatives from July 2010 onwards. The five business partners

of the Octopus Rewards Programme have already deleted the customers' data concerned, and the confirmation will be submitted to the PCPD.

Second, Octopus has deleted the Hong Kong Identity Card numbers or passport numbers, and month and year of birth of its members from the Octopus Rewards Programme database. It will submit the report of the independent auditor, the accounting firm Deloitte Touche Tohmatsu, to the PCPD on or before 14 January. Regarding this reply, I have already requested Mr TANG to provide a copy of the auditor's report to the Legislative Council to keep Members informed of the situation, and he has agreed to do so.

On the other hand, for other recommendations made by the PCPD, the Hong Kong Monetary Authority (HKMA) and the Special Committee under the OHL Board, Octopus pointed out that seven major recommendations had been implemented. First, the company has set up a Task Force on the protection of personal data, led by the CEO, to closely monitor and implement the recommendations made by the PCPD, the HKMA and the Special Committee of the OHL Board.

Second, the company has employed an experienced Data Privacy Officer to ensure that the policies and practices of Octopus comply with the requirements of the Personal Data (Privacy) Ordinance (PCPO).

Third, in July last year, Octopus had issued notices to the 2.4 million members of the Octopus Rewards Programme to remind them of the option to opt out of receiving marketing and promotional information. They pointed out that the company had received replies from 30 000 members for ceasing to receive such information. Moreover, the company had deleted all unnecessary personal data of these members in September last year. Octopus also pointed out that a mechanism had been added to the webpage to facilitate members not intending to receive marketing and promotional information to opt out.

Fourth, the company is now designing new registration forms for the Octopus Rewards Programme, and the work will soon complete. New forms will conform to the guidelines of the PCPD, and the font size and spacing of the text will be to the satisfaction of the PCPD. There is also a column for customers to opt out of receiving marketing and promotional information. They have agreed to send me the properly designed form to seek my views before the

form is sent out for printing. If Members are interested, I can also ask them to send copies of the forms to you.

Fifth, the company has set up an audit committee for Octopus. The company will appoint an independent auditor at its meeting in February this year to conduct regular data privacy audits, and submit reports to the Audit Committee and the OHL Board. Moreover, an annual compliance report covering personal data protection policies and practices will be produced. These reports will be submitted to the OHL Board for discussion.

Sixth, since December 2010, Octopus has implemented due diligence assessment procedures for new business activities, which include conducting privacy impact analyses and privacy compliance assessments.

Seventh, according to the final audited data submitted by independent auditor, the total amount of revenue generated from data transfer to third parties for marketing purpose by Octopus since 2002 amounts to HK\$57.9 million. On 12 August last year, Octopus donated HK\$44 million to the Community Chest, and the balance of HK\$13.9 million was subsequently donated to the Community Chest on 28 October. The accounts had been audited by independent auditor. This is the latest information I obtained in the course of following up the Octopus incident.

Deputy President, regarding the progress of the Octopus incident, I think the most urgent task is to urge the Government to submit an amendment bill of the Ordinance to the Legislative Council as soon as possible for scrutiny. After the Octopus incident, the Government had conducted a consultation for one year, and the report on public consultation was only completed around October last year. If the Octopus incident had not happened, I wonder how long the Government will continue with the consultation. With the completion of the consultation report and the end of public consultation on the legislative proposals in last December by the Government, the pressing task at present is to urge the Government to submit expeditiously to the Legislative Council a bill to amend the Ordinance. By then, we can focus our efforts and time on the relevant discussion to ensure enhanced protection for personal data privacy under the legislation. I think this is the most important and most pressing task.

Hence, I hope that colleagues of the Legislative Council will put their efforts in this aspect. After the inquiries and investigations conducted in the past

10-odd months, the facts and truth revealed, as well as the various situations relating to the incident had generally been reflected in the consultation report submitted by the Government. The tens of dozens of recommendations set out in the consultation report should be implemented under the legislation to be enacted in future. These recommendations are focused and to the point. The Government has indicated the acceptance of 37 recommendations, but a few recommendations have not yet been adopted. In my view, the recommendations yet to be adopted by the Government are related to the most crucial issues to be dealt with when we amend the Ordinance. For instance, the PCPD should be given the power to carry out criminal investigations. The PCPD should be given the "teeth" to conduct investigation, so that it can assist the complainants. Once the case is substantiated after investigation, the PCPD may deal with the compensation claims. This will provide an efficient and simple means for protecting the personal data privacy of Hong Kong people. I think we have to deal with this important task. Besides, the opt-in and opt-out mechanism is a significant premise for protecting the personal data privacy of Hong Kong people.

It is evident from the Octopus incident that this aspect must be ensured in the enactment of legislation in future. Therefore, in my view, instead of spending a large amount of time on the investigation work, we should focus our efforts on the legislative work, pressing the Government to submit the relevant legislation as soon as possible.

The two government officials who sit on the MTRCL Board as members have undoubtedly been negligent in supervision. In this connection, I had directed harsh criticism against the two Directors of Bureaux bluntly at the motion debate held on 20 October. I also hope that the two Directors of Bureaux may learn a lesson from this experience, so that they will fulfil their duties properly in similar public offices in future. *(The buzzer sounded)*

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

MR WONG KWOK-HING (in Cantonese): Thank you, Deputy President.

MS EMILY LAU (in Cantonese): Deputy President, I speak in support of Mr James TO's motion.

Deputy President, the motion of Mr James TO states clearly the content of the investigation. Mr IP and Mr WONG, who have spoken earlier, may not agree with this arrangement, but these issues are fundamental, and corporate governance is also mentioned. Particularly when senior officials have been appointed to the committees or the Boards concerned, we have every reason to know whether they have fallen asleep or they have fulfilled their responsibilities. Just now, I listened to the speech of Secretary Prof K C CHAN carefully, who said he also spoke on behalf of Secretary Eva CHENG. However, from his speech, I could not learn what they had done on the Board. Deputy President, unlike Mr TO, I had not gone to the solicitor firm or stayed in the Legislative Council to read the relevant information behind closed door. Though Mr TO had read the information, he said that the so-called minutes of meeting of the Board were incomplete and unclear. The crux of the matter is that the major shareholder of Octopus is the MTR Corporation Limited (MTRCL), whereas the major shareholder of the MTRCL is the Hong Kong Government. Hence, the public want to know clearly the role played by the Government in this incident.

Moreover, according to the wording of the proposed resolution of Mr TO, the Octopus has been collecting personal data of the public and transferring the data to third parties and even the whole world. Deputy President, since the relevant provisions of the existing legislation have not come into effect, such data can be transferred arbitrarily, allowing the parties involved to make profit repeatedly. What are the roles of various bureaux and government departments and public organizations in the incident? Deputy President, do we know these issues? We definitely do not know. When the Secretary spoke earlier, he only mentioned that a number of investigations had been conducted. In respect of these investigations, the Privacy Commissioner for Personal Data (the Commissioner) often says that the Commissioner is but a toothless tiger, he can only rely on the "lend-me-a-hand" approach. The Commissioner also does not have the power to summon witnesses. That is how the investigation of the Commissioner had been carried out. Regarding the investigation conducted by the Hong Kong Monetary Authority (HKMA), the HKMA should actually be subject to investigation. As for the investigation of Octopus, it was conducted by its own staff, that is, the non-executive directors. None of these investigations are conducted independently. Credibility can only be established

by an independent investigation. When CHOW Chung-kong came out to apologize, he said he would make every effort to co-operate in the investigation of the Legislative Council. However, later, someone exerted their influence behind the screen and the Legislative Council could not carry out the investigation. At first, he thought that the Legislative Council would investigate the case, but we do not have to conduct the investigation now.

Mr IP Kwok-him does not support conducting an investigation. He said earlier that the incident involved two aspects. First, whether data privacy of customers had been sold out. They certainly have sold the data privacy of customers. This is obvious to all, and an investigation is thus uncalled-for. Second, whether Prudence CHAN had been self-contradictory. This is again obvious to all. Regarding the credibility of Octopus, it is also known to all. He is smart; since the two aspects he set have been dealt with, the investigation is thus unnecessary. However, the crux of the issue is the role of the two government officials who are now present in this Chamber, I am not pinpointing individuals, yet we want to know what kind of role they play. Deputy President, we do not even know whether they had attended the meetings. For certain government officials who are appointed members of certain committees, such as Airport Authority, most often, they will not attend any meeting throughout the year.

Deputy President, in mentioning the airport, we had conducted inquiry into the chaos of the new airport in the past. At that time, we exercised all the power conferred by the Legislative Council (Powers and Privileges) Ordinance and we required the submission of all the minutes of meeting of the steering committee. At that time, the incumbent Chief Secretary for Administration, Anson CHAN, criticized many people at the meeting, but no actions had been taken afterwards. Deputy President, we had summoned many people and had reviewed a lot of information at that inquiry. I learn that we can no longer do so in future; we cannot summon so many people or review so much information. I wonder what we can find out then. We need to have such power, for we need to find out what the persons concerned have done at the time. However, Mr IP said that investigation should not be conducted recklessly; otherwise, it would waste a lot of resources. He said that the existing problem of Direct Subsidy Scheme (DSS) schools was very complicated. We are now investigating the case on DSS schools. We investigate the case because the Public Accounts Committee has the power to summon witness and conduct investigation. He also mentioned the

nuclear power issue. The public are extremely concerned about the leakage of nuclear power; however the Panel on Security has not yet exercised this power. Yesterday, the CLP Power Hong Kong Limited amended the notification mechanism out of its own accord, changing the notification period from one month to within two days. The incident was really outrageous. After the leakage, Secretary Edward YAU knew nothing about this when he was at the scene, for notification could be made one month after the incident under the mechanism at the time. It may not have come to the stage where the exercise of such power deems necessary, for the panel concerned has done a lot of work. However, as mentioned by Mr James TO earlier, in the Octopus incident, a lot of information has not yet been provided and the parties concerned have not rendered assistance. However, the public want to know what had happened in the course. Had queries really been raised? Though queries have been raised, it was falsely claimed that the practice was alright and lawful. Even the newly appointed Privacy Commissioner for Personal Data (the Commissioner), who had been a senior official, opines that the practice contravenes the law. Deputy President, what had actually happened? As such, we cannot say that the incident has been satisfactorily settled, and we can leave it.

At first, the scope of discussion proposed by Mr TO was very broad. We thought that we should not do too much, and he thus narrowed down the scope to the investigation of this incident. However, many questions have not yet been answered and many problems have not yet been addressed. Just now, Mr WONG Kwok-hing seemed to be haunted by the spirit of Octopus. He just kept speaking on behalf of Octopus, even the Secretary has not done so. Since the Octopus incident has already occurred, if the incident can be handled properly, I hope no similar problems or incidents would recur. However, we are not talking about this issue now. When you talk about this aspect, he turns to an irrelevant aspect. Though Mr TO has well prepared that this motion will not be passed, we have to point out what issues should be made public. I very much agree with this point. I have asked Secretary Stephen LAM earlier about this. If any incident happens, investigation should be conducted, and then conclusions and recommendations be made.

Deputy President, I once mentioned that you also agreed that authorities in Beijing should investigate the case on the assault of the reporter in October last year. Therefore, even if Mr TO's motion is negated, many issues are apparent. Mr IP may say that the issue should be referred to the panel, yet Members still

have to arrive at a conclusion. The persons concerned will have to go over the minutes of meeting, including the minutes of the Octopus Holding Limited (OHL), the MTRCL and all other companies concerned; we have to check what had been asked, what had been done and by whom. Secretary Prof K C CHAN said earlier that in July last year, a letter was sent to request the handling of the incident. What had happened after the incident was handled? We do not know much about that. I hope that the authorities will understand and accept that certain work must be carried out to ensure accountability. Even if this motion is negated, the Secretary may take this opportunity to answer all the questions put forth by Members who have just spoken and will speak later. What is the role of the Government? When and how did it know the incident? How did it follow up the case? This incident did not only involve Prudence CHAN. She will be leaving, yet many people may be aware of the situation. Deputy President, has the incident been improperly handled? Deputy President, I speak to support the motion proposed by Mr James TO.

MR ALAN LEONG (in Cantonese): Deputy President, from January 2006 to June last year, the Octopus Holding Limited (OHL) sold the personal data of 1.97 million people to specified companies and gained a profit of \$44 million. This incident involving the sale of personal data of Hong Kong people has been the largest in scale in recent years, and has caused public outcry. It also revealed the common phenomenon that large consortia, which have secured monopoly in the market, would abuse their power blatantly, and their management is poor. The penetration of the privileged to our daily life has sparked outcry.

The privileged are running wild in Hong Kong society, and the Government has failed to monitor effectively the abusive and infringement practices that affect people's livelihood and public interest. The public at large are shocked and disappointed. The Civic Party thinks that though the OHL had shifted the blame onto the Chief Executive Officer, Ms Prudence CHAN, who had been made to resign, and it had donated the income from the sale of data privacy of Hong Kong people to charitable organization, these measures fail to address properly the public's worries about the lack of effective protection of personal data privacy and compensate the harm done to the several million Hong Kong people involved in the incident.

Deputy President, the disclosure of personal data by the OHL is only the tip of an iceberg. If major public organizations in Hong Kong fail to safeguard

effectively the core values of basic human rights and social justice in their daily operations through transparent and credible systems, the public's confidence on the governance of the Government will be seriously undermined, the hard-won international image of Hong Kong will be tarnished, and the quality of life and competitiveness of the city will be dampened abruptly.

The Civic Party had written to the Chief Executive and requested him to form an independent commission of inquiry under the Commissions of Inquiry Ordinance. We requested that the inquiry into the sale of privacy by the OHL be led by Mr Roderick WOO, who knows well the causes and sequence of the incident, so as to remove the doubts and worries of the public as soon as possible. Regrettably, the Chief Executive had not accepted the proposals, letting slip a chance to restore the confidence of the public.

The Privacy Commissioner for Personal Data (the Commissioner) had investigated the incident earlier and concluded that the OHL had violated three major principles as stipulated in the Personal Data (Privacy) Ordinance (PDPO). First, it collected more than a dozen items of personal data from members of the Octopus Rewards Programme, including identity card number, passport numbers and date of birth, and so on, which was beyond the purpose for collecting data. Second, the OHL failed to inform members to whom their personal data might be transferred. Besides, the Personal Information Collection Statement was printed in extremely small fonts and the content of the provisions was too lax. The Commissioner pointed out in the conclusion that the third principle violated by the OHL was the transfer of customers' personal data to its business partners for profit without customers' consent, which was the sale of personal data for monetary gains.

The Civic Party respects the investigation results issued by the Office of the Privacy Commissioner for Personal Data (PCPD). However, the public still fail to get clear answers for the following questions: What role did the OHL Board and the MTRCL Board play in the decision-making process? Was there dereliction of duties on the part of the Secretary for Transport and Housing and the Secretary for Financial Services and the Treasury? Were there any loopholes in the legislation and mechanisms concerned?

Deputy President, though the Chief Executive Officer of the OHL, Ms Prudence CHAN, had taken the blame and resign, she revealed earlier that the

MTRCL Board was aware of the sale of customers' personal data by the OHL. The Chairman of OHL, Lincoln LEUNG, had also admitted that the OHL Board was aware of the business of selling customers' personal data and that the business was making profit. It is evident that everyone who knows about the Octopus incident should shoulder the responsibility. The resignation of Ms Prudence CHAN still cannot reveal the truth under the sun. On the other hand, the Policy Bureaux of the Government and the Hong Kong Monetary Authority have not fulfilled their responsibility in preventing the infringement of the privacy of the public. They should also be accountable to the public.

Deputy President, since the PCPD does not have the power to summon witnesses to testify in the course of investigation, the report may fail to provide a comprehensive analysis of the accountability of the incident. Moreover, the PCPD is not empowered to impose direct sanction against organizations which violate the provisions. This reveals the loopholes of the PDPO. The Legislative Council, being a monitoring organization with public mandate, must investigate the Octopus incident to find out the truth for the sake of public interest. The Octopus incident has affected several millions of Hong Kong people. By finding out the truth, the confidence of the public can be restored. The Civic Party considers that a comprehensive and macroscopic investigation report will be conducive to the identification of loopholes in the mechanism and the review of the power and accountability of government departments and public organizations. These results will serve as significant reference for the Legislative Council in examining the amendments to the legislation and the improvement of the monitoring mechanism.

Deputy President, Octopus cards have changed the way of living of Hong Kong people. Over the years, the public have given their support and trust to the operation of Octopus. Since Octopus has monopolized the electronic currency transaction system for transport, every move of the OHL will touch a nerve of society. It is only natural that the public will hold higher expectation on the governance of the OHL. Apart from fulfilling its corporate social responsibility, the Government, the MTRCL and the OHL are also obliged to strike a balance between making profit and protecting public interest. The Legislative Council should conduct a thorough investigation into the incident with a view to learning a lesson and providing positive insight for the development of public organizations in future.

With these remarks, Deputy President, I support the motion proposed by Mr James TO on behalf of the Civic Party.

MR TOMMY CHEUNG (in Cantonese): Deputy President, last summer, it was discovered that Octopus Rewards Limited, a company wholly owned by Octopus Holdings Limited (OHL), had transferred Octopus cardholders' personal data collected under the Octopus Rewards Programme to third parties for direct marketing purpose and had received an income of more than \$50 million. The incident has triggered off widespread concern and discussion in society. Moreover, members of the general public are concerned that in addition to the OHL, whether other companies or organizations would transfer their personal data to third parties without their knowledge and they might become victims unknowingly.

Subsequently, Mr James TO had written to the House Committee requesting the formation of a select committee to thoroughly investigate the transfer of customers' personal data by commercial organizations. The matter was discussed at the meeting of the House Committee on 22 October, during which many Members opposed to Mr James TO's request. Today, Mr James TO once again proposed that a select committee be appointed to inquire into the Octopus incident. He further suggested that the duties and roles of the Board of MTR Corporation Limited (MTRCL) as well as related government bureaux, departments and public agencies in the matter should be investigated. I can understand Mr James TO's concern about the Octopus incident because it involves a major issue relating to the privacy of the public.

Without informing the customers, the OHL had used the personal data they provided to make profits. Although the Privacy Commissioner for Personal Data (the Commissioner) has concluded that the OHL had violated three personal data protection principles specified under the Personal Data (Privacy) Ordinance (PDPO), such contraventions do not constitute an offence under the current legislation. Obviously, the deterrent effect is inadequate and it is absolutely unacceptable. Hence, the Liberal Party hopes that the Government can deal with the Octopus incident fairly and squarely.

Actually, I believe the Octopus incident is only the tip of an iceberg. Since the incident had come to light, a number of banks had admitted one after

another that they had also transferred data of customers. Even Autotoll, the operator of electronic toll collection system for tunnels, had also admitted the above practice. In many other industries, such as the insurance sector, telecommunications sector and supermarkets, a lot of personal data have also been collected from customers. How do these industries handle the personal data collected, have they also transferred the data to third parties, as people start asking these questions, more information has been exposed. Obviously, the sale of privacy data of customers may have already become a normal business practice, just that there has never been stringent monitoring. As a result of inadequacies in the existing privacy policy and inefficient Government monitoring, the problem has festered.

Learning from the Octopus incident, the Liberal Party considers that the authorities should review whether the existing measures can adequately safeguard personal data privacy and whether it is necessary to regulate by legislation the handling of personal data collected by enterprises. Measures to be implemented may include the establishment of a simple and user-friendly opt-in or opt-out mechanism, under which commercial organizations are required to include a column in the forms to allow customers to indicate whether they agree or not to the use of their personal data. If the customer has not reconfirmed his agreement, the relevant organization should not use his personal data for other purposes or transfer the data to companies within the same group. Of course, such information should never be passed to any third parties.

Both the MTRCL, being the major shareholder of the OHL and the SAR Government, being the major shareholder of the MTRCL, are duty-bound to monitor the operation of the OHL. This responsibility is undeniable and it is obvious that they have been negligent. However, as I have said, the violation of privacy by Octopus is not an isolated case. Instead, it reflects on the problem in the overall privacy policy about the use of personal data by all commercial organizations, and this is not limited to the monitoring of the MTRCL or government departments. If Mr James TO's proposals were to be adopted, I am afraid that apart from identifying and reprimanding once again the MTRCL and government officials for dereliction of their monitoring duties, it may not help much in terms of strengthening privacy protection for the public in general.

If the ambit of investigation was extended to other industries or commercial organizations and the powers under the Legislative Council (Powers

and Privileges) Ordinance were invoked to invite representatives from various industries to come over to assist in the investigation, or even mandatorily require the organizations to hand over their commercial information, the scope of investigation would be too wide. Apart from drawing criticism of wasting manpower and financial resources, the indiscriminate use of powers and privileges by the Legislative Council to investigate into commercial organizations might also attract the criticism of power abuse.

Actually, the Office of the Privacy Commissioner for Personal Data (PCPD) has completed its report on the incident and concluded that the OHL has breached several personal data protection principles during the process of collecting and using the personal data of customers. The OHL had been requested to make a number of improvements. For example, the registration form for joining the Octopus Rewards Programme should be re-designed so that no excessive personal data for the specified purpose would be collected, and the use of loosely defined terms to cover direct marketing as a purpose of data collection should be avoided.

The OHL has also learnt its lessons from the incident and it has been taking remedial actions actively. Lincoln LEONG, the then Chairman of the OHL, had undertaken to implement six measures to protect the data of customers including the design of a new registration form for the Octopus Rewards Program in compliance with the latest guidelines issued by the PCPD and the deletion of non-essential personal data from the Octopus Rewards database. Moreover, six companies which had purchased personal data from OHL have already deleted or returned such personal data to Octopus. The OHL has also pledged to refocus on its core business as an electronic payment platform in future and never to sell personal data of customers again for profit. Furthermore, OHL has donated \$57.9 million, which is the total revenue from the sale of privacy data of customers, to the Community Chest. These remedial actions taken by OHL have somewhat answered the demands of the Liberal Party and the community.

Regarding the gate-keeping PDPO which has been implemented for 14 years, the Government had completed its review as early as the end of 2009 and public consultation had been conducted. Nonetheless, the outcome of the review was never published. It was not until last July after the Octopus incident came to light that the Government had expedited its progress and the Consultation Report on Review of the Personal Data (Privacy) Ordinance was finally released

on 18 October. As such, the legislative amendments have been delayed for quite some time. In the report, the authorities have made 37 proposals to be taken forward, which cover areas of direct marketing, data security, powers and functions of the Privacy Commissioner and offences and sanctions. According to the authorities, the legislative amendments will be presented to the Legislative Council in the first half of this year.

Given that the Monetary Authority has, in accordance with the Banking Ordinance, ordered Octopus to submit a report to account for the incident, and that the PCPD has also stepped in to request a number of improvements from the OHL, and the legislative amendments to the PDPO for plugging the loopholes are almost ready, the Liberal Party hopes that the authorities will expeditiously introduce into the Legislative Council the legislative amendments to the PDPO, we do not want to complicate the issue to stall the progress of this amendment exercise. We also hope the Privacy Commissioner will try harder to draw its conclusions so that the matter will not be delayed as a result of the difficulty involved in reaching a consensus. For these reasons, the Liberal Party does not support the motion proposed by Mr James TO for the formation of a select committee to inquire into the Octopus incident.

Deputy President, I so submit.

DR SAMSON TAM (in Cantonese): Deputy President, the earlier incident involving the sale of customers' personal data by Octopus Holdings Limited (OHL) has triggered off the concern of all people of Hong Kong about the safeguard of personal data privacy. Actually, with continuous technological development and advancement, the use of computer, Internet, mobile communications, and so on, has become indispensable in people's daily lives. In using these technologies, data such as the user's online purchases or movements will be recorded. Hence, these technologies, while bringing convenience to the user, also present great risks; the Octopus incident is only the tip of an iceberg. For industries such as banking, insurance and telecommunications, they have to store or collect many personal data or even life records of customers for business purpose. Regarding the concern of the industry I represent, I agree that it is absolutely essential for the Government to allocate additional resources to the relevant government departments so that they can keep up with the latest technologies to ensure effective safeguard of personal data privacy.

I believe after this incident, many enterprises will examine their own situation and become aware of the absolute importance of privacy protection in their business management systems. By achieving further improvement in the business management systems, it is also a safeguard for the enterprises themselves. It is the Government's duty to make continuous efforts to promote within the industrial and business sectors the awareness of the enterprises to build up more effective systems to safeguard personal data privacy.

Deputy President, as the enterprises become aware of the importance of safeguarding privacy, they will then ask whether the existing legislation is clear, readily enforceable and allows for easy compliance because they know what actions are allowed or prohibited. In fact, to a certain extent, it is quite understandable for enterprises to collect personal data of their valuable customers. However, the existing legislation is unclear as to what kind of data can or cannot be collected, and there are no guidelines on the collection process. Needless to say, there are even more grey areas in the transfer process or the sale of data for monetary gains. Therefore, I implore the Government to expeditiously formulate clear guidelines so that rules and regulations will be set for compliance by law-abiding enterprises.

As mentioned by many Honourable Members, under the current legislation, the Privacy Commissioner for Personal Data (the Commissioner) is really a "toothless tiger" against the unlawful or defaulting enterprises. It is because under the existing legislation, an enforcement notice or warning must first be issued by the Commissioner before prosecution can be instituted for repeated contraventions. Why would the enterprises care about such a provision? If the Government does not introduce the necessary legislative amendments now and waits until more enterprises like the OHL appear, I think it will be just too late. Therefore, the Government should amend the law as soon as possible. If an enterprise has contravened the law, appropriate punishment should be imposed so as to achieve a deterrent effect. This is really what must be done.

Legislating for the collection and storage of personal data by enterprises can only control the source. At present, many personal data have already been uploaded to the Internet or kept by different enterprises. It is thus a priority task to minimize the impact of these data on members of the public. Therefore, many previous discussions have been held in this Council as to whether the regulation on person-to-person electronic marketing activities should be reinstated. Of course, there are views for and against the proposal.

Nonetheless, I think the Government must pay close and serious attention to the matter. Will the Government, after listening to the views for and against the proposal, decide to set up a territory-wide central database so as to minimize the complaints against junk telephone calls? I think the Government should expeditiously make a decision on the matter so as to strike a balance between allowing healthy operation of the telemarketing industry and avoiding nuisance to members of the public who do not want to receive person-to-person telemarketing calls.

Deputy President, as regards whether the Legislative Council should form a select committee to inquire into the issue, I think it very much depends on whether the Government has been taking the initiative to actively and effectively check against violations. As a member of the technological developments committee of the Office of the Privacy Commissioner for Personal Data (PCPD), I have been reflecting to the Government in the past few years that the PCPD does not have adequate resources and there are not enough technical experts to keep up with the latest technological developments. Therefore, I once again urge the relevant Policy Bureau to allocate adequate resources to the PCPD so that it will have adequate staff to carry out the work, and avoid similar events from happening again. Regarding the present incident, I have attended several meetings of the technological developments committee under the PCPD and my understanding is that the Commissioner is very concerned about the incident and has been taking follow-up actions proactively. As far as I know, their work has met with positive co-operation from the parties concerned and they have been getting information from the OHL and other concerned companies regularly. Given the co-operation from the enterprises, is it necessary for the Legislative Council to intervene again? I do not think there is an urgent need to do so.

Another monitoring body, the Hong Kong Monetary Authority, has also taken the initiative to intervene into the incident. Hence, I think if the Government will and can do something, it is unnecessary for the Legislative Council to get involved in the investigation of each and every case for such investigation to be efficient and deemed as urgent. All in all, I hope the Government will expeditiously amend the Personal Data (Privacy) Ordinance and legislate for the regulation of person-to-person electronic marketing activities so as to plug the loopholes. Unless absolutely warranted, there is no need for the Legislative Council to investigate into the present incident by forming a select committee. Therefore, I have reservation about the motion proposed by James TO.

MR RONNY TONG (in Cantonese): Deputy President, I have actually struggled for quite some time and considered carefully whether I should speak or not. Originally I did not intend to speak, but after I have listened to the remarks of many Honourable colleagues, including Mr Alan LEONG, leader of the Civic Party, I think I would feel sorry if I do not say anything.

Deputy President, I take my work at the Legislative Council very seriously. I think I should not make any decision or cast any vote in this Council for reasons that cannot really convince me. For example, it is very difficult to convince me with reasons such as "giving face", "investigating when required as it does not matter", or "it is ethically wrong". In my view, the Legislative Council should convince people by reasoning, and find the right decisions through debates.

Actually, the subject today gives many Honourable colleagues a very good chance to express their views about whether Hong Kong has done well in connection with the laws on privacy or the protection of privacy in Hong Kong, and I find this desirable. But, I would like to express my views on this motion, and about whether it is necessary to set up a select committee to inquire into the incident.

If you ask me whether Octopus is right or wrong in its deed, I believe the answer is that it is certainly wrong. I have not heard any Member say that it is right.

Moreover, if you ask me whether Octopus and the MTR Corporation Limited (MTRCL) should take responsibilities, I absolutely think that they should take responsibilities, and I do not think any other persons should take responsibilities. Could it be said that the victims should take responsibilities? I have not heard other Members say that Octopus and the MTRCL do not need to take responsibilities.

Concerning this incident, if you ask me whether our laws can provide adequate protection, the result is again one-sided as our laws absolutely cannot provide adequate protection. I have not heard any Members or government officials claim that the existing laws provide adequate protection.

If you ask me whether the Government should take responsibilities for this incident, I think it should definitely bear responsibilities because its monitoring is ineffective and it is indifferent to the privacy rights of Hong Kong people. For

many years in the past, we have requested to amend the Personal Data (Privacy) Ordinance to provide genuine protection to the privacy of individuals. However, the Government has refused to make amendments until this incident has occurred. Does the Government have the responsibilities? I think that it definitely has the responsibilities though I have not heard many Honourable colleagues agreeing to this point.

If you ask me whether this is an important subject of concern to Hong Kong people, my answer will certainly be in the affirmative. Hong Kong people are very much concerned about this important subject.

The sixth question is whether we need to exercise our privileges to investigate into this incident. I am a bit hesitant. Why? Deputy President, what are the objectives set out in Mr James TO's motion? As he has stated, it is necessary to investigate into the roles played by the Board of Octopus and the MTRCL, being the shareholder of Octopus. Deputy President, my immediate reaction is that we are quite sure about their roles. They have taken the initiative to do something that we consider as not up to the expectation of Hong Kong people; thus they have unshirkable responsibilities. Will the result of the investigation reveal that their roles are different from what I have just mentioned? I do not think so. In connection with their decision making and execution processes, Deputy President, I have not found any information that shows that their decision making and execution processes have violated the provisions of the company ordinance. That is precisely why they should take responsibilities. They cannot tell others that they have been cheated, they actually did not want to take such actions, or their subordinates have done something unacceptable to the community in their name. They cannot say so, and even if those are the facts, they eventually should take responsibilities. How will the investigation into their decision making and execution processes benefit us? I think they will not benefit us at all.

What are the duties and roles of the relevant Policy Bureaux, government departments and public organizations in the incident? Deputy President, I believe that I have answered this question when I spoke just now. It is their responsibilities to protect the privacy of Hong Kong people. They have not fulfilled their responsibilities. They have to take full responsibilities for the incident and they cannot evade responsibilities.

Deputy President, in that case, what should we investigate? Deputy President, I have asked myself a very simple question: has the act of Octopus in this incident violated the law? Unfortunately, the answer is no and it has not violated the law. This is where the problem lies. It has not violated the law, its actions are lawful. We can say that businessmen should not be unscrupulous. Nevertheless, the unscrupulous businessman has not violated the law, he has just done something ethically unacceptable. If we want to curb his acts, we should legislate for regulating the practice, and this is where the problem lies. If the unscrupulous businessman indicates that he has obtained legal advice that his actions are not against the law, and he has signed legally binding agreements with other parties in a perfectly justifiable manner, we can only say that he is unscrupulous and we cannot say that he has violated the law. What exactly do we want to investigate?

Is there any chance that these agreements would allow the personal data of Hong Kong people to be resold repeatedly to various places overseas? Deputy President, the answer is yes. Just like Mr James TO, I have spent a lot of time going through most of their agreements. The agreements include some constraints, stating that the data cannot be resold. Nonetheless, the wordings of the relevant provisions give data buyers some leeway to continue selling the data under the pretext of business promotion. Thus, all the answers are set out in the documents, Mr James TO and I have gone through these documents. Therefore, the problem really exists.

Deputy President, should we investigate this incident in that case? We must strike some sort of balance. As I have just said, we should investigate this incident, not for the sake of "giving face" to the Democratic Party or to James TO — I am sorry but I have to say that I cannot give "face" to you. Moreover, I cannot accept the saying that, "It doesn't matter, Ronny TONG, just go ahead and investigate the incident, let other colleagues conduct the investigation, you do not have to get involved, right?" I do not think I am satisfied with this answer.

If you ask me whether we should investigate the ethical problems involved, I have reservation. Is the Legislative Council a forum for investigating inappropriate ethical behaviour? What make me hesitate most is that the Legislative Council and Honourable colleagues have limited resources. If we do not investigate this incident, can resources be used in other areas, say, for investigating matters that can take a step forward? I have just said that the only answer is that we should legislate for regulation. The Government should

tighten control insofar as privacy is concerned, and this is the only thing that we can take forward. I think there is no dissenting view in this Chamber for the time being. Nonetheless, if we use our resources to investigate other matters, and if we can do more for example, the "outrageous" incident of Direct Subsidy Scheme (DSS) schools, I do not think that the Public Accounts Committee has examined all the information. We have just investigated the Government but not DSS schools. So, if we use the resources to investigate DSS schools, and find out why nearly 99% of DSS schools have refused to subject to regulation under the Government's policy, why there are so many problems, and why they can exploit so many legal loopholes, I believe this is something worth doing. This does not mean that the Legislative Council will investigate other more "productive" matters if we will not inquire into this incident; it all depends on the views of Honourable colleagues. For me, if I were to make an assessment, I would rather investigate an incident whereby we can make more accomplishment than inquiring into an incident on which a conclusion has been drawn.

I find it very difficult, Deputy President, and so far I have not heard any convincing reasons why the Legislative Council should exercise its powers to investigate this incident. The probable answer is that Octopus is too loathsome, and what it has done is utterly unacceptable; hence, we must investigate this incident. For many Honourable colleagues, this is a sufficient reason, but I do not think so. Thank you, Deputy President.

MR PAUL TSE (in Cantonese): I thank Mr Ronny TONG for his speech, for I can shorten my speech because of what he has just spoken. It is a very good lead-in.

Deputy President, I do not need to say too much as we know very well that Honourable colleagues have frequently regarded the Legislative Council (Powers and Privileges) Ordinance (the Ordinance) as an "imperial sword" — the final and most lethal weapon. We know very clearly that the Ordinance should be invoked under some established principles and constraints. When the matter is well handled, we can certainly uphold justice, find out the truth, affix responsibilities for injustices in the community, and speak up for the public. However, if the matter is badly handled, we will sacrifice or waste many resources of this Council; I do not need to dwell on this point.

Deputy President, I have noted the direction of this motion moved by Mr James TO and I sympathize with him, because he is "trapped between the devil and the deep blue sea" as the English idiom goes. He has to evade from attacks from both sides. On the one hand, he has to avoid people saying that the Legislative Council is arbitrarily using its powers to investigate the operation and wrong-doings of business organizations, which does not tally with the reasonable procedures for invoking the Ordinance by this Council. Yet, on the other hand, after much consideration and based on the experience from the two House Committee meetings on 22 November and 26 November last year, he is aware that he has to face great resistance if he wants to inquire into the internal operation of Octopus Holdings Limited (OHL) and the involvement of individual directors (including officials) of the Board, to find out if there is dereliction of duty.

In fact, there is resistance because there are comments that he should not arbitrarily use this Council as a tool to investigate private organizations. Once a precedent has been set, many organizations, even organizations of which the Government is a shareholder, including the Disneyland, may be involved. Therefore, Mr TO has deliberately stated at the beginning that he does not intend to investigate the Octopus incident alone, he wants to make use of the incident to arouse the concern of the community about the inadequacies in protecting the privacy of an individual, and about the practice of selling personal data. According to him, he is not just focusing on the OHL, but all sectors in Hong Kong, and in particular four major sectors, including banking and insurance. He hopes to get hold of certain data through the investigation that will facilitate legislative amendments in the future.

This argument is very clear. When the issue was first discussed at the House Committee meeting, Mr James TO did not ask for a voting, but he clearly asked for a voting at the second House Committee meeting. At the last House Committee meeting, I specifically pointed out that this argument was wrong, because we could not use many resources and abuse the procedure under the Ordinance to collect data just for the sake of enacting legislation. Many problems would arise once this precedent has been set. Mr TO has subsequently changed his ideas on second thoughts. In his motion, he no longer emphasizes the point on data collection for legislating purpose, instead he stresses that the investigation on the Octopus incident may be imperfect. Sometimes, it is indeed rather difficult for us to follow Mr James TO with the twists and turns.

Nevertheless, I understand his difficulties, and I want to follow him as far as possible. If he goes left, we will talk about the problems of going left; if he goes right, we will try to explain the problems that may arise if he goes right. I would like Mr James TO to clarify later, whether he is going left or right this time, or whether he is inclined towards both directions. If that is the case, we should give some reasons for our reservations about the two directions. If necessary, we may have to refer to the remarks made at the previous House Committee meetings.

Deputy President, I wish to say in passing that, as Mr Ronny TONG has repeatedly said (I remember that Mr CHAN Kam-lam supported his views at the last House Committee meeting), if we continue to investigate or study the incident, we should conduct thorough investigation on those who neglected their duties, probably the former Privacy Commissioner for Personal Data (the Commissioner) because he had in adopting the argument of Mr Ronny TONG, he had not taken any actions although 12 cases of complaints concerning the possible use of privacy information by Octopus have been received within six years; yet no enforcement notice had been issued, requesting Octopus to rectify the situation, or else there would be legal consequences. He has never done so.

It is very fair for Mr LEE Wing-tat to say that we should not criticize the Commissioner when he does not have any opportunity to defend. At the last House Committee meeting, Mr LEE said that when the issue was raised for discussion at the panel meeting, no members had questioned or criticized the Commissioner. Similarly, when a motion debate on a similar subject was held in this Council on 20 October last year, no Members had criticized the Commissioner. In that case, Mr LEE Wing-tat considered that we should not criticize the Commissioner afterwards as he did not have any opportunity to defend himself. There is room for dispute in this connection. Should we affix the responsibilities of the Commissioner or the officials concerned? This is certainly one of the issues for consideration. I do not agree that this direction should be taken as the basis for the application to invoke the Ordinance, and I will explain my views again later.

I thank Mr Ronny TONG very much for raising an issue that I would also like to raise. Mr James TO has indicated that he wants to find out whether things have gone wrong in relation to the roles, as well as the decision making and execution processes. When a government representative is appointed to

participate in the decision making and monitoring processes of a public organization or company with government funding, his role is no different from that of an ordinary director. As a member of the Board, he comments on the reports provided by the management and attends Board meetings to get involved in decision making. The decisions made are collective decisions.

In this connection, unless we have evidence to blame them for not attending meetings, not reading the minutes of meeting, not participating in discussions, or negligently failing to raise questions — which is more likely the case — we can just inquire into their performance as directors of the company, and this is not about how privacy is protected or how errors involving privacy are committed during the decision making process. These officials are not concerned about making decisions regarding the implementation and interpretation of the Personal Data (Privacy) Ordinance (PDPO). They are directors of the company, if they learn from the legal advice provided by the company that things are in order, they will not pursue further. Government officials have a lot of work to do, when they learn from the reports that things are in order, that according to the views of the subsidiary company, there are no problems; they have adequate legal and professional advice, things are in order according to the law, I do not think that we should not put the responsibilities on any officials or any directors, we should not say that they should reject the legal advice, or raise queries on practices that are acceptable under the PDPO and by the Commissioner. We should not say that they are wrong and that the Commissioner should make greater efforts, and so on. I do not think it is reasonable to say so.

What can we inquire into? We can just inquire into whether the directors have attended meetings or fulfilled their responsibilities. Can this solve the problem of protecting privacy information from being abused? Deputy President, the answer is obvious.

I have just mentioned that Mr James TO is caught in a dilemma. If we merely focus on investigating the Octopus incident I do not need to say too much as many Honourable colleagues have already elaborated on the background of this incident. In fact, various investigations have been conducted on the incident; but opinions differ as to whether the investigations have sufficient credibility, public participation, transparency and the power to summon witnesses. Certainly, if we have a chance to invest resources again and conduct investigations anew, we may be able to find some facts that have not been previously disclosed. Yet, we all know the conclusions regarding certain

specific and critical information and evidence, as Members have just explained very clearly. Have the privacy principles been contravened? Yes. Should somebody take responsibilities? Yes. The problem is whether we should accept such a crude trunk-like conclusion and further amend the PDPO to improve the situation; or should we not amend the PDPO and instead spend one or two years straightening out the investigation report to find out if the trunk-like investigation findings are inadequate. Are we not happy with this tree trunk and would like to see branches, leaves, fruits and even all the seeds? Do we want to thoroughly inquire into all these areas before moving forward? Opinions also differ on this point.

I have always been rather pragmatic. In my opinion, if there is a trunk and even some rough branches, we do not need to rack our mind and spend time and resources examining both sides of every leaf to find out if there are cracks. Deputy President, this is not the attitude or approach that should be adopted by us.

What will happen if we adopt an approach similar to that of a court in the trial of case? Assuming that we allow Mr James TO to change his approach frequently, regardless of his pleading and how he wants this case to be investigated, we can only focus on the views that he has expressed or may express in determining how the loophole can be plugged. Let us put the Octopus incident aside for the time being; what will happen if we take the situation of the four major sectors as he described at the last meeting as the basis of our legislative amendments? As I have clearly explained, if we do so — for some time in the past, Mr James TO had not explicitly focused on these four major sectors, and he just discussed the overall situation in Hong Kong. His plan is extensive, and the Civic Party does not agree to such an extensive approach. Even though we just focus on these four sectors including banks, insurance companies and other organizations that have regular promotional campaigns, the scope of investigation will be very extensive. If a sampling investigation is to be conducted, we will be self-contradictory because we need not invoke the Ordinance to find out the situation of the each sector. If the Ordinance is really invoked to summon representative organizations, how can a fair definition of "representative" be made? Many difficulties will be encountered in the process. Hence, I pointed out at the last House Committee meeting that this approach was not feasible.

Mr James TO may have also considered the matter after the last meeting, so today, he has not said that the Ordinance should be invoked for legislation purpose. Instead, he has said that the Ordinance should be applied to the Octopus case. Nonetheless, I have just explained that I still have much reservation even if we are just targeting the Octopus case.

I agree totally with the remark made by Mr Ronny TONG earlier that we must use the resources carefully. We cannot act arbitrarily and recklessly just because we want to comply with the general principles of being more open and transparent and allowing the general public to have the right to know. The reason is that we should be accountable for the resources of this Council, and we should bear responsibility in utilizing this weapon or system which has great destructive power. In invoking the Ordinance, if we do not have the backing of adequate principles and sound foundation, or if we do not even have enough credibility and persuasiveness, the credibility of this Council will be weakened. I believe that this would not do any good to us. Thank you, Deputy President.

MR FREDERICK FUNG (in Cantonese): Deputy President, I still remember around July last year, the media revealed for the first time that Octopus Holdings Limited (OHL) sold the personal data of the public, this incident has caused a stir. At that time, the public were astonished to find that Octopus, which has brought us convenience in daily life and is closely related to the necessities of life in areas of clothing, food, housing and transport, could wantonly sell our personal data for profits. The protection claimed to be provided under the Personal Data (Privacy) Ordinance (PDPO) is non-existent, and the gate-keeping role played by the Privacy Commissioner for Personal Data (Commissioner) appears so flaccid. The PDPO is loose and lenient, and it is lagging behind the advanced data technology. Even worse, the PDPO simply fails to stand up against businessmen and enterprises, including government-owned enterprises, which greed for money and put profits first. They merely regard the personal data of the public as a ready source of money. They wantonly extort and abuse such data and they make unlimited demands for maximum profits. Is this the purpose of businessmen? Is this the purpose of the Government? Is this the purpose of the Government in owning enterprises?

Looking back at the approach adopted by the OHL in handling the incident, we found that it evade the problem and deliberately conceal the facts, which was

unacceptable to the community. Eventually, the incident developed like a rolling snowball, with more and more scandals being revealed; it even turned into a privacy disaster. The Chief Executive Officer of the OHL denied stoutly at the very beginning, and she attempted to conceal the truth and get away with it. However, the facts could no longer be swept under the carpet as a former employee had exposed the truth, and under the strong pressure of public opinion, the OHL revealed the truth bit by bit. Deputy President, it turned out that in the past four and a half years, the OHL has transferred to six companies the personal data of 2 million clients; the clients affected not only include members of the Octopus Rewards Programme, but Octopus card users as well. The number of persons impacted in this incident and the far-reaching implications resulted are beyond imagination.

The original intent of the Octopus Rewards Programme is to attract people shopping for earning rewards in return, yet the Programme has become a tool manipulated by enterprises to reap profits by selling personal data. The OHL has intentionally and deliberately collected important data from clients, such as their Hong Kong identity card number, date of birth, contact number and address under the Programme. The data collected is more than necessary, and unrelated to the Programme. Worse still, the OHL has, without the consent of the persons concerned, resold their personal data for profits, and the amount of profit amounts to \$57.9 million. This practice has seriously infringed upon the privacy of individuals, abused people's trust in the company, and run counter to the public's intent and expectations in joining the Octopus Rewards Programme. It has also gone against the direction of the OHL of focusing on the development of e-money business. Furthermore, the sale of personal data may lead to security problems, for example, some law-breakers may get hold of the personal data of a large number of people for illegal purposes. We cannot bear to think of the consequences.

Deputy President, the Privacy Commissioner for Personal Data (the Commissioner) announced earlier the completion of a report on the inquiry into the transfer of client data by the OHL, and it adjudicated that the OHL has violated three principles under the Personal Data (Privacy) Ordinance (PDPO): the OHL has collected excessive personal data; the OHL has failed to inform the clients how and to whom the data may be transferred; and it also revealed in the report that the OHL allowed CIGNA Worldwide Life Insurance Company Limited to sell insurance in the name of Octopus, which was cheating clients.

There is a contravention of the regulations, so what? There is an act of cheating, so what? We cannot do anything about it. Apart from taking limited remedial and improvement measures, the OHL has not been punished. This obviously reflects that the existing PCPO is too loose, and there is inadequate regulation of personal data. The PCPO lacks deterrent effect and fails to meet the demands of the public.

The Hong Kong Association for Democracy and People's Livelihood (ADPL) had asked the OHL to return the some \$50 million gained from transferring personal data to all Octopus card users instead of being generous at the expense of others, trying to settle the issue by donating money. In fact, the OHL only donated other people's money, it had not donated even one cent out of its own pocket. In view of the extremely serious situation of abusing the public's personal data in the private sector, the ADPL and I opine that the Administration should consider legislating to introduce criminal liability and require enterprises to effectively protect the public's privacy. The sale of personal data without explicit authorization by the clients shall be a criminal offence. Reference can also be made to the practice under the Sex Discrimination Ordinance and the Disability Discrimination Ordinance. It is proposed that the Office of the Privacy Commissioner for Personal Data (PCPD) can provide legal assistance to the public. When a member of the public has his privacy invaded, he may seek compensation through civil proceedings through the PCPD.

Regarding the intentional and deliberate sale of personal data by the OHL, the ADPL considers that the incident was handled unsatisfactorily: the OHL only made a verbal apology without being punished; no systematic and comprehensive follow-up actions have been taken; worse still, the money donated by the OHL belonged to the public. Although the Chief Executive Officer of the OHL, Ms Prudence CHAN has resigned earlier, and the OHL has taken remedial measures after the incident, that does not imply that the problem has been solved. Regarding this incident, we should not handle the case in a high profile manner at first but let it off lightly, so as to hastily wind up the matter. We have to ask, in this incident, what role is played by the MTR Corporation Limited in the decision making process. What are the duties and roles of the Policy Bureaux, government departments and public organizations in this incident? How do other private enterprises, such as banks and shops promoting the rewards schemes handle our personal data? Deputy President, in a society that boasts the

so-called completely free market and oriented towards mercantilism, if the people in power blindly worship "big market, small government", how can we not question whether these profit-oriented businessmen regard the personal data of the public as a money-spinner? The wanton disclosure of personal data is now in a precarious situation. For this reason, we must learn a lesson from the Octopus incident and we should also teach the OHL a lesson, thereby improving extensively the protection of privacy.

In my opinion, Mr James TO's proposal intends to present the Octopus incident to the public in a more comprehensive, clear and transparent way. His proposal is worth pursuing even if some money has to be spent, we can also teach Octopus a lesson. Though we cannot subject Octopus to criminal sanctions, we should let it know that the sufferings of the public in this incident can go even farther than it being questioned by Members in this Council.

MR JEFFREY LAM (in Cantonese): Deputy President, the Octopus card is used by millions of users, and the Octopus Rewards Limited has sold the personal data of the public; we must look squarely at this incident that involves public interest. However, I do not agree that the Legislative Council should use the "imperial sword" and invoke the Legislative Council (Powers and Privileges) Ordinance to set up a select committee to investigate the incident.

Deputy President, based on the motion, a select committee should be set up to find answers in three aspects: first, responsibilities; second, the actual state of affairs; and third, how to deal with the aftermath of this incident.

First, let me talk about the issue on responsibilities. I agree that Octopus has not handled the matters properly. For example, when the incident was initially revealed, it had not admitted its responsibilities immediately, which was against public expectations.

Nevertheless, the senior officers from the MTR Corporation Limited (MTRCL) and Octopus have apologized to the public and have taken a range of remedial measures. Apart from donating to the Community Chest more than \$50 million generated from the sale of data, Octopus has deleted the relevant personal data under the supervision of an independent auditor. It has also set up a task force on the protection of personal data and has employed a personal data

privacy officer, so as to enhance the overall personal data protection mechanism and policy.

Octopus is a commercial organization, and government officials, being members of the Board of the MTRCL, have limited direct intervention in the operation of Octopus. If the privacy of the public is to be protected, it is not enough just to monitor Octopus. A more positive approach is that the Government should start with the overall system, it should review and improve the existing Personal Data (Privacy) Ordinance (PDPO) and the enforcement mechanism, so as to enhance the protection of privacy of the public.

The Government has just completed a consultation on a review of the PDPO in this direction. I hope the Government would sum up the views of the community as soon as possible and submit the proposed amendments to this Council for our deliberation.

As regards the true facts, the Office of the Privacy Commissioner for Personal Data (PCPD) and an independent organization appointed by the Hong Kong Monetary Authority had respectively conducted investigations on the Octopus incident last year. The PCPD had taken two and a half months, and deployed one third of its staff members to conduct the investigation. Their work included public hearings, taking the statements of the persons concerned, reviewing documents, and carefully investigating the suspects' premises, and so on.

The two investigation reports were published in October last year. According to the PCPD, Octopus violated three data protection principles and a range of improvements were proposed. The PCPD also issued the new Guidance on the Collection and Use of Personal Data in Direct Marketing to further regulate enterprises in the collection, use and transfer of personal data of the public.

In my opinion, these two investigations are rather comprehensive, and the public can understand the sequence of events. As the main duty of this Council is to monitor the Government, it is inappropriate for us to frequently conduct this kind of investigation and interfere with commercial organizations. Furthermore, we need to spend a lot of manpower, resources and time to conduct the

investigation by a select committee. I do not think we are making the best use of resources if we set up another committee to investigate the Octopus incident.

As the saying goes, "A fall in the pit, a gain in your wit", the aftermath work is even more important. Apart from the remedial measures taken by Octopus, we also need to improve the inadequacies of the existing mechanism.

The PDPO came into effect in 1996 and in light of the rapid development of information technology and electronic transactions, the laws should keep abreast of the times. In fact, various sectors such as banks, telecommunications companies and government organizations have to handle personal data, and there is a leakage of personal data from time to time.

For instance, iPhone has recently become very popular, and I believe that there are many iPhone users. Not long ago, it was revealed by the overseas media that quite a few Apps transfer the users' personal data such as location, age and gender to other companies for promotional purposes. As there are more and more iPhone users in Hong Kong, does this Council need to investigate the Apple Inc.?

We cannot solve the problems of the existing mechanism by investigating Octopus alone, but it is an impossible task to investigate all organizations that handle personal data. I think this Council should be more forward-looking and focus on reviewing and improving the laws and mechanisms for the protection of the personal data of the public.

The Government is now conducting a consultation on a review of the PDPO, which includes the proposal of making the illegal use or sale of personal data a criminal offence. Members can make proposals when the law is scrutinized in the future to make it better and enhance the protection of the personal data. I believe that this will be more constructive and there will be more practical effects.

Deputy President, I so submit.

MR CHAN KIN-POR (in Cantonese): Deputy President, direct telemarketing is a normal commercial activity all over the world. After the Octopus incident,

direct marketing activities have stalled, which has dealt a blow to these normal commercial activities.

I believe that the Privacy Commissioner for Personal Data (the Commissioner) should take responsibilities for the Octopus incident. The Commissioner receives hundreds of privacy complaints each year and there are more than 10 cases related to Octopus within the past five years. The problems as mentioned by the Commissioner in the report on the incident have long been in existence, and they not only involved Octopus. For example, there are problems relating to the font size of agreements and the format of consent for data transfer. If the Commissioner can update its guideline earlier — whether he is "toothless" or not does not matter, he has the power to update the guideline — I believe the Octopus incident will not occur. I am sure that commercial organizations in Hong Kong will certainly act strictly in accordance with the guidelines, and their boards will require the management to act strictly in accordance with the laws. If the laws are not updated, it is unfair and unreasonable to put the blame on commercial organizations which act strictly in accordance with the current laws. In fact, proper direct marketing activities are conducted under close supervision. There are specific procedures in handling various kinds of works such as data transfer, making phone calls, and cancellation of data after the direct marketing process. Even before the occurrence of the Octopus incident, the collection of personal data required written consent most of the time, of course the fonts or formats concerned are open to question.

After the outbreak of the Octopus incident, the independent auditor appointed by Octopus has made an investigation report as requested by the Hong Kong Monetary Authority and Octopus. The Commissioner has also inquired into the Octopus incident and made a number of recommendations about improvements to be made. The Government has proposed to amend the laws to enhance privacy protection and it has conducted a public consultation. The Legislative Council has held many discussions and hearings about the proposed amendment to the laws. The current legislative proposal aims at significantly strengthen consumer protection in many ways, but there are comments that some proposals have exceeded the proper limits in righting a wrong.

As a lot of work has started and it has almost been a year since the incident happened; and as amendments are being proposed to amend the relevant legislation, if we set up a select committee and spend time on the investigation

..... from my painful experience as a member of the Select Committee to inquire into the Lehman Brothers incident — this committee will take four years to complete the investigation, and more than two years have already passed — we are not sure if the investigation can be completed within four years, and the remaining term of office of Members of this Council is just slightly more than a year. If we are going to set up a select committee, it will take up huge resources of this Council but there will be little practical significance. Hence, I cannot support Mr James TO's motion.

DR PRISCILLA LEUNG (in Cantonese): Deputy President, the Octopus scandal made people very angry, and I believe most Members present in the Chamber have Octopus cards and are Octopus card users. After I become a Member of this term of the Legislative Council, I supported the establishment of the Subcommittee to Study Issues Arising from Lehman Brothers-related Minibonds and Structured Financial Products (the Lehman Subcommittee). In considering whether a select committee should be set up, my main concern is the factor of necessity. Some Members have already joined two select committees, and today we should consider whether another committee should be set up to inquire into issues arising from the Octopus incident.

I recall that when the Lehman Subcommittee was initially set up, I said that I understood the situation of the victims very well, as my personal data has been stolen, I receive cold calls very often. As banks know how much savings we have, their subsidiary companies such as beauty and fitness companies and other investment companies would call us, and these acts are indeed offensive. Therefore, I believe people whose privacy has been invaded will be very angry. As regards the Octopus incident, I believe we all consider that investigation should be conducted and legislative amendments should be considered.

In fact, the authorities have already investigated the Octopus incident, and it has explicitly indicated in the report that the responsible persons had made mistakes. Today, should we consider conducting another investigation by a select committee? Now that we must amend the Personal Data (Privacy) Ordinance (PDPO), will such an investigation be conducive to the amendment? I do not think so.

Mr James TO has acted with much perseverance in requesting for appointing a select committee, but the scope of investigation has been narrowed

down repeatedly. Initially, he proposed to investigate various sectors and industries, later the scope was narrowed down to investigate the banking, telecommunication and insurance sectors. His proposal today has again narrowed down the scope. However, we want to know if his major objective in narrowing down the scope is to obtain Honourable colleagues' consent to appoint a select committee. I do not think that a select committee should be appointed under this situation. As select committees can invoke the Legislative Council (Powers and Privileges) Ordinance (the Ordinance), the powers can actually be described as a two-edged sword. I have pointed out time and again that the PDPO should be amended. However, if too many amendments are made, it will also be a two-edged sword, and eventually we will get hurt. Nowadays, the Internet world is well developed, if we investigate every incident and invoke the powers to conduct investigation staff members of many companies or organizations may inadvertently commit certain crimes. For this reason, when the Legislative Council Panel on Constitutional Affairs discussed the PDPO, I cautioned that we should be careful about an "across-the-board" approach — the criminalization of most acts — for some acts of invasion of privacy, the practice of claiming compensation by civil proceedings should be retained.

How about the Octopus incident? In this incident, some people affected have considered seeking compensation through legal channels, but they have failed to do so. All of us know the reasons why. Many people may think that they would not lose the lawsuit. They do not see any reasons why the OHL would not be held liable in respect of the scope of their claims. Why would they lose the lawsuit? Of course, as regards the winning or losing of a lawsuit, the viewpoints of the general public may be different from the ruling of the court, which is based on legislation and precedents. This may also reflect that the PCPO has not provided adequate protection in terms of detailed provision.

Therefore, the PDPO must be amended. This has actually been our focus in the past year, and the relevant work is now undertaken in this Council. If we invoke the Ordinance again to conduct another administrative investigation, will this be conducive to our discussion about amending the PDPO? I do not think that it will be very helpful.

At this stage, we should focus on amending the PDPO and learn from the experience and lesson from the Octopus incident to make improvement; and at the same time, we should not overdo in righting the wrong. Why have I

repeatedly said that I am worried about overdoing in righting the wrong? I have this impression after my dealings with the former Privacy Commissioner for Personal Data (the Commissioner). It has already been stated in the previous consultation document that the PDPO should be amended. It is also mentioned in one paragraph that parents may be influenced when they contact schools to obtain personal data of their children, which may include their children's academic results or records of their performance at school. When I discussed this issue with the Commissioner, I asked him about the age of these children. The answer was that the minimum age could be when I asked if it was six, he told me that so long as a child is clear-headed, he had the right to refuse his parents collecting his data, and the consent of social workers was required. At that time, we were surprised to find that the power under the PCPO or the PCPD could be exercised in this way, this kind of power would be excessive. For this reason, I should be the first one to stand up and raise opposition, and I will take actions together with a group of parents. If parents behave badly, say 1% of them make use of their children's data for unlawful deeds, you can sue them for criminal offence. The Commissioner should not be involved in dealing with the problems of parents and children. They may have some disputes, and children as young as six or seven can have disputes with parents. The Government has subsequently accepted our views raised at that time.

Why do I have to repeat this incident? It is because the amendment to the PDPO is a two-edged sword, and things may sometimes be out of our expectation. All those who study law know that all things can be seen from both sides. While we protect a person's privacy, we may have infringed upon the privacy of another person. I do not agree to the proposal of empowering the Commissioner to initiate prosecution.

In my view, the power of prosecution cannot be vested in more than one department. The Department of Justice sometimes fails to do a good job, is that right? It is inevitable that people would criticize on the judgment made. Nonetheless, we cannot give the Commissioner or other commissioners the power of prosecution simply because of this reason as conflicts may arise. Therefore, firstly, I do not agree to the proposal of empowering the Commissioner to initiate prosecution.

Secondly, I do not agree to criminalizing all acts of using personal data for promotional and other purposes. We must consider if the person concerned has

malicious motives. We should be accommodating. In the Internet world, the new generation may be charged with criminal offences for no reasons; we cannot bear to see that happen. A reasonable way to deter them is to initiate civil proceedings.

In addition, about the opt-in and opt-out mechanisms, I do not think that an across-the-board approach should be adopted. We should distinguish between the two situations. As I have just said, I am the client of a bank, and the bank gives my data to a subsidiary beauty company. This should be an opt-in mechanism under which my data is not given to companies operating bank-related business but to tutorial centres or other companies. I think that the opt-out mechanism can be used to deal with the so-called data for use within banks. This will be conducive to maintaining efficiency. Actually, staff members of those organizations have to work, and at the meetings of the Lehman Subcommittee, we learnt that these staff members have to face many problems in connection with the operation of banks. This is also an important lesson because many problems have emerged. Furthermore, we should consider how to attain efficiency while we, as clients, would be protected. Hence, I think an across-the-board approach is not the best way to render protection.

Furthermore, I would like to speak on the rather sensitive section 33 of the PDPO (it has not been enforced after enactment). Sometimes, we should look at the problems left behind. When we look back 13 years later — it was 1997 at the time — do we think that we can safeguard privacy by immediately enforcing this provision that had not been enforced before? The world has changed, and nowadays, many Hong Kong companies have subsidiary companies on the Mainland or in overseas countries. As specified in the PDPO, there should be similar privacy protection after the transfer of personal data to another place. Yet, this provision may not be enforceable. I find that many difficulties will arise in enforcing many provisions under the PDPO. If section 33 should immediately be enforced across the board because of the Octopus incident, I think we should make good use of this opportunity and the support of so many people in amending the PDPO to examine these loopholes thoroughly, before determining how data can be used overseas and on the Mainland. In this way, clients in Hong Kong can be protected and legal blind spots can be removed, so that the legal provisions can be unenforceable. We must consider various issues before enforcing an ordinance.

Speaking from various angles, I opine that the issue, as well as the amendment proposals to the PDPO and the related disputes, have been discussed repeatedly at meetings of this Council and of the panel concerned, hence I do not think we should appoint a select committee to investigate the Octopus incident. The work will be redundant. It is more important for us to focus on doing the work well in the future. If we can complete the legislation of amendments within our term of office, it can be said that we have handed in a good assignment. At this stage, I find it inappropriate to set up a select committee to investigate the Octopus incident.

I cannot support Mr James TO's proposal. Thank you, Deputy President.

MS AUDREY EU (in Cantonese): Deputy President, Dr Priscilla LEUNG has gone quite far, and she has touched upon the opt-in and opt-out mechanisms, privacy being a double-edged sword, criminal prosecution and civil claims. However, Deputy President, the motion moved by Mr James TO today is purely about whether a select committee should be set up to investigate the Octopus incident, and the wordings of the motion has already covered the scope of the investigation. Therefore, I will not have lengthy discussions about the proposals recently made by the Privacy Commissioner for Personal Data (the Commissioner) or about how we can better safeguard privacy. I will just speak on the motion.

(THE PRESIDENT resumed the Chair)

Mr Alan LEONG, the new leader of the Civic Party, has, on our behalf, stated the position of the party and gave our support to this motion. Mr Ronny TONG spoke after him, followed by Mr Paul TSE who said that he shared the views of Mr Ronny TONG. I am not surprised, for different people can have different views on how public money should be used or how judgment should be made. Nevertheless, I would like to add one point. In his speech, Mr Ronny TONG asked if he should "give face" to Mr James TO; he then said that he could not "give face" to Mr James TO, and he also queried why we should investigate the Octopus incident. Should we conduct an investigation because Octopus was

a nuisance? Mr Paul TSE just said that Mr James TO was caught in a dilemma. What should be done?

President, I would like to supplement why the Civic Party supports Mr James TO's motion. When Mr James TO said at a House Committee meeting that he would move this motion, I had already stated our position on behalf of the Civic Party, and I said that we could not support his request because the scope was rather wide. I recall that he referred to various sectors and industries, and he said that four sectors easily involved in the invasion of privacy, and he wondered if an investigation could be conducted from a broader perspective. At the said House Committee meeting, I pointed out, on behalf of the Civic Party, that we would not support the investigation with such an extensive scope as proposed by Mr James TO. Nonetheless, it did not mean that we would certainly support or refuse to support Mr James TO, and our support or otherwise had nothing to do with the issue of "giving face". We always focus our discussions on the issues concerned. I also stated at the said House Committee meeting that, if he narrowed down the scope and merely inquired into the persons involved in the Octopus incident, especially the senior management of the MTR Corporation Limited (MTRCL) and the Octopus Holdings Limited (OHL), and even the roles of accountability officials in the incident, I considered it necessary to follow up the case.

President, why did I say so? When Ms Prudence CHAN, the Chief Executive of the OHL, initially gave an account of the incident, she said that it involved 1.97 million people and the profit gained was over \$40 million. Their auditor subsequently found after an investigation that the incident involved even more people. The personal data of 2.1 million people were sold and the profit generated amounting to \$57.9 million.

President, this is actually a very important incident, it is not a trivial issue. The sale of data commenced in 2002 and continued until the day when the incident was unmasked. This incident covers a very broad scope and spans over a rather long period of time. As senior officials of the Government are members of the Board of the OHL, responsible for supervising its operation, they have a part to play in the work. President, after this major scandal has suddenly been unmasked, the Civic Party considers it essential for the officials concerned to be accountable to the public because this is not just an incident involving privacy, to be investigated by the Commissioner.

President, the Legislative Council had used the power given by the so-called "imperial sword" and set up select committees before. We had investigated the chaotic situation at the opening of the new airport and the incident involving short piles. These incidents involved public interests rather than the commercial operation of a private company that are connected with privacy or wrongdoing. Another example is CITIC Pacific's losses due to foreign exchange speculation, which affected many shareholders and involved major mistakes made by certain government departments in the course of operation. In fact, this Council has the responsibility to unmask and investigate these incidents.

When we investigated the incident involving short piles and the chaotic situation at the opening of the new airport, an accountability system was not yet in place. We now have an accountability system and there are accountability officials in the Board of the MTRCL, and the OHL is a subsidiary company of the MTRCL. After this incident had been brought to light, the first response of the Civic Party was that it would be best for the Chief Executive to appoint an independent committee to investigate the incident under the Commissions of Inquiry Ordinance. At the first instance, I wrote to the Chief Executive on behalf of the Civic Party — I was the party leader at the time — and I suggested that it would be appropriate for him to appoint an independent person to investigate the incident. It so happened that Mr Roderick WOO's term of office expired at that time, and the incumbent Commissioner, Mr Allan CHIANG, succeeded him. Since Mr Roderick WOO was well versed in the Personal Data (Privacy) Ordinance when he was in office and he had investigated the Octopus incident, he was the candidate with the highest credibility, I thus suggested to the Chief Executive to appoint him. Of course, I was not forcing the Chief Executive to appoint him. My idea at the time was that we could save a lot of efforts and resources if Mr Roderick WOO could lead an independent investigation committee. Unfortunately, the Chief Executive had not taken my advice, and he had not set up an independent investigation committee.

For this reason, we still have to consider today how we can follow up the accountability officials' roles in supervising the operation of the MTRCL and the OHL in this incident. If we look at the wordings of the motion moved by Mr James TO today, we will find that he has touched upon the process of decision making and execution, the possibility of further disclosure of those personal data by the third parties, and the duties and roles of related government bureaux,

departments and public agencies in the matter. The Civic Party is most concerned about these areas. Why does the Civic Party think that it is necessary to conduct a public investigation or hearing? We are forced to take this step since the Chief Executive is unwilling to appoint an independent investigation committee.

Mr Jeffrey LAM mentioned three areas in his speech and he asked what we should investigate after this incident came to light. We should analyse the responsibilities, find out the truth and deal with the aftermath of this incident. I would like to use Mr Jeffrey LAM's good argument. Insofar as responsibilities are concerned, from 2002 up till last year, the incident involved more than \$50 million and the privacy of 2.1 million people. However, only Ms Prudence CHAN, the Chief Executive Officer of the OHL, assumed full responsibility. Was she the only one who knew what happened? Certainly not, some senior management and the Board should be aware of the situation. Hence, we should study the responsibilities and roles of decision-making officials in the government departments concerned. It is necessary to investigate and clarify the situation so that the public would be informed.

As regards the second area mentioned by Mr Jeffrey LAM, that is, to find out the truth. In the eyes of the public, they found Prudence CHAN making self-contradictory remarks; therefore she should step down from her position as the Chief Executive Officer of the OHL. This is obviously not the whole picture. From 2002 until now, Prudence CHAN would not have made all the decisions by herself, what are the true facts and what are the roles of the senior government officials involved? This is unknown to the public. Under this circumstance, despite the resource constraints of this Council, we are forced to find out the truth.

About the third area, Mr Jeffrey LAM mentioned about the follow-up work after this incident. President, I believe the follow-up work can be divided into two aspects. First, privacy protection. I share his views because the Commissioner has published many reports and pointed out three sins of the OHL: it has not notified clients about where their personal data have been transferred; it has collected excessive personal data of clients; and it has resold personal data without clients' consent. Although the OHL has made mistakes in three areas, the Commissioner cannot impose sanctions because he considered that the OHL will not make the same mistakes again.

In respect of the follow-up work after this incident, and the more extensive issues relating to privacy protection in future, as raised by Dr Priscilla LEUNG just now, should we adopt the opt-in or opt-out mechanism? Should the Commissioner be given more powers; or alternatively, should the Commissioner be given the rights to criminal penalties and prosecution? In fact, these issues can be addressed in the report to be prepared by the Commissioner or during of the process of legislative amendments or reviews.

President, there is another way to follow up the incident. If a special investigation committee is appointed, focusing on the incident itself, the roles of the persons involved from the organizations concerned, what follow-up actions will we propose? For example, is it necessary to reprimand a senior official and find out if he has made mistakes? Being aware of the actions taken, the official concerned is still day-dreaming. How can he be an accountability official? President, the Commissioner cannot, on his own, deal with the aftermath of the incident, find out the truth and take follow-up actions. He has already done all he can within the scope of his powers and duties. He has identified the three sins committed by the OHL, but he cannot take follow-up actions. President, what are the roles of the OHL, the MTRCL and the accountability officials in the whole incident, and what should be done to deal with the aftermath of the incident? President, we can only use our "imperial sword" and set up a select committee to handle these matters.

President, some time ago, I had also mentioned this incident at a House Committee meeting, but I have not gone into details as what I have done today; it is because I can speak for 15 minutes today. I would like to explain clearly that the Civic Party is not simply "giving face" to Mr James TO; we do not oppose every actions taken by the Government, and we do not often request for investigations on every issues or on the use of resources. Instead, we prefer other better methods. For instance, we have written to the Chief Executive not long ago asking him to appoint an independent investigation committee. However, he has not adopted our views, and we are forced to take this step. If we cannot follow up this incident we know that a Subcommittee of this Council is now investigating the Lehman Brothers incident; I am also a member of the Subcommittee. We have held more than 100 meetings, we are really overburdened and the Secretariat has strenuous work as well. Honestly

speaking, if this motion is passed, we are just punishing ourselves because we will have work to do. President, as this issue involving public needs, we support Mr James TO's motion on behalf of the Civic Party. We also hope that Honourable colleagues who think that the work of select committees is strenuous a very simple example is the Subcommittee on the Lehman Brothers incident, many Members who have joined the Subcommittee have withdrawn and some members have not attended the meetings. Even if Members do not have time to work as Subcommittee members, they should not oppose setting up a select committee for this reason. When some work are deemed necessary — as I have said on behalf of the Civic Party, being Members of this Council — I may not agree to the stances of other people, but this Council has the responsibility to make use its limited resources and its role as an open platform, to investigate the Octopus incident, as it has aroused strong reaction from the public; and from the outbreak of this incident in 2002 up till last year, the privacy of so many people have been invaded, yet no compensation has been awarded and no follow-up actions have been taken. The whole incident took place right under the eyes of senior accountability officials, and — we, as Members of this Council, should take responsibilities and demand for a specific investigation.

President, this investigation will not take too much time. Frankly speaking, there are not many crucial persons involved. We may ask other Members, especially, Ms LI Fung-ying who was responsible for investigation into the LEUNG Chin-man incident. If the scope is not too extensive, the work can be highly efficient and we can absolutely make good use of time. The people and events involved in the LEUNG Chin-man incident were more complicated. As I can imagine, the persons concerned in the Octopus incident would co-operate with this Council. If an investigation is conducted, the process should not be too difficult and it will not take a very long time. Having considered these factors, we support the setting up of a select committee, with a narrower scope of investigation. Hence, the Civic Party supports Mr James TO's motion. Thank you, President.

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

MRS REGINA IP (in Cantonese): President, I will be very concise. The New People's Party does not support conducting an investigation.

I am sure Honourable colleagues will not be surprised about my position. I also voted against the investigation into the Lehman Brothers incident, which was one of the major issues years ago. In my view, these investigations authorized under the Legislative Council (Powers and Privileges) Ordinance seemed to turn the Legislative Council into a court. I believe all Honourable colleagues who have participated in the Lehman Brothers hearings know that the processes are very stringent. Just like court proceedings, the witnesses have to give evidence, permission is required for talking to lawyers and it is necessary to take attendance, and so on. The processes are also very lengthy. We have held more than 100 meetings on the Lehman Brothers incident, and we all know that staff members of the Legislative Council are weighed down with the work. Fortunately, though fewer and fewer Members are taking part, the remaining Members who hold fast to the work of the Select Committee to inquire into the Lehman Brothers incident are will working very hard on the investigation.

I mention this incident to illustrate that investigations conducted by invoking the privileges of this Council may not be most efficient and the best way to find out the truth. In particular, in view that this term of the Legislative Council has not much time left, and this Council has limited resources, we still need to handle many major issues before the end of the fourth term of the Legislative Council.

Of course, the Octopus incident involved the leakage of privacy data, which shocked many people at that time. Some people thought that they were just ordinary people, and privacy was their only asset. Nevertheless, a large company used the asset to reap profits. Many people were furious and I had received many complaints. As a number of Honourable colleagues have just mentioned, we believe that the Octopus incident is just the tip of an iceberg. The direct marketing sectors transfer the personal data of clients for profits and business through various rewards programmes. I believe many companies are involved. I have gone through the Government's report on the Octopus incident (if I have remembered incorrectly, I hope the two Secretaries would correct me), and I remember that the Government indicated that nobody has violated the law

under the current ordinance, in spite of the fact that the incident subsequently caused great uproars in the community.

For this reason, I think that the executive authorities should consider how to improve the existing policy or the Personal Data (Privacy) Ordinance, so that the public will be truly informed before allowing their personal data to be given to commercial organizations for direct marketing or a new model of business operation. Even though the Octopus incident caused uproars from many people, we have also received complaints from the direct marketing sectors. As the saying goes, "when the water is clear, there is no fish." If we take excessively strict precautions, we may cause the unemployment of tens of thousands of people.

The Government should really review its policy and the relevant ordinance, and strike a balance between introducing a new business model and protecting an individual's privacy. I think that the executive authorities should handle the work, as it will be more practical than having this Council inquire into who have made mistakes and who should be accountable. Hence, the New People's party will not support Mr James TO's motion.

Thank you, President.

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

(No Member indicated a wish to speak)

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, I have to thank Members for their views on the motion. As I emphasized in the speech I made at the beginning of the motion, the Government is gravely concerned about the Octopus incident, and we fully understand the concern of the public about the incident.

As I mentioned in my earlier speech, as members of the Board of the MTR Corporation Limited (MTRCL), the Secretary for Transport and Housing and I wrote to the Chairman of the MTRCL on 27 July 2010 to express our grave

concern about the incident. Upon receiving our views, the Chairman of the MTRCL inform the media on 30 July 2010 that the MTRCL, being the major shareholder of the Octopus Holdings Limited (OHL), had urged the OHL to take follow-up actions proactively. This fully reflected the position of the entire MTRCL Board, including Board members appointed by the Government.

Moreover, on 4 August 2010, the Secretary for Transport and Housing and I met with the media, we told them that the Government had all along kept a close watch on the development of the Octopus incident and had instructed the representatives of the MTRCL and the Kowloon-Canton Railway Corporation on the OHL Board to ensure that the OHL would co-operate fully with the Privacy Commissioner for Personal Data (the Commissioner) and the Monetary Authority in their investigation and implement properly the recommendations to be made in future reports. At the same time, the Government considered that the OHL should follow up proactively the results and recommendations in the interim investigation report announced by the former Commissioner on 30 July 2010. The OHL should properly handle the relevant issues as soon as possible, which include:

- (a) issues relating to the management and governance of the company, and the restoration of public confidence on the Octopus;
- (b) ensuring that personal data kept at present or to be collected and kept in future by the company is essential, and that unnecessary personal data will be deleted properly and completely;
- (c) contacting customers within the shortest period to offer them a convenient channel to withdraw or reaffirm their authorization for the use of their personal data;
- (d) giving clear direction on how the profit generated from the sale of personal data by the company will be handled; and
- (e) giving a clear account of the future business direction and mode of operation of the company.

Regarding the monitoring of the Hong Kong Monetary Authority (HKMA) on the OHL, on 20 April 2000, the HKMA authorized the Octopus Card

Company Limited (OCL) as a deposit-taking company under the Banking Ordinance and has been supervising it as such since. The primary supervisory objective of the HKMA on the OCL is to ensure the safety and soundness of the institution so as to protect the interests of card holders, who are akin to depositors in the case of a deposit-taking entity.

In addition to the regulatory requirements under the Banking Ordinance, the OCL has to comply with the Code of Practice for Multi-purpose Stored Value Card Operation (the Code). In 2005, the company adopted the Code on a voluntary basis to enhance its transparency and operation efficiency. The Code requires the OCL to put in place appropriate management control measures and procedures to ensure the safety and efficiency of its operation. Though the OHL adopts the Code on a voluntary basis, it has been authorized by the HKMA, and the overall compliance of the Code of the OHL is monitored by the HKMA.

In monitoring OHL's compliance with the relevant requirements under the Banking Ordinance and the implementation of the Code, the HKMA adopts similar supervisory means applicable to general authorized institutions, including on-site examinations, off-site examinations, careful supervision of meetings and co-operation with external auditors. Moreover, the OHL must provide statistics on the use of Octopus card to the HKMA on a regular basis or as required.

In response to the Octopus incident, the HKMA has implemented corresponding follow-up actions. As I mentioned earlier, the Monetary Authority, according to the Banking Ordinance, has required the OCL to submit a report prepared by external auditors to be appointed by OCL and approved by the Monetary Authority. The external auditors concerned had submitted the interim and final report to the Monetary Authority on 18 October 2010 and by the end of November respectively. A copy of the final report had been submitted to the Panel on Financial Affairs of the Legislative Council, and the HKMA published the final report on its webpage on 29 November. In addition, the HKMA will follow up the implementation of the recommendations made in the report by the OCL, and will continue to monitor the progress.

In response to the requirements of the Government, the Office of the Privacy Commissioner for Personal Data (PCPD) and the HKMA, the OHL has promptly adopted a series of measures, which include:

- (a) stopping the transfer of personal data to third parties for their marketing initiatives since 25 July 2010 and refocused on Octopus' core business as an electronic payment platform;
- (b) setting up a Special Committee under the OHL Board to conduct a comprehensive review on the policies and measures adopted for the privacy and use of personal data by the subsidiaries of the OHL;
- (c) communicating with the 2.4 million Octopus Rewards Programme members to remind them of the channel to opt out of receiving marketing and promotional information. The Octopus Rewards Limited (ORL) has received opt-out requests from approximately 30 000 members and has already completed the deletion of surplus data relating to those members; and
- (d) deleting non-essential personal data from the Octopus database. Moreover, the OHL Board will appoint an independent auditor to confirm that unnecessary personal data has been deleted from the Octopus database, and that personal data transferred to business partners has been returned to the OHL or completely deleted.

Moreover, in response to all the recommendations made by the Commissioner, the Monetary Authority and the Special Committee appointed by the OHL, the OHL has undertaken to implement a series of measures, including the tightening of the specific operation on protecting personal data, the appointment of an experienced Data Privacy Officer to enforce policy and practices on personal data protection, and the commission of an external independent auditor to conduct an annual data privacy audit and produce an annual compliance report covering personal data protection policy and practices for submission to the OHL Board. The OHL has also instructed the ORL to follow up the undertaking it submitted to the Commissioner by implementing various measures to enhance the protection of personal data privacy. The OHL has made a public declaration that the company and its subsidiaries will not participate in any activities requiring the provision of personal data of its customers to business partners for marketing purpose.

Moreover, the OHL has confirmed that the total amount of revenue (not profit) generated by Octopus' data transfer to third parties for their marketing

since the program's commencement in 2002 totaled \$57.9 million, \$44 million of which had been donated to the Community Chest in August 2010, and the remaining balance of \$13.9 million has been donated to the Community Chest on 28 October.

In addition, in response to the request made by the Panel on Financial Affairs of the Legislative Council on 27 July 2010, the OHL submitted a paper on 13 August to the Panel on the customers' personal data incident and the role of the relevant Boards on the incident. It also undertook to co-operate fully with the Panel in following up the concerns of Octopus customers and issues relating to the incident.

It is evident that the Government, the Commissioner and the HKMA have been gravely concerned about the Octopus incident and have taken proactive follow-up actions on the incident. The OHL has also accepted the recommendations of the investigations concerned and has undertaken to implement the follow-up work.

President, I have stressed earlier that the Government attached great importance to the protection of personal data privacy. On 18 October 2010, the Government published the Report on Public Consultation on Review of the Personal Data (Privacy) Ordinance (Consultation Report). The Consultation Report has consolidated the views submitted by the public on various proposals and put forth proposals on the way forward, including legislative proposals. The major proposals cover areas of direct marketing, data security, powers and functions of the Commissioner, offences and sanctions, and so on. For instance:

- (a) it proposes to introduce additional specific requirements on the collection and use of personal data for direct marketing purposes so as to tighten the control, and to make it an offence if a data user does not comply with the requirements and subsequently uses the personal data for direct marketing purposes;
- (b) it proposes to make unauthorized sale of personal data by data user an offence; and to make it an offence for a person who discloses for profits or malicious purposes personal data which one obtained from a data user without the latter's consent; and

- (c) it proposes to raise the penalty for misuse of personal data in direct marketing under the relevant provisions in the Personal Data (Privacy) Ordinance (PDPO).

At the meeting of the Panel on Constitutional Affairs of the Legislative Council held on 18 October 2010, the Secretary for Constitutional and Mainland Affairs had given a detailed account of the Consultation Report to Members. He had listened to the views of the public at the special meeting held on 20 November and discussed with Members the relevant proposals on 20 December.

The Government is now examining carefully the views collected during the further public discussion period ending at the end of last year. After finalizing the legislative proposals, the Government will report to the Panel on Constitutional Affairs, and it plans to submit the amendment bill to the Legislative Council by the end of this Legislative Session.

The above proposals put forth by the Constitutional and Mainland Affairs Bureau have rightly responded the request of Members for enhancing the protection of personal data privacy and the aspirations of the public.

In view of the abovementioned development, the incident involving the provision of customers' personal data by the Octopus to third parties for marketing purposes has been thoroughly investigated and explained. The OHL has also accepted the relevant recommendations and undertaken to implement follow-up actions. Moreover, the Government has already put forth legislative proposals to enhance the protection of personal data privacy under the PDPO, and the further public discussion of the proposals has completed. Upon careful examination of the views received and the finalization of the legislative proposals, the Government plans to submit the amendment bill to the Legislative Council by the end of this Legislative Session.

Besides, as I pointed out in my speech made at the very beginning, the Legislative Council has had in-depth discussion at various meetings on the protection of personal data privacy and the proposal of appointing a select committee to investigate the transfer of customers' personal data by commercial organizations, including the Octopus incident. Members in general consider the

appointment of an independent inquiry commission unnecessary. Hence, we consider it unnecessary to appoint a select committee on this incident.

President, I so submit.

PRESIDENT (in Cantonese): Dr PAN Pey-chyou, do you want to speak again?

DR PAN PEY-CHYOU (in Cantonese): Thank you, President for giving me a chance to speak because Members seldom speak again after the Secretary has spoken. I will briefly make my argument.

Regarding the Octopus incident, I believe all of us know that the Hong Kong Federation of Trade Unions (FTU) is gravely concerned. Owing to the efforts of Mr WONG Kwok-hing and staff members of my office, who have perseveringly taken a few months to discover the relevant data, we managed to unveil to the public this incident, which had subsequently aroused wide concern in the community. However, I have much reservation about exercising our powers under the Legislative Council (Powers and Privileges) Ordinance to set up a select committee to inquire into the Octopus incident.

I have just heard quite a number of Honourable colleagues expressing their views in this Council, and I would also like to express my views briefly. According to my FTU colleagues, the incident has now reached a certain stage of development. First, the incident has aroused wide concern in the community; second, it has mended the sheepfold after a sheep is lost. I think we should be forward-looking, the Personal Data (Privacy) Ordinance (PDPO) and various concepts and legal construct about privacy are quite novel around the world. I recall that when I worked in New Zealand in the mid-1990s, New Zealand had just introduced a privacy law, and the community was highly concerned about it. I understand that New Zealand is one of the earliest countries to introduce a privacy law, and this law has not been enacted for a long time. If we want to protect data providers and owners under the law, as well as data collectors, and specify clearly the rights and responsibilities of both parties, a grey area will certainly appear.

According to my understanding, the Octopus Holdings Limited (OHL) has not contravened the law in this incident, and it has just generated profits by using

data involving privacy through disgraceful methods that are morally objectionable. I think the community will continue to have discussions about privacy matters after this incident, and I also believe that we can certainly make better legislative amendments. For this reason, we should be forward-looking and handle this incident from the perspective of how improvements can be made.

On the contrary, if we invoke the Legislative Council (Powers and Privileges) Ordinance to set up a select committee to investigate the incident, what will be the consequences? We also understand the mode of operation of a select committee. I have just joined a select committee and we have completed our work. Actually, the investigation process constituted a considerable mental burden on the parties that gave evidence in the Legislative Council. For instance, the person in charge of an enterprise who attended a hearing in this Council has to endure considerable mental tests. Of course, for the sake of public interest, we have the responsibilities to clarify the facts.

What I would like to point out is that, in considering whether a select committee should be appointed, we have to consider the staffing and resources required, the mental pressure and burden of the parties concerned, and the costs incurred by Honourable colleagues. Honourable colleagues definitely have to bear certain costs, we have to read relevant papers, spend time on attending long hearings, make deliberations, write reports, and so on. We have to spend a lot of time on these work. We have to consider the matters handled by 60 Honourable colleagues in this Council each day, and the fact that a lot of work requires follow-up. Are any of our work in this Council not involving public interest? In fact, all the work handled by us involve public interest.

I have just heard Ms Audrey EU say that a select committee should be set up for investigation because the incident involves public interest. According to this logic, I would like to ask let me give a few examples such as the building collapse incident in To Kwa Wan last year, do we need to set up a select committee to inquire into the incident? Several drug incidents had occurred last year which definitely involved public interest, do we need to set up a select committee to inquire into these incidents? Recently, eggs, pork and sausages imported from Germany were contaminated by dioxin, do we also need to set up a select committee to inquire into the incident? Let me give another example: a political party spent public money on the five geographical constituencies referendum last year. This incident also involved public interest, do we need to

set up a select committee to inquire into the incident? If we are to investigate all these incidents, I believe what this Council can do will be very limited, and that is not what the public expects. Hence, I must point out that the FTU does not support the setting up a select committee and invoking the Legislative Council (Powers and Privileges) Ordinance to investigate the Octopus incident.

President, I so submit.

PRESIDENT (in Cantonese): Dr PAN, you have all along been sitting in this Chamber. Before I ask the official to speak for the second time, I have set aside sufficient time for Members who wish to speak to make a request to speak, and I have also noticed that you are not speaking in response to the official's remarks; so, I do not understand why you have to wait until the official has spoken for the second time to make a request to speak.

DR PAN PEY-CHYOU (in Cantonese): President, can I clarify this point? Actually, I already pressed the "Request to Speak" button before you asked the Secretary to speak.

MR LEE WING-TAT (in Cantonese): President, originally I did not intend to speak and I think it is acceptable for Members of this Council to hold different views. However, I feel a bit uncomfortable after listening to Dr PAN's remarks. As we all know, Honourable colleagues will not rashly exercise the powers conferred by the Legislative Council (Powers and Privileges) Ordinance. The powers have only been exercised a few times since 1997. President, I agree that the powers have been exercised more frequently in this term, but it could not be said that 60 Members had exercised their powers rashly in the past few terms.

Dr PAN was my co-worker in the Select Committee, and I appreciated very much his calm attitude and diligence during discussions at the meetings of the Select Committee; however, I do not agree with some of his views. The first point is his saying that people being investigated are under great pressure. President, as you know, although the Legislative Council has the powers, we do not have an "imperial sword" as some Honourable colleagues have said. The powers only allow us to inquire into the persons concerned, but we cannot

summon anybody, say, Mr A, B, C, D and E, ladies and gentlemen. Most people summoned by this Council have power and they make policy decisions, and people may have doubts about their negligence in exercising their powers. Who are they? — Secretary Eva CHENG is holding her chin in her hand and I wonder if she is very tired — they may be Secretaries or members of the Board of the MTR Corporation Limited (MTRCL) or the Octopus Holdings Limited (OHL). They have power and influence, as well as high salaries. People taking up these posts should be mentally prepared; they would be applauded by the public for their good performance and criticized for their mistakes. The most serious scenario is that they would be subject to investigation, which is very common for them. Therefore, I do not think that it is a big problem for those summoned to be under pressure.

As regards the comment that a lot of money and time are required on setting up a select committee. I think it all depends on the incident, but I certainly agree that we cannot exercise the powers at every turn. Why have I unexpectedly stood up to speak? It is because Mr WONG Kwok-hing from the Hong Kong Federation of Trade Unions (FTU) was the first one to ask for an investigation into the incident. I hope Dr PAN would bear this in mind, he should first ask Mr WONG Kwok-hing if he thought that we should only conduct an investigation after considering the issues carefully — Mr WONG has just left the Chamber because he knows that I will make this point — The Member who proposed last year, in a high profile manner, that the Legislative Council should set up a select committee was his colleague, Mr WONG Kwok-hing. At that time, Mr James TO had not proposed setting up a select committee. It seemed to me that he expected the Government to set up a committee instead. In that case, this Council does not need to set up a select committee because all of us are very busy.

Nevertheless, Mr WONG Kwok-hing was different; he acted boldly and repeatedly said that an investigation was required because the incident was very important. The FTU subsequently gave an explanation, and it is up to you to judge whether you would accept the explanation. They considered after some meetings and interchanges, the incident has already been explained clearly, and this is acceptable. There are two different judgments. We opine that the incident has not been explained clearly.

Yet, he should not say that it is not right for us to propose setting up a select committee. We are not the first one to make this proposal; I know Dr PAN is kind, gentle, and very reasonable, but his colleague has made the proposal first. If we are being criticized for not considering the matter carefully, I would like to ask Mr WONG Kwok-hing, why he made the request in such a high profile manner before the summer recess last year. He still said on 4 October that a select committee should be set up, and he only withdrew his request some day in October. As a Member from the FTU, you should ask Mr WONG Kwok-hing if he had considered the matter carefully, and whether significant public interest is involved. Will such an investigation impose great pressure on others? Will a lot of time be taken? Mr WONG Kwok-hing should be asked first instead of Mr James TO and us, is that right?

I am a bit surprised; in particular, I do not want to strongly criticize Dr PAN because I respect him and I do not feel like criticizing him. Some people use "four-letter word" in criticizing others, but I do not want to do so. Nonetheless, President, why do I have to defend this position of the Democratic Party? It is because I hope that Honourable colleagues would consider this issue rationally.

President, I would like to make another point. The Government has had such a habit for more than 10 years. Whenever there are policy changes, it will resort to privatization and nationalization or it will outsource the work. I do not remember clearly which Honourable colleague made the remark — probably it was the Ombudsman, Alice TAI, who remarked that the work but not responsibilities could be outsourced. I think that is an exquisite remark. However, President, frankly speaking, we have held many debates on the related subject in the Legislative Council in the past 10-odd years. If the so-called statutory organizations are involved, especially statutory organizations that have power and where the chairpersons of their boards are government officials, we have to ask the Secretary, has he outsourced his responsibilities to these statutory organizations. Examples include the Hong Kong Monetary Authority, the Urban Renewal Authority, and the MTR Corporation Limited with 75% of its shares owned by the Government, and the Kowloon-Canton Railway Corporation whose shares are now owned by the Government. I am afraid that the Government may have the idea and I know that many people also had this idea in the past.

What exactly is this idea? The Government would like to have a shield. The Government will engage some consultancies, for example, the consultancies recently engaged to conduct studies on the Western Harbour Crossing and the Cross-Harbour Tunnel were badly reproached by a professor from the Department of Statistics and Actuarial Science of the University of Hong Kong. That was an incoherent reply — I mean the reply of the consultancy but not the Secretary. The Government gives people an impression that it frequently spends tens of thousands of dollars and even \$1 million to engage consultancies that just produced 10-page reports. We can probably write these simple reports after some online research.

Some people never read those reports. For example, Secretary Eva CHENG commissioned The Hong Kong Polytechnic University to prepare a consultancy report on the views of the public on subsidized home ownership before the summer recess. I have gone through the whole report carefully. To be frank, after reading the report, I do not have the impression that it costs a few hundred thousand dollars. Anybody can write such a report; is it necessary to spend a few hundred thousand dollars on it? Officials think that they do not need to shoulder responsibilities if they hand over to these organizations the responsibilities for traffic services throughout the territory. I earnestly hope that the Secretary would not think so because the public have sharp eyes. When you do so first, Ms Prudence CHAN has already stepped down; second, Mr CHOW Chung-kong happens to — I am not sure about the reasons — he happens to retire at this time. There was previously a Finance Director, the three of them used to support the three "walls" of the Government. The Government might feel very comfortable because it did not need to bear responsibilities. Now, one of them has resigned, another one has just retired, and Mr CHAN, who is newly appointed to replace the recently resigned Chairman of the OHL, has been severely criticized. If the Government has such an idea, I believe the public will see through, in other words, the Government just wants to evade responsibilities.

President, I advise the Government, especially the two Secretaries, to separate the outsourcing of work from the outsourcing of responsibilities. If they think that this work is very important, and the public has such expectation, as accountability officials, they should have the courage to take responsibilities.

Thank you, President.

MR LEUNG KWOK-HUNG (in Cantonese): President, I just heard Mr LEE Wing-tat talk about Mr WONG Kwok-hing, but Mr WONG is not in the Chamber now.

Mr WONG Kwok-hing was the first one to suggest exercising the powers conferred by the Legislative Council (Powers and Privileges) Ordinance (the Ordinance) or similar powers to conduct an investigation. This reminds me of a common saying on the Mainland, that is, raise an issue in a high profile manner but let it off lightly. In other words, just engaging in grand talks with no intention of talking real actions, or having neither the will nor the strength. There are two approaches to handle work, I learn that DENG Xiaoping emphasized handling complicated matters with great ease. However, the opposite is true for the Hong Kong Federation of Trade Unions (FTU) now. The FTU is like someone who looks as if he is lifting up very heavy loads, yet in fact he is just holding a balloon. He claims that it is tiring to lift up this big rock and he does so for the general public; and when he feels so happy for the praise he gets, the balloon in his hand flies away, he has nothing left.

President, why has this Council, in exercising the powers conferred by the Ordinance to monitor the Government, met with controversies? Why do people have an impression that we often abuse the powers? It is because there is a serious problem with our political system.

The Chief Executive is not returned by universal suffrage, or he is just elected arbitrarily; we have handled an easy matter in a complicated manner. The Chief Executive is elected by 800 persons on behalf of 6.9 million people. Why will the Chief Executive take responsibilities for us, buddy? First, he is not a political party member and it is specified that he cannot be a political party member. Therefore, if Mrs IP wants to run in the Chief Executive election in future, and if the law has not been amended, she must withdraw from the party that she established. The Chief Executive participates in politics but he does not need to be responsible to electors or any political party. Is this a big issue? If any person who does not need to be responsible to a political party, he will do everything on his own and the political party cannot press him. For example, if Mr LAU Kong-wah has done something wrong, the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) can ask the caucus to condemn him. If I have made a mistake, the League of Social Democrats will also

condemn me. They will ask me not to incriminate other members because I am the one who made a mistake, and they will then draw a line between us.

This poor system tied in with the governor from the former British Hong Kong Administration — the FTU has repeatedly mentioned this product of dictatorship. Will a system designed at the time the dictator was in power be easily condemned? Of course, it will not. The system we designed is still in place today, and the powers conferred by the Ordinance have always existed. The Legislative Council can exercise the powers to investigate certain persons; not including the Chief Executive, as he cannot be subject to investigation. What do we want to investigate? This Council is in an awkward situation, huddling under a corrupt political system. If we want to do something for the public and find out more about things that are not yet known under the current system this Council have no paparazzi teams; if the establishment of this Council includes 200 paparazzi teams and 500 staff members specialized in finding out if the MTR Corporation Limited (MTRCL) has any mistakes or omissions, I do not need to exercise the said powers. The paparazzi teams can tail after the people concerned and find out whom Lincoln LEUNG has contacted and what Prudence CHAN has done. They will then study the relevant regulations and then publish a report, demanding for replies.

President, we are exactly in such an awkward situation, is that right? We have nothing. When we do not know some information, we should use the powers to conduct an investigation. If we really want to appeal for the people, it will be difficult if we do not use the powers because the British Hong Kong Administration formulated many regulations or restrictions. For instance, many organizations are established with government funding, and officials are appointed to work in these organizations. Nevertheless, the Government has said that it cannot give them direct orders but only directives. In other words, it can just specify the general requirements. It is very difficult to replace a person. He cannot be dismissed unless he resigns. Lincoln LEUNG only resigned to assume responsibilities. Is that right? Yet, he has been transferred to a higher position after he has resigned. There are numerous mysteries in this incident. Prudence CHAN faced a thousand accusing fingers but she had been in office for a shorter time as compared with Lincoln LEUNG and she should follow Lincoln LEUNG's orders. Yet, Lincoln LEUNG can stay aloof from the incident. I am not talking about LEUNG Kwok-hung but Lincoln LEUNG. Do not worry or glance at me; I am not criticizing myself. On this point, even an ordinary

homemaker in Kai Yip Estate has asked me, "Mr LEUNG, can we do that? As a cleaning worker, can I work without being instructed by my foreman?" The reason is simple. The mystery is unsolved. The MTRCL has said that Prudence CHAN should take full responsibilities and she was dismissed. However, Lincoln LEUNG can be appointed to fill another vacancy.

When we discussed the competition law, many Honourable colleagues asked why the Hong Kong Trade Development Council (HKTDC) was not included. Why was a corporate organization funded by the Government and having independent power under the relevant ordinance not included in that law? The person who said so should be the first one to vote today in support of an investigation into the MTRCL. Do you agree, buddy? He cannot behave so differently as though he is off his head.

My logic is clear enough, though people may say that I am daft. The Government is an autocracy and an organization appointed by the Government is a semi-autocracy, so we cannot investigate it in normal times, is that right? When we summon the Chief Executive Officer of the MTRCL, she can refuse to come here. However, Secretary Prof K C CHAN must come here, is that right? Secretary Eva CHENG has to come here. She must come here according to the Basic Law. Secretary Ambrose LEE will have to come tomorrow though he may not want to do so. Yet, the MTRCL or the HKTDC can ignore us. Can we investigate these organizations without invoking the Ordinance? I have never heard of that. I am not saying that we should investigate everything. Now that WONG Kwok-hing has lifted the balloon high up, the balloon is just like a big rock, and he is just like a strong man or Atlas holding up the earth I hope he would do us a favour; we must "help someone till the end and escort Buddha all the way to the West", is that right? If a committee is set up under the Ordinance, and we cannot find any information worth inquiring into, it will serve us right. Nonetheless, similar cases have happened before. In the KAM Nai-wai incident, there was no plaintiff and only the defendant, but some Honourable colleagues wanted to investigate the incident and dig into the bottom. What have been investigated so far? We can "invest" in shares and bonds, but how about "investigation"? We should not go too far, buddy. We cannot act like the DAB, is that right? Is there any logic? We have a defendant and *prima facie* evidence, but the MTRCL incident has not been thoroughly investigated. Even though James TO has said that we should inquire into other

information, we find it very troublesome because we are not sure how we can inquire into so much information. There is reasonable doubt.

There are different treatments at different times. There is no plaintiff in the KAM Nai-wai incident but only hearsay, yet an investigation is still conducted. This Council has taken a liking to our Honourable colleague — KAM Nai-wai is not present — but it lets go those whom this Council should monitor, whom the Council should enforce justice on behalf of Heaven. I have to state again that I am not stirring up trouble. If I am a member of a parliamentary council where the parliament has supremacy and the principle of separation of the executive, legislative and judicial powers applies, and has elected members monitoring the Government, I would not waste my breath discussing this issue with you. We can comply with the regulatory procedure; for example, a hearing in the United States may inquire into a person at any time.

The DAB and a group of conservative members are at the advantageous position, they are the majority and they can inquire into whether LEUNG Kwok-hung has forcibly occupied a public housing flat. They need not release information to the *Oriental Daily* that I am very rich for I have a new door installed. They have also investigated the case after releasing the information, but they found no conflict of interests. Have I said that their investigation is superfluous? I have not made a sound. They even mention the five geographic constituencies referendum, what a big deal. What do they want to investigate? Do they want to investigate whether Donald TSANG have secret communication with me? I can tell them that we have not; they are the ones who meet him very often, but I have no dealings with him, is it right? There are dealings between them and the Chief Executive. If they want to investigate me, can I also investigate how many communist party members there are in the FTU? Of course, I cannot do so. Can I investigate whether they have been instructed by the party to attack the five geographical constituencies referendum? Of course, I cannot do so. They may or may not like the five geographical constituencies referendum. This makes sense in a democratic parliamentary council. They should be responsible to their electors. Will they resign in the face of a major political issue and enable electors to give them power again? What do they want to investigate? I ask them again what they want to investigate. Can Dr PAN Pey-chyou tell me what he wants to investigate?

PRESIDENT (in Cantonese): Mr LEUNG, please face the President when you speak.

MR LEUNG KWOK-HUNG (in Cantonese): Yes, President Jasper TSANG. I am very angry. As the saying goes, "A man must first despise himself, and then others will despise him". If I ask myself, I am not very interested in returning to the Legislative Council. As it turns out, electors have elected me and I am fulfilling my responsibilities. I can actually choose not to run in the election. I am not going to stand for election, and I will not participate in the boring game of "having 800 persons or 1 200 persons elect the Chief Executive". As you have seen, I was wearing a pig's head when I entered this Chamber. Am I pig-headed? I just think that wearing a pig's head is the best way to mock at a "pigpen" system. I remember that the famous Russian writer, CHEKHOV, once said to this effect, "One would rather be killed by a swine than praised by a swine" and that SZETO Wah often cited this remark. I have this saying in mind whenever I come to this Chamber. We have Napoleon and Snowball here, should it matter? It does not matter. I know what I am doing; will I speak in animal language after I have heard someone speak in animal language? I will not do so.

Mr WONG Kwok-kin challenges me and asks me not to stand for election. I heard him whisper just now. Karl MARX said, "Let people talk, paddle your own canoe". I also think so but he is just a little too loud. I would like to tell him that I would decide whether I would stand for election or resign from this Council. I may resign again. Should an investigation be conducted on a one-constituency referendum? We should not behave like that. When I resign, some people would like me to be condemned and investigated.

President, I support an investigation 400% rather than 100%. What are the reasons? Under a corrupt system, this Council can only be responsible to electors who are full of doubt and anger this way. Thank you, President.

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

MR WONG KWOK-KIN (in Cantonese): President, I have no intention of starting another round of dispute. However, I think certain issues have to be clarified. First, Mr LEUNG Kwok-hung said earlier that he felt helpless for the voters elected him but he did not want to be a Member of the Legislative Council. I am baffled. He might as well not stand for the election, and no one could have forced him to become a Member of the Legislative Council then. I speak for this reason.

I think just now some Members made unfair comments about Mr WONG Kwok-hing. Concerning the Octopus incident, Mr WONG Kwok-hing started working on it in August 2009. He had spent more than a year to uncover the secret or the plot behind the Octopus incident, compelling the Octopus Holdings Limited to return the money and make open apology, and the MTR Corporation Limited to introduce many remedial measures. The incident has raised the concern of members of society about privacy and sparked the discussion of the Personal Data (Privacy) Ordinance. I believe this will prompt the SAR Government to put additional efforts in protecting privacy or improving the legislation and the monitoring arrangement.

I think Mr WONG Kwok-hing has set the targets when he handled the incident, and when he considers that the targets have been met at this stage, the follow-up work on his part should end. The work at the next stage should be followed up by the Government or other government departments. Surely, certain colleagues in the Legislative Council may not accept this point. If anyone considers that higher and farther targets should be set, he or she may follow up the incident. I do not consider this a problem, for we may set different requirements and targets of our own. However, after setting one's own target, one has no reason to criticize the targets set by others. This is unacceptable. Though you want to take a few steps further, you cannot blame others for stopping at a certain point. If you think that a few more steps should be taken, you should request the Government or the legislature to take those steps. It will be left to colleagues to decide whether or not to accept your requests. This is the rules of the game in the legislature. You can express your views and I can express mine. Do not use the target of taking a few steps forward as a pretext to attack others. In my view, the perseverance of Mr WONG Kwok-hing in following up the Octopus incident has exerted profound impact on the development of the case. Otherwise, there would not be so many people paying attention to the incident and the truth might not have been revealed.

Despite all the efforts made, he has to come under criticisms. This is indeed unfair to him. I do not want to argue about this point anymore, and I will leave this to the public to comment. Justice is at the heart of the public, and I believe the public will have their judgment on this incident.

I so submit. Thank you, President.

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

(No Member indicated a wish to speak)

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, Secretary Prof K C CHAN has indeed given a comprehensive reply. However, a number of Members have spoken after that, and I consider it worthy for me to recap the development of the whole incident to date. I have to stress that the incident involving the provision of customers' personal data by Octopus to third parties for marketing purposes has been investigated and explained thoroughly. The Octopus Holdings Limited has accepted the relevant recommendations and undertaken to take follow-up actions.

The most important issue is certainly the enactment of legislation. As mentioned by a number of Members, the Government has put forth legislative proposals on the Personal Data (Privacy) Ordinance to enhance the protection of personal data privacy, and further public discussion has completed. We are now carefully examining the views received and finalizing the legislative proposals. We plan to submit the amendment bill to the Legislative Council by the end of this Legislative Session.

Hence, given the development of the incident to date, we consider there is ample justification that we should look forward and that the appointment of a select committee on the incident is unnecessary.

Thank you, President.

PRESIDENT (in Cantonese): Secretary for Financial Services and the Treasury, do you wish to speak again?

(Secretary for Financial Services and the Treasury shook his head to indicate that he did not wish to speak again)

PRESIDENT (in Cantonese): I now call upon Mr James TO to reply. This debate will come to a close after Mr James TO has replied.

MR JAMES TO (in Cantonese): President, I am baffled by the speech of Mr WONG Kwok-kin just now, for that is a speech made by Mr WONG Kwok-kin. He pointed out that when Mr WONG Kwok-hing proposed invoking the Legislative Council (Powers and Privileges) Ordinance (the Ordinance), he meant to clinch stage victory. That means Mr WONG Kwok-hing was merely using the Ordinance as the bargaining chip, and he did not truly mean to invoke the Ordinance. When he requested that the Ordinance be invoked, he was expecting a counter-offer, which might give him an easy way out and an opportunity to gain success. This remark was not made by Mr WONG Kwok-hing but by Mr WONG Kwok-kin. Will any colleague make false or untrue remarks simply as a stake bargaining? Perhaps I am a bit daft, but I will never do so.

I would like to tell Members about the development of the incident. When the incident happened, Mr WONG Kwok-hing was the first to propose invoking the Ordinance. At that time, many reporters came to me, for I have proposed invoking the Ordinance for the greatest number of times. I told them, "No, this power must be exercised cautiously." I then told them to be very careful, and make sure that it was actually the Ordinance that was mentioned. They told me that Mr WONG Kwok-hing proposed invoking the Ordinance. I said, "It does not matter, let him put forth the request then." If a compulsory investigation had to be conducted on the incident Since it was the summer recess at that time, I immediately wrote to the Chief Executive to propose dealing with the incident during the several months of summer recess of the Legislative Council. Honestly, I understand that resource and manpower would be an issue. More often than not, when the Government takes counter-actions or responds to a crisis, the Chief Executive will take the initiative to appoint an inquiry commission. That was a golden opportunity. Both the Civic Party and I had

written to the authorities, proposing the establishment of an independent inquiry commission. I suggested that the commission should be led by a judge, while the Civic Party requested it be led by Roderick WOO, the former Privacy Commissioner of Personal Data (the Commissioner). It does not matter who would lead the commission provided that the person was in an independent capacity and was given the power to summon witnesses. At that time, the Commissioner Roderick WOO pointed out, during the inquiry, that he did not have the power to summon witnesses. Had the Government adopted this approach, we might have known those facts much earlier, and we might look forward after that.

The Chief Executive told me in his reply that an investigation could not be conducted for the Commissioner was investigating the case. Eventually, the Commission published the interim report on 30 July. I recalled that when the Council resumed on 4 October, Mr WONG Kwok-hing continued to make a request at the House Committee to invoke the Ordinance. However, on 7 October, he made a U-turn and indicated that the discussion should be deferred. I have made strenuous efforts to obtain the letter dated 7 October from the Clerk of the House Committee. Since the information had not been uploaded to the Internet, no reporters knew about this, and Mr WONG Kwok-hing had not announced his decision to defer the discussion. This item had not been included in the agenda, and I had asked why this item had not been included. At that time, the Commissioner had already published the interim report and indicated that the final report would not differ much with the interim report. The report from Deloitte, the auditor appointed by the Octopus Holdings Limited (OHL)

(Mr WONG Kwok-hing raised his hand)

PRESIDENT (in Cantonese): Mr WONG Kwok-hing, do you have any question?

MR WONG KWOK-HING (in Cantonese): President, I would like to make clarification. Should I make the clarification now or after Mr James TO finishes his speech?

PRESIDENT (in Cantonese): Mr WONG, if you consider your earlier speech being misunderstood by other Members, you may make clarification on the content of your speech after the Member concerned finishes speaking.

MR WONG KWOK-HING (in Cantonese): Thank you, President.

PRESIDENT (in Cantonese): Mr James TO, please continue.

MR JAMES TO (in Cantonese): The report published by the Privacy Commissioner for Personal Data (the Commissioner) did not differ with the subsequent report. The report made by Deloitte — the company commissioned by the OHL — did not have much difference with the report of the Commissioner. Moreover, the final report of Deloitte was similar to that of the Commissioner. One strange point was that on 7 October, Mr WONG Kwok-hing withdrew the letter to defer the discussion at the House Committee, but he did not state when the discussion would resume. On 20 October, Mr WONG Kwok-hing proposed a debate on improving privacy protection. At that time, I considered it necessary to propose invoking the (Legislative Council (Powers and Privileges) Ordinance (the Ordinance), for the entire proposal did not mention the issues raised just now. For this reason, I put forth an amendment to Mr WONG Kwok-hing's proposal. On 20 October, the Hong Kong Federation of Trade Unions (FTU), including Mr WONG Kwok-hing, agreed with my amendment. What have actually happened from 20 October up to date? What improvement has been made? What are the differences with the follow-up actions mentioned in the earlier report? Why does he disagree now?

Mr LEE Wing-tat said that he respected Dr PAN. I also respect Dr PAN, but I cannot respect WONG Kwok-hing. Every time, he raises an issue in a high profile manner and let it off lightly. At the beginning, he acts as if he is "omnipotent", but eventually, he just let off lightly. He once used the analogy of the Gibraltar monkey that has only a head but not a tail, and that is him.

President, why does this practice of my colleagues bother me? I have talked to other colleagues from the FTU privately. I have told them I am not against Mr WONG Kwok-hing but against this kind of behaviour. On the bid for hosting the Asian Games and the discussion on drink-driving, similar

behaviour was found. The same mode of behavior repeats each time. How can we convince the public to trust us then? Is he telling the truth or is he telling lies?

President, let me return to the subject. We notice that it was during the years between 2002 and 2007 and 2008 that the business on the sale of privacy by the OHL was being expanded. The sale was most active during the years when Lincoln LEUNG was in office. However, he was not subject to any punishment. President, is there justice at all? Prudence CHAN had come to the Legislative Council to give misleading remarks, which were even regarded as lies. She should take the blame. However, in the McKenzie report in 2005, it was pointed out that business in this aspect should be ceased. She joined the company to close the business. She had to bear the consequence for making inappropriate remarks, but Lincoln LEUNG, the one who expanded the business, had received no punishment.

Moreover, to put it crudely, Lincoln LEUNG is an "account man", he was appointed to keep an eye on the business of the MTR Corporation Limited (MTRCL). The term "account man" is not derogatory. He had to bring in more profit and identify areas for business expansion. He had brought about business expansion, but on the "wrong" track. If the incident was considered a mistake, why Lincoln LEUNG did not have to take any blame? He said he left the service on his own accord. During his term of office, he might be considered making a contribution by leading the OHL to sell privacy for profit, and he might have received handsome amount of bonuses. Why Lincoln LEUNG was not held accountable? Had Lincoln LEUNG shouldered all the blame and hidden the facts from the MTRCL Board? No one knows.

When I spoke for the first time, I have given the two Directors of Bureaux several opportunities to respond, including giving a response on behalf of the Commissioner for Transport. What have they done? What have they done and proposed at the Board? Had they raised the concerns about protecting privacy? If they had not, was it not negligence on their part? Should an investigation be conducted? Should the responsibilities be stated unequivocally? Should government officials appointed as members of various Boards always remain vigilant? Should issues involving significant public interest be handled cautiously?

President, certain colleagues, such as Mr Jeffrey LAM, said honestly that, "Government officials appointed to various Boards cannot do much." Many Members of this Council are appointed by the Government as members of different Boards. For instance, Mr Jeffrey LAM is the Chairman of the Mega Events Fund. I really hope that he will not, being the Chairman of the Mega Events Fund, say that he does not have much role to play, for we rely on him. Mr Albert HO is appointed a member of the Airport Authority Board, and I have reminded him to act cautiously. Mr LEE Wing-tat always reminds me that being a member of the Urban Renewal Authority (URA) Board, I have to act cautiously. In the past few days, I have reminded SIN Chung-kai that he should act carefully as a member of the West Kowloon Cultural District Authority Board. Be it government officials or Members, once they become members of various Boards, the public will have expectation, and we will have the responsibility to make commitment.

For instance, the URA may consider Mr James TO and Miss Tanya CHAN asking too many questions. However, if I do not ask any question, I will be in great trouble. Some people do not take their appointments as Board members seriously, they just fulfil their duties perfunctorily hoping that nothing serious would happen. However, this incident involves the privacy of several million members of the public. It is a business involving the sale of privacy, which is a big issue. We rely on a couple of government officials to monitor the situation. However, have they monitored the situation? They have not answered this question. I have given them a number of opportunities to do so but they have not responded to this. Do we need to investigate the incident then? The incident carries broad and crucial implication.

President, there is one minor point: The OHL said that it had made the donation. Mr Frederick FUNG mocked earlier that the donation came from the sale of the privacy of the public, which was money from immoral deals; if so, why bragged about making the donation? To be more precise in calculation, an accountant reminded me: "Ah TO, the some \$50 million donated was tax deductible, and Octopus may probably receive a tax deduction amounting to more than 10 percentage points." Has the OHL claimed the tax deduction? Has the OHL applied for tax allowance according to the donation receipt? I hope the two Directors of Bureaux will follow up on this. Some people may consider this a minor issue. Of course, this is a trivial issue. Otherwise, the MTRCL would have included this in the company accounts. Shareholders of the MTRCL will

be happy about this, while the Government will get profit and dividend will be distributed. However, should this be handled this way?

President, according the report and guidelines of the Commissioner, it is recommended that the public should be given the opt-in option. However, according to the guidelines of the Hong Kong Monetary Authority (HKMA), it suggests the public may be allowed to opt out. By now, according to the reply of the government officials concerned, Octopus had issued 80 000 to 100 000 letters to remind the public of the opt-out option, and 30 000 people had decided to opt out. However, I have one question. The two government officials, being members of the MTRCL Board, should follow up the recommendation of the Commissioner of providing an opt-in option. If so, should the recommendation of including an opt-in option be implemented? What have the two Directors of Bureaux and the Commissioner for Transport reminded Octopus to include, the opt-in option or the opt-out option? Secretary Prof K C CHAN said in his reply that Octopus had decided to use the opt-out option. However, did the Secretary agree with this? If he really agreed with so doing, then had the two government officials appointed as members on the Board been negligent, for they knew that the subsidiary company concerned had not followed the recommendations of the Commissioner?

It is proved at this meeting that the Secretary has been negligent, for he pointed out that the MTRCL and the subsidiary companies of Octopus had decided to adopt the opt-out option. When he said that tens of thousands of people had opted out, he seemed to be stating something right. However, did he agree with that? Should letters be issued to customers again? If they do not submit their personal data, it means they are not willing to provide such information. This approach is fairer. For the personal data it obtained previously was in violation of the privacy protection principles. Though the HKMA may not necessarily agree with this, public organizations should not be too mean about this after the incident. Should they not be more open? Officials have not said a word about this despite sitting in this Chamber. The approach was mentioned loudly in the response earlier as if it was a benevolent measure. How ridiculous it is?

President, in conclusion, I think colleagues will have many different reasons to oppose this motion. Honestly, if colleagues consider that government officials appointed to various Boards should undertake more important responsibilities rather than only be a member, I hope Members will attach more

importance to this aspect and adopt the same attitude in ensuring accountability on other issues. At the same time, we should encourage ourselves and remind colleagues of the Legislative Council that being a member of any Board, they should always remain vigilant. We are appointed members of a certain Board not because the Government considers us outstanding. If we have contested in election, it is because of the votes we won at the election. If we belong to any political parties and groupings, we are in some measure representing our political parties. Besides, we carry the expectation of the public when we join the Boards. More importantly, for government officials, the public will expect them to protect the interest of the public, and public interest definitely includes privacy.

To put it in a broader perspective, a lot of interest of the public is involved, including the interest for promoting environmental protection. Hence, we carry a heavy burden of responsibility. For instance, when the Government imposes the ban on idling engines, and if we agree that this involves public interest, we may have to request the Board on which we are sitting to impose the ban on idling engines to the vehicles under the Board. As for environmental friendly designs, we may have to pay attention to environmental friendly design in the construction of any headquarter of the Board. As in the case of the handling of food waste, we have to adopt the specified method to handle food waste. We have to be conscious on every aspect rather than simply being a member on the Board. As a saying goes, "when there are three monks, none fetches the water". Among the three Directors of Bureaux and the three Directors or Commissioners, who should be held responsible? There must be a clear division of labour. Otherwise, when it comes to environmental protection issues of the MTRCL, should the Commissioner of Transport, the Secretary for Financial Services and the Treasury or the Secretary for Transport and Housing undertake the responsibility? The public consider that government officials should be responsible about this. Certainly, the management of the company, say CHOW Chung-kong, should also identify the solution. However, the Directors of Bureaux and the Commissioner for Transport, being members of the Board, should give due regard to public interest, and we Members are obliged to remind them and ask whether they have done so. If they have not, what should we do?

PRESIDENT (in Cantonese): Mr WONG Kwok-hing, do you have to make clarification?

(Mr WONG Kwok-hing stood up)

PRESIDENT (in Cantonese): Mr WONG, before you make your clarification, I would like to remind you and other Members that this debate has come to an end, and the debate cannot be extended when you speak now. You can only clarify the part of your earlier speech that you consider other Members have misunderstood.

MR WONG KWOK-HING (in Cantonese): President, as I spoke earlier, I mentioned that on 7 October last year, I considered the Octopus incident had entered the third stage. On that day, I met with CHOW Chung-kong, the Chief Executive Officer of the MTRCL. According to the content of the negotiation and the undertakings made by the MTRCL, I considered that the objectives I intended to achieve by proposing to the House Committee on 8 October to invoke the Legislative Council (Powers and Privileges) Ordinance had already been attained. Since I judged that those objectives had been achieved, right after that meeting, I asked my secretary to issue a letter to withdraw the proposal with reasons stated. After the meeting with CHOW Chung-kong, I met with the press immediately. I learnt that footage was broadcast live on television. I had issued a press release subsequently

PRESIDENT (in Cantonese): Mr WONG, please be precise.

MR WONG KWOK-HING (in Cantonese): President, as such, I had not let dropped the subject silently or given no account of the incident as Mr James TO claimed. I believe what men are doing, heaven is watching. Mr James TO's blatant act of besmirching will not win the support of the public.

PRESIDENT (in Cantonese): Mr WONG, I have already said that

MR WONG KWOK-HING (in Cantonese): Real gold fears no fire, I express my regret about his allegation.

PRESIDENT (in Cantonese): Mr WONG, please stop and be seated. You are not making clarification just now.

(Mr WONG Kwok-hing sat down and Mr James TO raised his hand)

PRESIDENT (in Cantonese): Mr James TO, do you have any question?

MR JAMES TO (in Cantonese): President, my speech has been misunderstood. May I clarify briefly?

PRESIDENT (in Cantonese): I cannot allow this debate to go on. Please be seated.

MR JAMES TO (in Cantonese): I will not debate. Since my speech has been misunderstood or besmirched, could not I clarify briefly?

PRESIDENT (in Cantonese): Members should understand that the Rules of Procedure have been laid down for this Council. In respect of this debate, apart from the Member proposing the motion, each Member may only speak once according to the rule. I know that after a Member has spoken, he may consider the speeches made by other Members hardly acceptable. However, this is so stipulated under the Rules of Procedures. If a Member who has delivered his speech requests to respond whenever he hears other Members mentioning something he disagrees, or whenever he feels other Members do not respect him, or whenever he considers that his speech has been distorted, the debate will never end. Hence, will Members please respect the Rules of Procedures.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Mr James TO be passed.

(Mr Abraham SHEK raised his hand)

PRESIDENT (in Cantonese): Mr Abraham SHEK, do you have any question?

MR ABRAHAM SHEK (in Cantonese): President, I would like to declare that I am a Non-executive Director of the MTR Corporation Limited.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Mr James TO be passed. Will those in favour please raise their hands.

(Members raised their hands)

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

(Members raised their hands)

Mr James TO rose to claim a division.

PRESIDENT (in Cantonese): Mr James TO has claimed a division. The division bell will ring for three minutes.

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

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

Functional Constituencies:

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

Dr Raymond HO, Mrs Sophie LEUNG, Dr Philip WONG, Ms Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Vincent FANG, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Prof Patrick LAU, Dr LAM Tai-fai, Mr Paul CHAN, Mr CHAN Kin-por, Mr IP Kwok-him, Dr PAN Pey-chyou and Mr Paul TSE voted against the motion.

Geographical Constituencies:

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

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

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 23 were present, four were in favour of the motion and 19 against it; while among the Members returned by geographical constituencies through direct elections, 28 were present, 17 were in favour of the motion and 10 against it. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the motion was negatived.

PRESIDENT (in Cantonese): Two motions with no legislative effect. I have accepted the recommendations of the House Committee: that is, the movers of the motions may each speak, including reply, for up to 15 minutes, and have another five minutes to speak on the amendment(s); the movers of the amendments may

each speak for up to 10 minutes; and other Members each may speak for up to seven minutes. I am obliged to direct any Member speaking in excess of the specified time to discontinue.

PRESIDENT (in Cantonese): First motion: Legislating for regulating allied health staff to protect public health.

Members who wish to speak in the debate on the motion will please press the "Request to speak" button.

I now call upon Dr Joseph LEE to speak and move the motion.

LEGISLATING FOR REGULATING ALLIED HEALTH STAFF TO PROTECT PUBLIC HEALTH

DR JOSEPH LEE (in Cantonese): President, I move that the motion, as printed on the Agenda, be passed.

I proposed this subject for discussion in the Legislative Council today mainly because I wish to let Members know, through this discussion, that some allied health staff have an immense impact on society as well as on public health protection. Frustratingly, over the past 10-odd years, the Government has not properly done its job as the gatekeeper. I thus hope that through today's motion debate, colleagues and members of the public can come to know the importance of this issue, and that the Government should expeditiously introduce legislation to regulate allied health staff, such as dieticians, audiologists, psychologists, speech therapists, podiatrists, prosthetists, ancillary dental workers, and so on. These professionals should be regulated by legislation.

First of all, let me spend a few minutes on the historical background and why these allied health staff should be regulated through legislative procedures. The main purpose of putting them under regulation is, first of all, for protecting public health. How can the health of the people be protected by regulation? Most importantly, regulation can prevent people from impersonating allied health staff and if there are no incidents of impersonation, the quality of allied health

staff can be guaranteed and their services rendered to the public can be safeguarded.

Secondly, once regulation is put in place, we must have a clear list of registered allied health staff. With this list, the public can differentiate between the authentic and the fake allied health staff. In this way, the public's right to information as well as their right to choose can be protected, thereby enabling them to choose the right allied health staff who can genuinely help them.

Thirdly, I wish to talk about the benefits of regulation. With regulation, the professional conduct of the trades can be upheld and their professional standard can be enhanced, this can in turn guarantee the quality of the services rendered to the public.

The last point is also about the purpose of regulation, which is in fact originated from the Government's policy. The Government always emphasizes that its healthcare policy must be in tandem with medical development, healthcare financing, services for the grassroots, and so on. In order to tie in with the overall policy of the Government, we need to have a statutory body to monitor the persons concerned, and to plan for the appropriate and reasonable provision of manpower.

Based on the above four points, I cannot see any reasons why Government only regulates certain allied health services and leave out the other allied health services which equally requires regulation.

Perhaps, let me talk about history first. Since 1957, the Hong Kong Government, which was then the British Government, has already proposed that medical professionals should be regulated. Medical practitioners, nurses, dentists, midwives, and so on, were then put under regulation. Today, a total of 11 medical professions are under regulation. From this we can see that regulation is nothing new, it is a practice adopted long ago, possibly several decades ago. However, only some but not all medical professions are under regulation. Why is it so? I shall definitely ask the Government later.

Knowing the purposes of regulation is not enough, we have to examine what standard should be adopted for regulation as well. According to the Government, there are three criteria on regulation. First, the profession concerned must have direct contact with patients. The meaning of direct contact

is simple. Receiving treatments from doctors, nurses or physiotherapists is regarded as having direct contact. This is very easy to understand.

The second criterion is that the practice of the allied health profession concerned must pose a certain level of risk to the person being diagnosed or treated. The risk may be invasive in nature or contain some forms of health hazards. This is the second criterion defined by the Government.

The third criterion mentioned by the Government is that consideration should be given to the distribution of the allied health professionals concerned. If the majority of them are employed in the public sector or government departments, regulation may not be necessary because the government departments or public institutions already have some code of practice or professional code which can serve to regulate these professionals. Regulation is thus unnecessary. If the majority of them work in the private sector, regulation is an option to be considered.

These are the three criteria advocated by the Government for determining how to regulate healthcare professionals.

Just now, I said that 11 professions are under regulation and these professions have met the three criteria. In our discussion today, the allied health staff mentioned are those who should be subject to regulation but have not been regulated, such as dietitians, audiologists, psychologists, speech therapists, podiatrists, prosthetists, ancillary dental workers, and so on. In fact, the call for regulating these staff or the request raised in the motion is not initiated by me, they are initiated by the trades and the trades have raised this issue for discussion long ago. If Members refer to the Legislative Council documents, they will learn that since the handover of the Legislative Council in 1997 (not to mention the Legislative Council before 1997), that is, June 1997 to be exact, the trades have raised this issue for discussion on different occasions almost every other year. Generally speaking, discussions were held by the Panel on Health Services on the importance of regulation and how regulation should be taken forward, and the trades have all along participated in the discussion.

Certainly, the Government has countless reasons to support its claim that they need not be put under regulation. But what are the reasons? I do not know. Since 1997, I have raised this issue for discussion in the Panel on Health Services almost every other year. Since 2004, a meeting has been held every year between the Secretary and members of the trades, not me; the trades would

explain to the Secretary the grounds for introducing regulation and the demerits of not having regulation. In fact, it is strange that members of the trades would ask the Government to introduce legislation to regulate them. There are reasons for doing so and I will explain them in greater detail later.

The Secretary made varied remarks at the annual meeting. While saying in a certain year that regulation would be implemented, the Secretary claimed in another year that regulation would be implemented if the professions concerned met the three criteria. The Secretary even proposed in one year that an independent committee be established for the trades (just like what Mr Alan LEONG has proposed in his amendment) to take charge of regulation. To date, the discussion has not reached any definite conclusion. I thus find it necessary to look into what has happened. If the three criteria mentioned by the Government are used to determine whether these professionals should be put under regulation, I wish to see whether these unregulated professionals meet the three criteria.

Regarding the first criterion, to meet the requirement for regulation, the profession concerned must have direct contact with patients. The professionals which we just mentioned definitely have direct contact with patients in their practice. Contrary to what the Government has said, they are not simply providing support to front-line clinical practitioners. Let me use dietician as an example to illustrate my point. The main duties of dieticians are to provide professional advice directly to patients with chronic diseases or conditions such as diabetes, high blood pressure and apoplexy, and provide specialized services to elderly people in the community. In each and every consultation, a dietician will not communicate with the patient by phone, they will meet the patient in person. More importantly, these professionals who normally require a licence to practice abroad will follow a proper procedure. For instance, they will first examine the physical condition of the patients before devising a treatment plan for them, to be followed by a series of professional services. This example well illustrates that these professionals genuinely have contact with patients, rather than just providing supporting services.

Next, I wish to talk about podiatry. Members may be less familiar with the work of podiatrist. Some people may think that they have not much to do, just performing pedicure. When I first met them, they told me that their work involved more than pedicure. The podiatrist is in fact a very specialized

profession. If a diabetes patient has a foot problem (such as poor blood circulation), a podiatrist will make a thorough examination of the patient before cutting his toenails. We are not talking about the pedicure service provided by people working in the Shanghai-style bathhouse. A podiatrist will examine the patient for any foot problems, such as whether the blood circulation of his foot is normal, whether the nerves are normal, and whether a foot ulcer is caused by a foreign object in the shoe. If the patient has a foot ulcer, the podiatrist will cleanse the wound using a special method to facilitate wound recovery. Without the podiatrist providing direct treatment to the patient, the patient's foot may have to be amputated due to mistreatment of wound. These examples show that they have direct contact with patients.

These examples well illustrate that these professions indeed have direct contacts with patients. The case of prosthetist also illustrates the close contract between the medical professionals and the patients. I do not wish to go into details, but this group of professionals has played an important role in the Sichuan earthquake. Why is their work not regarded as having direct contact with patients? I need to point out that they meet the first criteria cited by the Government. There is no reason saying that they do not meet the criteria.

Let us then take a look of the second criteria. The second criterion cited by the Government is that in rendering services to patients, the profession will pose a certain level of risk to the patients. What does the Government mean by risk? The Government simply means an invasive risk. What does the Government mean by an invasive risk? The Government is unwilling to make any definition. However, if we look up the meaning of "invasive", it means something injected into the body. This is very telling. As I have just mentioned, if a podiatrist, after examining the condition of a patient, confirms that the patient needs foot treatment, the podiatrist may then need to cleanse the patient's wound. This is invasive, rather than non-invasive.

I learn about a case involving speech therapist from a member of the trade. A child with problems of slurring speech and difficulties in swallowing saliva and food consulted an unqualified speech therapist for treatment. There were several occasions when the child was almost choked to death because he was taught to speak and use his vocal cord in an improper way. If the speech therapist was a qualified professional, the child could be spared from such hazards.

These services, which are seemingly not rendered directly to patients and not invasive in nature, are actually invasive and involve direct contact with patients. These invasive services pose very high health hazards. Unfortunately, the impact of the hazards is not seen immediately. Although the impact is not immediate, or can only be manifested after the patient has gone home, the impact is profound and long-lasting.

These examples clearly show us that the services rendered by allied health staff will directly pose a certain level of invasive risk to the service recipients and the impact of such health hazards is profound. As these allied health staff meet the two criteria, why are they not regulated? If they are not regulated, what will be the consequences?

Not long ago, a clinical psychologist told me a case. Some patients suffering from mood disorder have consulted a certain unqualified clinical psychologist. After the counselling, their conditions have not improved, worse still they became more depressed and even had suicidal thoughts. There are similar cases. We hold that these are invasive services which can directly affect the patients' behaviour at home, subjecting them to serious health hazards. These services must be regulated; otherwise, the public will be jeopardized. If these professionals meet the second criteria concerning health hazards, there are no reasons why they are not regulated.

The third criterion is what the Government has referred to as the size of practitioners. What is it exactly? The Government said that if the majority of the allied health staff work in the public sector, they need not to be regulated; but if most of them work in the private sector, they have to be regulated. According to the statistics provided by the Department of Health, at present, there are about 5 500 people in Hong Kong working as those types of allied health staff which I just mentioned; among them, over 50% are in private practice. This is the statistics provided by the Department of Health. I have a list with me here and the Under Secretary can refer to it if he is interested. This is in fact very important because over half of the practitioners (that is, 2 000-odd people) are in private practice. The impact which I just mentioned is so profound that if regulation is not introduced to prevent these 2 000-odd practitioners from being impersonated by others, the consequences would be far reaching. Referring back to the statistics, in fact, apart from what I have just said, the information provided by the Department of Health also shows that the figures concerned are

making a double-digit leap every year, meaning that more and more practitioners are joining the private market. The Government is duty-bound in this regard. It must ensure that these private practitioners are regulated and that they will not be impersonated by others; otherwise, the outcome will be grave.

Based on these three criteria, the Government has no reason not to introduce legislation for regulating these allied health staff. Moreover, as some types of allied health staff are already under regulation, it is pointless not to regulate other types of allied health staff. However, the Government said that a very good mechanism has already been put in place to regulate them. What is this mechanism then? Simply put, the mechanism is based on self-regulation. If I am a dietician returning to Hong Kong from abroad, I can set up a society. If you are graduated abroad with proper qualification for practice, you can also claim yourself a dietician. Such self-regulation will not work. Right? Conversely, if I do not study abroad, I can also claim myself a dietician, except that I have not joined that society. President, suppose you ask me how to put on weight (both of us need to put on weight rather than losing weight), I can just explain a few words and then prescribe you with some drugs, the drugs may not be the proper medication, not only will you fail to gain weight, your renal function may also be adversely affected. This example exactly reflects that the current self-regulation mechanism does not function at all, neither does it have any legal power to safeguard the health of Hong Kong people.

In consideration of the above reasons, may I ask the Government why after so many years, it is still unwilling to make an effort to regulate allied health staff who should be regulated? I wish to emphasize that the trades also wish to be put under regulation. The reason is that with effective statutory regulation, the undesirable examples which I just cited can be prevented and the public's health protected. In particular, as the current regulatory bodies on supplementary medical professions have been doing similar work, why does the Government not make extra efforts to regulate these professions, so as to truly implement a statutory registration system and a regulatory system to safeguard their standard of practice? Last but not least, introducing regulation by legislation can protect the health of the people of Hong Kong.

President, I so submit. Thank you.

Dr Joseph LEE moved the following motion: (Translation)

"That in recent years, the Government has striven to promote healthcare reform, advocated stepping up primary healthcare services, community rehabilitation services and the policy of ageing in place, etc., and emphasized the provision of appropriate primary healthcare services to members of the public, the elderly and chronic patients, etc. through multi-disciplinary healthcare services teams; however, under the Government's policy over the years, no legislation has been enacted to regulate the registration and practice of allied health staff, such as dietitians, audiologists, psychologists, speech therapists, podiatrists, prosthetists and ancillary dental workers, etc., resulting in some people in the market falsely claiming themselves as and impersonating various types of allied health staff to provide non-professional primary healthcare services for members of the public, thus posing dangers to the health of members of the public; in this connection, this Council urges the authorities to immediately put in place a statutory registration system for the relevant allied health staff and enact legislation to regulate their practice, with a view to promoting primary healthcare services and protecting the health of members of the public."

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

PRESIDENT (in Cantonese): Two Members will move amendments to this motion. This Council will now proceed to a joint debate on the motion and the two amendments.

I will call upon Mr CHEUNG Man-kwong to speak first, to be followed by Mr Alan LEONG; but no amendments are to be moved at this stage.

MR CHEUNG MAN-KWONG (in Cantonese): President, the statutory registration system for healthcare practitioners and the legislation for regulating their practice have been implemented for a long time. In 1957, the Medical Registration Ordinance was enacted to regulate the practice of medical

practitioners in Hong Kong and the Medical Council of Hong Kong has been charged with the duty to execute the statutory functions. At present, eight statutory bodies are set up for the statutory registration systems of 12 types of medical and healthcare practitioners.

As society progresses, more and more professions are involved in taking care of people's health and the number of corresponding healthcare practitioners are also on the increase. Apart from the 12 types above, there are another 16 types of healthcare practitioners under the Health Services Functional Constituency. Dr Joseph LEE's original motion has listed some types of the allied health staff.

In respect of the setting up of statutory registration systems, a more comprehensive discussion on the registration system for allied health staff in the Legislative Council can date back to 2004. At that time, the Government pointed out that it had mainly based on several criteria in examining whether a statutory regulatory framework should be established for a certain type of medical or healthcare profession.

The first criterion is whether the profession involves contact with patients. The work of some healthcare practitioners involves frequent contact with patients and provision of direct clinical treatment to patients, thus carrying higher health hazards to the public. They should thus be subject to statutory regulation.

Second, consideration should be given to the work nature of the healthcare profession concerned. Healthcare practitioners performing "invasive" healthcare services are more prone to pose health threat to their service recipients. These healthcare practitioners should be accorded with higher priority for setting up a statutory regulatory system.

Third, the size of the profession concerned. A healthcare profession with fewer practitioners poses a smaller magnitude of health hazard to the public. Moreover, the Government holds that if most members of a profession are employed in the public sector, the profession poses less health threat to the public.

These three criteria of the Government are actually not totally reasonable and they are also very ambiguous. To begin with, what does it mean by posing a

high risk to the public? What does it mean by "invasive" healthcare services? Is psychotherapy an "invasive" healthcare service? Some patient groups are against the third criterion (that is, professions of which the majority members are employed in the public sector pose a lower risk and thus have lower priority for setting up regulatory systems), because even if public institutions have put in place quality assurance measures, they do not have statutory power to permanently remove the qualification of the black sheep whose practice is unethical and below standard.

Although not much in-depth discussion on the establishment of a regulatory system for allied health staff has been held by the Legislative Council and the community, a number of trades have in fact discussed and lobbied for the regulatory system with the Government for years. The discussion may have focused more on a certain professions and the public generally agree that statutory registration systems should be established. Among the professions discussed, psychologist is the profession with which the public are more familiar.

Professional psychologists basically meet the three criteria laid down by the Government. First of all, the services provided by psychologists, particularly those provided by clinical psychologists and educational psychologists involve direct provision of psychological assessments and psychotherapies to clients. Their service recipients cover all walks of people and all age groups. If a psychologist's service is below standard, the outcome can be irreversible. For instance, if traits of suicidal or violent tendency are left unnoticed or cannot be detected at an early stage, the chance of possibly stopping cases of suicide and family violence will be lost.

Psychotherapies are unique in the way that the counselling is based on a relationship of trust. If a psychotherapist has an ethical problem or if he has recklessly disclosed the private information of his client, the harm inflicted can be enormous.

Apart from providing direct services, psychologists also provide training and support services to other professionals, such as healthcare practitioners and teachers. Substandard psychotherapy services may cause long-lasting and deep traumas.

In respect of the second criterion, although the treatments of psychologists are not directly "invasive" in a material sense, their counselling and education have an immense impact on the heart and mind of their service recipients.

Regarding the third criterion, the number of psychologists is the biggest among allied health staff. According to the Manpower Survey conducted by the Department of Health in 2009, of the 403 clinical psychologists, 34.5% were employed in the private sector; and of the 153 educational psychologists, 30.7% were employed in the private sector.

Moreover, the professional status of psychologist is recognized in a number of ordinances. For instance, they can serve as a professional witness in the judicial system and provide professional opinions on the danger of criminals to society. Their opinion can directly affect the court ruling.

There are basically no doubts about the importance of the services provided by psychologist and of regulating this profession. It is thus difficult to understand why the Government has yet to introduce a statutory regulatory system for psychologists so as to safeguard public health.

As for other types of allied health staff, such as dieticians, people have come to learn more about them in recent years. As the problems of diabetes and obesity have become more common, the number of people seeking consultation with dieticians has also increased. In the absence of statutory regulation, some baby milk powder or health food advertisements promoted by self-claimed dieticians may be misleading to the public, thus putting people's health at risk.

According to the information obtained by the Democratic Party, among the 16 types of allied health staff under the Health Services Functional Constituency, some professions have a very small size. For instance, there are limited numbers of people practicing as podiatrists and audiologists. Most people do not know the services provided by these professionals and the risks that their services may involve. Moreover, although the information indicates that the problems of people faking as and impersonating these allied health staff are very serious in Hong Kong and abroad, whether a statutory regulatory system should be established is yet to be discussed by the Legislative Council.

Thus, despite the fact that the Democratic Party agrees that statutory regulatory systems should be expeditiously put in place for some types of allied health staff (such as psychologists) and legislation be introduced to regulate their practice, regarding the proposal raised in the original motion that statutory registration systems should be immediately put in place for all types of allied health staff, the Democratic Party holds that the community, or even the practitioners, are not ready for the proposal. The Democratic Party thus intends to propose an amendment to call on the Government to immediately collect data, conduct public consultation and examine the feasibility and necessity of putting in place a statutory registration system before tabling the bill and the proposed system for regulating allied health staff. We think this is a better course to take.

In examining the regulatory legislation, the Government must deal with the issue of how stringent and in what way the regulation should be taken forward, so that the provision of services will not be affected and the current service users will not be deprived of the services due to the regulatory system. Thus, in conducting the consultation, the Democratic Party holds that apart from the views of the allied health sector, the views of the current and potential service users should also be consulted.

President, I so submit and propose the amendment.

MR ALAN LEONG (in Cantonese): President, the Civic Party supports the motion moved by Dr Joseph LEE today. My amendment only seeks to, on top of the requests proposed in Dr LEE's original motion, call on the Government to provide a legislative timetable and I have also added some specific recommendations.

President, as a matter of fact, at present, there is statutory regulation in Hong Kong to regulate the practice of medical practitioners, nurses, dentists, pharmacists, midwives and five supplementary medical professions, that is, medical laboratory technologists, optometrists, physiotherapists, and so on. These registration ordinances each have their own regulatory body made up of members from different fields within the trade. The ordinances also empower the relevant regulatory body to lay down the eligibility for registration and practice, and issue relevant certificates for professional practice. Without the authorization of the regulatory body of the profession concerned, no practitioner is allowed to practice in the name of that profession. The regulatory bodies also

have their own members' list for public reference. It is also empowered to conduct hearings on complaints concerning professional misconduct or misrepresentation, take disciplinary actions, or in serious cases, remove the name of the practitioner concerned from the relevant members' list.

In this way, allied health staff are subject to regulation by their relevant trade under the framework laid down by legislation and their specialty is protected from fraudulent use by others. This in turn can further protect the safety of the people treated by these professionals and safeguard consumer rights. The four points which I intend to raise in the amendment are drafted by drawing reference from the existing regulatory ordinances.

President, as early as 2004, the Panel on Health Services of this Council had discussed whether legislation should be introduced to regulate allied health staff. The discussion on ancillary dental workers could even date back to the last century. At that time, the Government said (I quote), "statutory regulation of healthcare professions should only be called for when there is evidence showing that the practice of a healthcare profession has demonstrated an unacceptable level of risk to the public." (End of quote) President, a society-based approach was proposed at that time, that is, by means of professional self-regulation on a voluntary basis. The Government's remark at that time seemed to mean that, instead of preventing unfortunate incidents from happening through legislation, the Government would not introduce legislation unless some serious incidents have happened. We hold that the Government is very irresponsible for making such a remark.

President, take psychologists as an example. If a patient suffering from depression is treated by an under-qualified psychologist, the patient may be subject to a much greater chance of suicide due to delayed treatment. According to a study conducted by the University of Hong Kong, commissioned by the Hong Kong Psychological Society, in the end of 2006, less than 20% of the interviewees were aware that one must hold a Master's Degree in clinical psychology before he was qualified for providing this type of counselling. An under-qualified dietician who wrongly prescribes nutritional supplements may also inflict harm on public health. President, the demand for psychologists has been on the increase. Similarly, many beauty care and slimming companies use dieticians as a tout for business, but no statutory registration has attained the Q-mark certifications. It is thus very difficult for the general public to tell the authenticity of these companies.

The Government has employed some types of allied health staff under the Hospital Authority (HA). The staff are directly regulated by the HA. Perhaps because the number of staff involved is too small, separate statutory regulation is unnecessary. In this connection, I have looked up some statistics. President, according to the Health Manpower Survey conducted by the Department of Health in 2009, over 65% of the 312 dietitians were employed in the private sector; over 50% of the 34 audiologists were employed in the private sector; almost 35% of the 403 clinical psychologists were in private practice; almost 35% of the 506 speech therapists were in private practice; 40% of the 40 podiatrists were in private practice; 25% of the 129 prosthetists were in private practice, and 70% of the 318 dental technicians/technologists were in private practice.

President, these statistics fully show that the proportion of allied health staff in private practice is not small, not to mention those who did not meet the qualification defined in the Department of Health's survey have not been reflected in the statistics. These practitioners must be appropriately regulated by legislation in order to safeguard the rights of the people. President, even though the numbers of practitioners in certain aforesaid professions are small, this is not a reason for not introducing legislation. We can consider adding these smaller-sized professions to the Schedule to the Supplementary Medical Professions Ordinance. Certainly, the Government should fully consult various stakeholders and conduct an in-depth study on the details before implementation.

President, Hong Kong can draw reference from experience abroad. For example, a Health Professional Council has been established in the United Kingdom to regulate 15 professions, including the seven professions mentioned in the motion today. The Health Professional Council also holds regular open and transparent consultative sessions with various stakeholders, issues latest guidelines and handles complaints related to the professional conduct, performance and ethics of healthcare practitioners, so as to ensure the quality of the registered professionals and safeguard consumer rights. Our neighboring country, Singapore is also drafting a similar bill. Thus, President, there is no reason for Hong Kong not to follow the international footsteps. In order to accord the best protection to the people of Hong Kong, legislation should be introduced to regulate allied health staff.

President, the Civic Party urges the Government to expeditiously meet with stakeholders and formulate an appropriate legislative timetable because there are

people seeking the services rendered by these allied health staff every day. I hope the Government will not act too slowly and will not only take remedial actions after some incidents have happened. Instead, it should foresee the need of regulation, conduct early consultation and iron out the legislative arrangement. In order to accord the best protection to the people of Hong Kong, legislation should be introduced to regulate allied health staff as soon as possible.

I so submit and support the original motion and the amendment.

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, under the laws of Hong Kong, 13 types of medical and healthcare professionals are required to undergo statutory registration prior to their practice in Hong Kong. They include medical practitioners, dentists, Chinese medicine practitioners, midwives, nurses, pharmacists, medical laboratory technologists, occupational therapists, optometrists, radiographers, physiotherapists, chiropractors and dental hygienists. Regarding the medical and healthcare professions which Member has mentioned in his motion, including audiologists, audiology technicians, podiatrists, clinical psychologists, dental surgery assistants, dental technicians/technologists, dental therapists, dieticians, dispensers, educational psychologists, mould laboratory technicians, orthoptists, prosthetists/orthotists, scientific officers (medical) and speech therapists, statutory registration is not required at present.

The statutory regulation for various healthcare professions is premised on professional self-regulation and is enforced by the regulatory bodies established under the respective legislation. These statutory bodies, composed of members from the professions and lay members, regulate the professional practice and conduct of healthcare professionals through a registration system and disciplinary actions prescribed in the legislation. Although the regulatory systems are established by the respective legislation, the legislation confers upon the professions a very high degree of autonomy and status. The regulatory bodies are given the power to devise their own code of practice or ethics for their members to follow, and to establish a disciplinary mechanism for handling and investigating complaints lodged by the public, and where necessary, to exercise disciplinary actions to fellow members.

In examining whether statutory registration should be introduced for a certain healthcare profession, the Government will consider the hazards which

may inflict on the public in the event of malpractice or services rendered by under-qualified personnel. Priority consideration will also be given to larger-sized healthcare professions whose members are mostly in private practice and those having more contact with patients. Apart from considering the aforesaid factors and grounds, the pros and cons of statutory registration will also be taken into account in considering whether statutory regulation should be implemented.

Other than dental surgery assistants and dental technicians/technologists, most of the aforesaid healthcare professionals who do not required statutory registration, are employed in the public sector. The existing systems in the public sector already provide these practitioners with some form of institutional control on their practice, thus providing considerable assurance to their standard. The duties of dental technicians/technologists do not involve direct interface with patients, whereas the work of dental surgery assistants is under close supervision of dentists.

President, the Administration notes that quite many aforesaid professions have a society-based registration system. We encourage these professions to further develop their society-based registration system and set up professional code of practice and guidelines to strengthen self-regulation. They are also encouraged to enhance their professional standard by securing accreditation from relevant international professional federations and institutions. This can also provide useful and helpful information for the public to choose the right service. In reviewing the structure, composition and mode of operation of the Supplementary Medical Professions Council, we will also examine whether more supplementary medical professions should be put under the Supplementary Medical Professions Council for regulation. The Government will continue to pay heed to the views of different trades and strive to strike a balance.

After hearing Members' views on the motion and the amendments, I will speak again. President, I so submit.

MR ALBERT HO (in Cantonese): President, the strategy of primary care development aims at providing comprehensive, continuing and integrated care services. In the relevant strategy document, it is pointed out that "To deliver such a comprehensive range of services, we need to adopt a multi-disciplinary

approach involving joint input from an appropriate combination of healthcare professionals, such as doctors, dentists, Chinese medicine practitioners, nurses, allied health professionals and other healthcare providers in the community."

To enable these multi-disciplinary teams to complement each other in providing services, and not just rely on doctors to provide medication, the Government has decided to formulate healthcare conceptual models and clinical protocols for various chronic diseases. Take diabetes as an example, in the process of controlling the medical conditions and providing healthcare services, patients no longer consult specialists regularly for getting drugs, instead they will be taken care of by a multi-disciplinary team formed by allied health staff including nurses, dieticians and pharmacists. In addition, the Government indicated that it would set up a Primary Care Directory, which provides such data as the qualifications of primary healthcare practitioners and their consultation hours, so that patients can be referred to receive appropriate healthcare professional services provided in the community.

Regrettably, as there are presently no statutory registration systems for several types of allied health staff, how can the Government set up a comprehensive multi-disciplinary team, implement the multi-disciplinary clinical protocols for every disease, and set up a Primary Care Directory covering various healthcare staff? Take the medical team for treating diabetes patients as an example. As there is no statutory registration system for dieticians, how can we include the names of all dieticians in the community as well as their qualification in the Primary Care Directory, so that doctors can refer patients to dieticians for advice? Last year, when the Government carried out a manpower survey on allied health staff, it failed to get a name list of the persons concerned, how can their qualifications be certified? In the absence of a statutory registration system and regulatory system for dieticians, how can we ensure that dieticians would follow clinical protocols, and work alongside with healthcare staff, like doctors and nurses who are under professional regulation, to provide comprehensive services to patients? Thus, if the registration system for allied health staff is not well established, the whole strategy for developing primary healthcare will eventually be reduced to the strategy for developing a family doctor system. Multi-disciplinary, comprehensive care services can hardly be provided.

President, I would like to talk about the issue concerning dental staff. In 1991, the Dental Sub-Committee of the Health and Medical Development

Advisory Committee proposed establishing a registration system for four types of ancillary dental workers. The Legislative Council Panel on Health Services discussed the proposal from 1999 to 2000. At that time, ancillary dental workers generally supported the establishment of a registration system but dentists considered that there was no need to do so. In fact, dental surgery assistants basically meet the criteria stipulated by the Government for establishing a statutory registration system. They provide direct, invasive services which may bring certain risks to the health of their service recipients. Furthermore, there is a large number of dental surgery assistants, and many people require their service. At present, there are 2 847 dental surgery assistants in Hong Kong, 85% of them work in the private sector, the quality of service required from them is higher than those who work in the public sector. Regrettably, when the Legislative Council discussed the registration system for dental surgery assistants in 1999, the Government considered it unnecessary to establish a statutory regulatory system for dental surgery assistants as they work under the supervision of dentists. Presently, the Government has set up several dental outreach teams within a short period of time, dentist with less than three years of working experience is responsible for supervising ancillary dental workers. The absence of a registration system also implies that dental surgery assistant may not have any training. It is worrying whether the outreach teams can provide quality services and whether the health of patients can be fully guaranteed.

President, to promote primary health services, the Government should expeditiously introduce the relevant statutory regulation. As there is no universally accepted definition for healthcare staff, the Government has to conduct research on each type of allied health profession, so as to ascertain which type of profession should be regulated through a statutory registration system. For those professions that can and should be regulated through a registration system, a timetable should be set in connection with the introduction of a suitable regulatory system.

I so submit and support the amendment of Mr CHEUNG Man-kwong.

DR PAN PEY-CHYOU (in Cantonese): First, I would like to thank Dr Joseph LEE for moving this motion. This motion brings out an important issue relating to healthcare and safety.

In China or in Western societies, medical development started from a humble status. Medical services in the past were very simple. In ancient times, doctors cured patients; we may have the impression of doctors carrying a large bag, filled with medicine, stethoscope or some simple medical devices, and went to patients' homes to treat them. However, with social development and advances in science, such kind of practice was no longer applicable.

With the continuous development in science, there have been huge advances in modern medicine, especially in recent decades; medical service has also become very complicated. This complexity brings about three results. First, a large number of staff is involved in treating patients. When a patient is hospitalized, the patient may be served by tens of staff in the hospital, each responsible for different duties. If the period of hospitalization is relatively longer or if the medical condition is more complicated, even more than a hundred staff may be involved, this is quite common.

With the increasing number of staff involved and the expanding scope of medical knowledge, specialization has become very refined. Doctors can belong to various specialities, and the same applies to nurses. More and more grades are established, with different areas of specialty. In treating patients, there is a division of work based on the experience and knowledge of the healthcare professionals.

As specialization becomes more and more complex, duties have also become more divided. We learn that in the past, the attending doctor undertook the final responsibility to treat patients. However, nowadays, how many duties can the attending doctor undertake? We all know the answer. Many duties like deciding the dosage for injection or the work of dieticians — I will talk about this later — can in fact be taken up by allied health staff. The attending doctor can no longer undertake these duties. His duty ceases after he has made the referral. Hence, these changes have led to great changes in the outlook of medical services.

Regarding the several healthcare professionals mentioned in Dr Joseph LEE's original motion, I would like to briefly introduce their duties.

Clinical psychologists or psychologists, including clinical psychologists and educational psychologists, are mainly responsible for providing accurate

psychological assessments at the medical level. They conduct very accurate psychological and intellectual assessments on the emotions and mode of thinking of a person, his cognitive abilities or other responses when the brain nerve is disrupted, as well as his characters. On the other hand, they will provide psychological therapy. In other words, if patients feel depressed or nervous, they will provide psychological therapy so that patients can better adapt to pressure and cope with their own emotional problems.

As for dieticians, they provide services related to nutrition. This kind of service is vital in treating diseases like mild diabetes. Patients do not need to take medicine, they simply need to control their diet and do exercise. For patients who suffer from illnesses such as liver failure, kidney failure or psychiatric anorexia, they need the services of dieticians so that they can regain health again.

Speech therapists provide services to people who have difficulties in producing voice and speaking, such as patients suffering from stroke or people who use their vocal cords inappropriately causing inflammation. Speech therapists help patients correct their method of speaking. In addition, they also make assessments. They examine patients who have difficulty in swallowing, for example, the elderly person who has such a problem after a stroke, so as to find out the cause of the problem and change their diet accordingly.

I think allied health staff undertake very important duties. From the several examples I just raised, we can see that the duties of these staff are very important. If they do not reach the expected standard and are not well qualified for the work, they can bring great harm to patients. However, up till now, the attitude of the Government is "to delay as far as it can", as in the case of mouldy pills which occurred last year, the Government will only impose strict monitoring after the incident.

Let me cite another example. The Government would also take remedial actions after it was found that some western medicine and Chinese proprietary medicine contained illegal drugs. In this way, the safety of the public cannot be guaranteed, the reputation of the trade is damaged and the Government has to take the blame, resulting in the all-lose situation for all three parties.

Therefore, it can be said that a consensus has been reached on regulating allied health staff as proposed in the original motion. If there is no legal

backing, Secretary, you are also aware that if there is no legal backing, it is difficult to regulate practitioners of a trade. So, in this respect, we greatly support the original motion moved by Dr Joseph LEE and the amendments proposed by Mr CHEUNG Man-kwong. In fact, we have to listen to the voices of the trade and let them know how regulation should be practically introduced. However, we have some reservations about the amendment by Mr Alan LEONG because I think we need to *(The buzzer sounded)*

PRESIDENT (in Cantonese): Dr PAN, Speaking time is up.

DR PAN PEY-CHYOU (in Cantonese): seek the views of the trade.

MR CHAN HAK-KAN (in Cantonese): President, many people say that Hong Kong is a highly professional city with a high standard of professional services and a good regulatory system. Hong Kong is internationally renowned, particularly in the field of healthcare services. Being attracted by our advanced technology, sound ethics and adequate regulation, people across the border come to Hong Kong to seek treatment. However, there is in fact a small minority of people in Hong Kong who impersonate health staff. Taking advantage of Hong Kong's good reputation, they recklessly claim themselves as "specialists", "dieticians" and "experts", providing so-called "healthcare services" to the people. This directly affects people's life and health.

President, as far as I know, there are 19 types of allied health staff under the Hospital Authority (HA), and only six professions, including physiotherapists and pharmacists, have professional regulatory systems. The HA has its own entry requirements and mechanisms for monitoring staff performance. For example, the HA will only employ dieticians who register in the United Kingdom, United States, Canada or Australia. The Sub-committee for Audiology under the HA's Coordinating Committee in Otorhinolaryngology is also responsible for supervising the quality of service of audiologists.

These examples indicate that in the public medical sector, mechanism has been established to ensure the provision of professional services by allied health staff. However, in the private medical sector, do we have such kind of

mechanism and monitoring, the answer seems to be in the negative. We are most worried about this situation.

In 2004, the Panel on Health Services discussed the issue relating to allied health staff who are yet to be regulated. According to the Government's stance at that time, there was no urgency to regulate these allied health staff as they did not have close contacts with patients in the provision of service, and hence their inappropriate practice would not cause great risks to patients. Moreover, as most of these professionals work in the public sector, there was no need to establish another regulatory system.

However, under careful scrutiny, the rationale hold by the Government could no longer be justified several years ago, not to mention today. At present, private healthcare market is highly popular. Let me illustrate this point with two examples. The first example is that we learn, from television or on-street promotion that almost every slimming and fitness company claims that it offers consultation services on nutrition. To solicit customers, the practitioners claim that they have received professional training, and that they are registered dieticians, awarded with professional qualifications in a certain country. However, does the Government know whether the qualifications of these "dieticians" are comparable to those employed by the Government?

I am very worried that these people, for the sake of doing business or meeting the target set by their companies, would make some recommendations that violate professional code. For example, they promote some unsuitable products or services to customers. We learn from the press that there are cases in which the so-called "dietician" was arrested because the slimming pills he prescribed to the customer contained illegal drugs.

The second example is that parents nowadays are very concerned about their children with learner diversity problems. Although the education sector and medical sector both advocate "early detection and early intervention", the services provided by the Government in this respect are very limited. Hence, parents have to seek assistance and services from educational psychologists in the private sector. Very often, parents share the same view that they do not know how to choose experts for assistance, or they do not know which experts can be trusted.

President, from the examples I have just mentioned concerning dieticians of slimming companies and seeking assistance from educational psychologists, we can understand the aspiration of the public for improving the existing regulatory system of allied health staff. The Government stresses that in future, primary healthcare services will be provided to the public through multi-disciplinary healthcare services teams. This is a correct and commendable move. If the Government takes forward in this direction, more allied health staff will have to perform different functions and they will provide more direct services to people; they will become the front-line staff in serving patients.

In fact, the Hospital Authority launched a plan in as early as 2007 to first transfer patients with specific symptoms to allied health staff for examination and assessments. Patients suffering from complex and serious illnesses will be referred to specialists for treatment, while patients with less severe illnesses are handled by allied health staff, for example, physiotherapists and occupational therapists. This practice has changed the procedure of referring all patients to specialists in the past. After this plan has been put on trial in the community, 80% of patients are diverted to physiotherapists for direct treatment. This can improve the waiting time problem for specialist healthcare services. When primary healthcare services are further developed in the public and private sectors, allied health staff will play an increasing important role. It is high time that professional regulation should be implemented.

Finally, the DAB will vote in support of the two amendments. We think that although Mr CHEUNG Man-kwong's amendment is relatively more conservative, he agrees to implement regulation. We will also support Mr Alan LEONG's amendment because in the amendment (*The buzzer sounded*) thank you, President.

MS CYD HO (in Cantonese): President, the division of labour in many healthcare services has become increasingly specialized and delicate with the worldwide development of tertiary education and technology. In the past, healthcare services were mainly divided into two fields, medicine and nursing. Although medicine was later divided into maternity and dentistry, medicine and nursing remain the two main streams. As mentioned by the Under Secretary, 13 grades and professions have been regulated, but the professions as mentioned by Dr Joseph LEE have not been regulated. These professions include

psychologists, educational psychologists, speech therapists, and so on. As people often seek help from these professions, if the quality of these services can be guaranteed, the rights of the public, patients and consumers can be safeguarded. Hence systematic regulation should be introduced as soon as possible.

Nevertheless, the pace and degree of development of various professions vary. For some areas of specialization, like the six supplementary medical professions, well-established degree programmes are offered in tertiary institutions over the world; in Hong Kong, local universities have also offered degree courses to provide professional training. However, such standard has not been reached in some areas of specialization. For example, in some overseas countries, an independent, professional and self-regulated mechanism is in place for accrediting the qualification of optometrists; in Hong Kong, The Hong Kong Polytechnic University offers well-established courses in this area, and the course has also gained high commendation by government officials. However, some practitioners in this trade have never received training in colleges. Owing to their many years of working experience, they are granted limited registration. How should we teach the public the way to differentiate them? The establishment of an accurate registration system, to be promoted by the relevant profession, can to the greatest extent, help people identify whom they should turn to for help.

We are now launching a consultation on healthcare financing, this issue also leads to the discussion on enhancement of primary healthcare services. In fact, many allied health trades are involved in the provision of primary healthcare services. Therefore, it is nice to have this debate today, on the one hand, we can discuss how to provide adequate and effective quality assurance, and on the other hand, we can discuss how to lower the overall medical costs.

President, quality assurance can be attained in two ways. The first approach is to impose top-to-bottom regulation and the second approach is to impose self-regulation. Let me talk about the objectives of regulation. There are four main objectives. The first objective is to attain quality assurance. Through registration and legislation, the general public and people in the trade would know what kind of services practitioners with certain training can provide, if they provide other services, they would violate the law and their licenses can be revoked. The second objective is to enhance the conduct of practitioners and promote professional development. The third objective is to handle complaints.

The fourth objective is to promote the healthcare services of the trade through public education, informing the public how to make good use of the services offered by the relevant trade.

Let me talk about the negative factors that can be created by the introduction of regulation by the authorities. In Hong Kong, western medicine practitioners, who uphold the principle of confrontational therapy, exert great influence in politics. The Secretary, Under Secretary and the Director of the Department of Health are doctors. The Legislative Council also designates a functional constituency for western medicine practitioners. It is very difficult for other healthcare service trades to be included in the system of functional constituency. I advise them to participate in direct election to serve public interest, which I believe is the right thing to do. Since western medicine practitioners in Hong Kong exert such great political influence, they truly think that they should be responsible for regulating and accrediting the supplementary medical professions. This belief may be driven by their intention to protect the interest of the trade or developed on the basis of the training they received, as well as the knowledge and working experience they gained in their field.

No matter what their intention is, this concept will increase medical costs. Why? The reason is that originally patients can directly be referred to specialists by well qualified healthcare staff, but as western medicine practitioners insist that patients should first be examined by family doctors before seeking treatment by specialists, a bottleneck situation will arise, that is, all patients must first be treated by western medicine practitioners. This will increase patients' waiting time and incur unnecessary medical costs. Hence, I hope that western medicine practitioners, who have the power to make decisions, can put public interest above the interest of the trade, and establish an effective professional regulatory system for the people of Hong Kong, so that the bottleneck problem as mentioned above can be solved.

Another example is that when people receive physiotherapy or chiropractic treatment, they cannot apply for insurance without western medicine practitioners' endorsement. I am really curious, how much do western medicine practitioners know about spinal care. I hope the Under Secretary can honestly tell us how many courses on chiropractic theories he has attended. President, as various professions have different levels of development, it is infeasible to insist on regulating all professions with just one system. We cannot apply the same

system in governing the professions which are in the early stage of development as those which are well developed. Such an approach will only slow down the development of all professions or do harm to newly-developed professions by being over enthusiastic. In this connection, I hope the authorities would study carefully the level of development of each profession and its special conditions, so as to formulate an effective system of regulation.

President, I therefore support the amendments proposed by Mr CHEUNG Man-kwong and Mr Alan LEONG.

DR LEUNG KA-LAU (in Cantonese): President, in principle, I support the original motion and all amendments. I would like to tell some stories and talk about history, and discuss why the Government has come to such a stance. I will also discuss the issue of cost as mentioned by Ms Cyd HO.

For a long period of time, all healthcare services had been provided by doctors, this was the situation many centuries ago. As healthcare services became more sophisticated, doctors were in short supply and the cost became more expensive, certain relatively simple healthcare services were thus handed over to those who were not doctors. There came nurses, and later the various "allied healthcare services". What is meant by "allied"? It originated from the word "alliance".

According to the existing laws in Hong Kong, the Medical Registration Ordinance stipulates that only doctors can provide medical services. As for physiotherapy and occupational therapy which are medical services, how can the relevant practitioners provide the services since they are not doctors? The Government thus exempted these allied health professionals, who are regulated by other laws, from regulation by the Medical Registration Ordinance, so that they can provide allied healthcare services. In fact, doctors who are specialized in a particular discipline certainly possess abundant specialist knowledge. If you ask me whether I possess orthopedic knowledge, to be frank, I may not know how to teach an occupational therapist how to cure foot problems, but orthopedists are certainly more familiar with orthopedic problems than allied health staff. Allied health staff provides services to patients based on doctors' recommendations and diagnosis.

The original purpose for establishing allied health staff is to solve the problem of cost. If all services are to be handled by doctors, the costs will be too expensive. Therefore, some relatively simple medical services, which require a shorter training period, are handled by allied health staff, who can provide services after receiving special training.

Why is the Government reluctant to register allied health staff? The three criteria mentioned by the Government are inadequate and the Government fails to justify its argument with these three reasons. For example, regarding the criterion on contacts with patients, medical laboratory technologists do not need to have contacts with patients, yet they are still required to get registered. Moreover, regarding the criterion on the risks caused by inappropriate practice, the Hospital Authority now recruits more staff to take blood samples from patients, their services have a direct impact on patients, but they are not required to get registered. So the three criteria given by the Government fail to substantiate its argument.

To put it simply, the Government just wants to make life easy. If most staff responsible for certain types of work are all employed by the Hospital Authority and regulated by laws, it is just like moving a rock to hit one's feet. In addition, once a registration system is established, qualifications will then have to be recognized. With the recognition of qualification comes the need to establish a salary scale and this will increase the cost. Then, what can the Government do when there is a shortage of nurses? The Government can employ more health assistants, they do not need to have particular qualifications and can perform their duties after receiving in-house training.

Therefore, I can tell Ms Cyd HO, if registration is required for all allied health staff, more than "seventy-two professions" may be involved. Phlebotomists have to be registered, health service assistants have to be registered, more than "seventy-two professions" will indeed be involved. Furthermore, if it is stipulated that only certain personnel who have received a particular type of training can undertake the relevant duties, the costs will eventually increase.

Many allied health staff who are not cover by the registration system have requested for registration. Why do they request to be under other people's regulation? This involves certain conflicts of interest. First, as I have just said,

after a registration system is established, the Hospital Authority or all public bodies have to set a salary scale for allied health staff. Next, it is natural that everyone strives for a place in the work environment. Perhaps, I should put it this way, many practitioners request for registration, and after the establishment of a registration system, some practitioners are qualified for registration while others are not. The impersonators certainly cannot be registered. The question is: who are the impersonators? Do you understand what I mean? It may be stipulated that those who studied in certain European countries, the United States or some other countries are qualified for registration upon graduation; what about those who study in our motherland? Who are the impersonators? It can thus be seen that conflicts of interest will easily arise.

Why do I support the original motion and all the amendments? It is because many allied healthcare services do have an impact on patients. For example, if podiatrists, whom I just mentioned, do not provide proper treatment to the feet of diabetes patients, the patient may have to amputate his feet if there is infection. So the services of many allied health staff, who are not required to register at the moment, definitely have an impact on the health of patients.

However, the problem is not that simple. What is the registration benchmark? Who are the impersonators? Who are qualified practitioners? What is the increase in medical costs? Will any person, who claims to be an allied health staff, advise the patients that they need not consult a doctor if they seek help from him? Just now, many Members envision that patients can be properly treated by allied health staff, and they need not seek treatment from doctors. However, as the training received by allied health staff cannot be compared with that received by doctors, and in view of the limitation of allied health staff, can they replace the full functions of doctors? Therefore, I particularly support the amendment proposed by Mr CHEUNG Man-kwong and agree that the authorities should assess risks, study the present condition of the trade, and assess the manpower requirement before deciding on the feasibility and necessity of putting in place a registration system for every allied health profession. Thank you, President.

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

MR ALBERT CHAN (in Cantonese): President, if we consider from the perspectives of principle, concept, theory and profession, regulating healthcare professionals by legislation so as to protect people's health is a right thing to do. However, when handling the relevant issue, we have to consider the actual situation of Hong Kong, the actual condition and needs of the people, as well as the support of the medical structure.

The Hospital Authority has earlier wrongly estimated the number of doctors, thinking that there was a surplus of doctors, a golden handshake was thus introduced to lure a large number of doctors into early retirement. However, it was later found that there were insufficient doctors. In respect of nurses, due to insufficient training places, there was a serious shortage of nurses.

Once other healthcare professionals are involved, it is difficult to regulate them by legislation because there are so many types of healthcare professions, including dietitians, optometrists, or as just mentioned by Members, even medical staff responsible for drawing blood and making injections have to be licenced. In other words, the areas to be regulated for each profession can be finely defined. Once such fine division is involved, it is difficult to accurately assess the provision of and support by certain services, the number of staff to be trained by the relevant organizations every year, the educational resources required as well as the practical demand of the market.

I am not a professional in this area. Would Members who are doctors by profession and the Under Secretary please tell us, are we not allowed to assign serving healthcare professionals with other duties? In any places Of course, the more specialized the services, the higher proficiency can be attained, but the public and patients will inevitably have to pay higher fees. It would be ideal if complementary measures can be made in the process of development. Once financial commitment is involved, the increased costs will be transferred to the public and patients have to pay higher fees. Of course, life is invaluable. If people's health can be guaranteed, if their life can be protected, it is worth spending the money. However, many things occurred in the past I think the greatest problem is that Hong Kong is a tiny market, unlike the United States, the Mainland China and Europe, all of which have large markets, which can well support the training of professionals.

In addition, President, traditionally, Hong Kong's medical system follows the British system. As for other professionals, especially the improving standard

of Chinese medicine, do they need to comply with the British professional system? This arouses great controversies. If professionals trained by other systems can also be appointed to fill certain professional posts, the problem of manpower shortage can greatly be relieved.

Let me cite veterinarian as a simple example. I know that nowadays many young people go to Taiwan to study veterinarian programmes because the programmes are recognized by Hong Kong. The support of accreditation systems is crucial, and we have to consider this factor in discussing whether or not we should regulate healthcare professionals by legislation. I hope that the Government can consider whether other systems can be adopted apart from following the traditional British system. In this way, professional standards can be guaranteed on the one hand, and on the other hand, people can receive professional education in other places.

The supply and support of the market should also be developed. If we can make careful considerations in areas such as market, education, Hong Kong people's choices and safeguard of health, I think regulation by legislation is a general and inevitable trend. But adequate discussions are needed before legislation is enacted.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): Dr Joseph LEE, you may now speak on the two amendments. The time for speaking is five minutes.

DR JOSEPH LEE (in Cantonese): President, the amendments proposed by the two Members, in fact, do not have any conflict with my principle.

Let me first talk about Mr CHEUNG Man-kwong's amendment. He mainly urges us to be more discreet, consult the professions and ascertain the statistics first before introducing regulation by legislation. Mr CHEUNG Man-kwong's amendment precisely reflects that he has been fooled by the Government. After so many years the Government still has not done its job

properly. This subject has been discussed in the Legislative Council since 1997, and well before that. A colleague has just said that the regulation of ancillary dental workers has been discussed for a long time. How come no actions have been taken? In fact, it is impossible that there is no such statistics. The Government should have the statistics. If these statistics are really unavailable, it is because the practitioners concerned are not put under regulation. This is the Government's fault. The Government has not collected any data. This is its incompetence.

With respect to consulting the trades, I believe that nowadays, neither the general public nor members of the trades would consult a dietician whose qualification is unconfirmed; moreover, they would not let a podiatrist whose qualification is unconfirmed treat their feet. This is precisely what Mr CHEUNG Man-kwong's amendment seeks to express. As the Government has not put in sufficient efforts in the past, Mr CHEUNG Man-kwong and members of the Democratic Party hold that the Government should make extra efforts to provide more information. Thus, I urge the Government to do a better job by providing more information and do not fool the Democratic Party again.

In fact, apart from clear documentary support, the trades are also well aware of the need to introduce regulation. There are statistics on the number of practitioners. Mr Alan LEONG has just provided some statistics, so have Members of the Democratic Party. The Government has no reasons to say that it does not have such statistics. As I have just said, 50% of the practitioners are working in the private sector, not the public sector. The Government always claims that given the small number of practitioners, no actions need to be taken. Yet, I can firmly say that their impact can be profound although their number may be small. As I have just mentioned, there may be just a dozen-odd speech therapists in practice, but if a speech therapist wrongly teaches a child how to swallow food, the child may choke to death. In the end, the impact can be enormous. How can the Government say that there is no impact? How can the Government say that the issue can be brushed aside because no death has incurred? Hence, my view is in line with that of Mr CHEUNG Man-kwong. Mr CHEUNG Man-kwong is concerned that the Government has not provided sufficient information. I hope that through this debate, the Government can provide sufficient information.

Regarding Mr Alan LEONG's amendment, Mr LEONG is truly very nice. He has explicitly spelt out what is in the heart of members of the trades, while I

have only expressed their views in a general sense. In fact, what Mr Alan LEONG has said is precisely what the trades have been saying. Every year, I arrange a meeting with the Secretary for the trades. Every year, we ask the Secretary whether he has a timetable, urging him to do something for us. The Health Professional Council, which Mr Alan LEONG just mentioned, is in the United Kingdom. The Council is charged with the specific duty to regulate healthcare practitioners. In fact, we have made such a proposal to the Secretary before and the Secretary has given as a runaround as usual and has not done anything in the end. All in all, Mr Alan LEONG's amendment has more specifically and thoroughly spelt out how to implement regulation, so that the Government can have a better understanding of the issue.

Will the Government say once again that it will not regulate the professions because some of them are already under regulation? This is not the case. All professions should be put under regulation. As Mr Alan LEONG has just proposed, can the Government adopt a stopgap measure and regulate some professions first by putting them under a Schedule? This is a feasible solution, but the Government has not done so. I hope the Government can listen to Mr Alan LEONG and expeditiously put those unregulated professions under regulation, so that the health of the people of Hong Kong can be safeguarded.

There is one point which I do not quite understand, why is it that Members of the FTU have reservation about Mr Alan LEONG's amendment. In principle, there is no conflict between the two. His amendment only seeks to make the motion more specific. Thank you, President.

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, first of all, I wish to thank again all the Members who have participated in the motion debate. Particularly, I wish to thank the motion mover Dr Joseph LEE and the amendment movers Mr CHEUNG Man-kwong and Mr Alan LEONG for their concerns and valuable views on the regulation of allied health staff. I will now respond to the views expressed by Members just now.

The statutory regulation of healthcare personnel in Hong Kong can trace back to 1957, as mentioned by Members just now. The Medical Registration Ordinance was enacted in that year to regulate the practice of medical practitioners. Since then, legislation on the regulation of dentists, midwives,

nurses, pharmacists, five supplementary medical professions (that is, medical laboratory technologists, occupational therapists, optometrists, radiographers and physiotherapists), chiropractors and Chinese medicine practitioners has been introduced one after the other.

The objective of regulating healthcare professions is to protect the public from potential health hazards arising from services rendered by unqualified personnel. In considering whether certain healthcare professions should be subject to statutory regulation, the Government adopts a risk-based approach to assess the risk associated with the practice, and whether such level of risk warrants the introduction of statutory registration for the practice. The following are some major considerations.

First of all, President, we will consider whether the practice of the healthcare practitioners requires frequent and direct contact with patients. The mode of service delivered by healthcare practitioners varies and a number of Members have elaborated on this point just now. Some of these practitioners have frequent and direct contact with and provide clinical treatment to patients while others mainly provide support to front-line healthcare practitioners. The practice of the former naturally carries a higher level of risk to public health, and therefore has a relatively stronger case for being subject to statutory regulation. On the other hand, healthcare professions which mainly provide support to front-line healthcare personnel carry a relatively lower level of risk to public health.

President, we also need to consider the impact and magnitude of the risk arising from malpractice of healthcare practitioners on their service recipients. The risk level and magnitude vary with the nature of the professions. Healthcare practitioners who perform "invasive" procedures are more prone to pose imminent and recognizable threat to the well-being of service recipients, and their practice should therefore be accorded with higher priority for statutory regulation.

Moreover, we also take into account the size of the profession and its distribution in the public and private sectors. While the primary consideration in deciding whether a particular group of healthcare practitioners should be subject to statutory regulation is on the risk level of the practice to public health, the size of individual healthcare professions, which has a bearing on its coverage and impact to the entire community, should also be taken into account.

Smaller-sized healthcare professions have a relatively smaller magnitude of health risk imposed onto the community. Moreover, the distribution of these personnel in the public and private sectors is another major consideration. As quality assurance measures such as the issue of practice guidelines, the provision of on-the-job training and continuing professional education are more readily available in the public sector, professions whose members are employed mainly in the public sector tend to pose less threat to public health than those professions predominated by private sector practitioners.

In this connection, a series of Health Manpower Surveys have been conducted on a regular basis by the Department of Health. The Health Manpower Survey 2009, to which a number of Members have referred just now, is part of the Department's effort to collect data on the relevant information and statistics. In considering whether statutory regulation is to be introduced for a healthcare profession, the Government will draw reference from these statistics and accord higher priority to those healthcare professions which are of a larger size, predominantly employed in the private sector with more direct contact with patients and of higher level of harm to public health in case of malpractice.

President, apart from statute-based registration, regulation of healthcare practitioners can and should also be achieved through other means. One form of it is through society-based registration. Society-based registration is a voluntary scheme under which professional associations administer an enrolment system and promulgate a list of qualified members to enable the public to make informed decisions when seeking certain healthcare services. The associations can also adopt respective professional code of practice to strengthen self-regulation and encourage their members to gain accreditation and enhance their professional competence by pursuing continuing professional development. These associations can also develop society-based quality assurance schemes and devise a disciplinary mechanism to ensure that only qualified personnel could stay on their lists. They are also encouraged to secure recognition from relevant international professional federations and institutions, so that their professional standard is on par with the international arena.

President, in considering whether or not statutory regulation should be introduced to individual healthcare professions, one has to be aware that legislative and regulatory efforts should strive to strike a balance among the stakeholders and take into account the impact on public health as well as the pros and cons of

different modes of statutory regulation. In the review of the structure, composition and mode of operation of the Supplementary Medical Professions Council, we will also examine whether more supplementary medical professions should be put under the Council for regulation. In the meantime, President, we encourage the professional associations to further develop their society-based registration systems, so as to furnish people with better and more effective information in choosing their services. The Government will continue to listen to views of different trades so as to strike a balance among them.

Thank you, President.

PRESIDENT (in Cantonese): Mr CHEUNG Man-kwong, you may now move the amendment to the motion.

MR CHEUNG MAN-KWONG (in Cantonese): President, I move that Dr Joseph LEE's motion be amended.

Mr CHEUNG Man-kwong moved the following amendment: (Translation)

"To add "the number of allied health staff involved in caring for public health is on the increase, and although the Government has formulated a statutory registration system for 12 types of healthcare practitioners, many types of allied health staff are still not regulated by legislation;" after "That"; to delete "put" after "immediately" and substitute with "collect data for ascertaining the number, qualifications and practice of various types of allied health staff and the possible risks posed to the public in case of malpractices, to extensively consult the public and the trades concerned, and to study the feasibility and necessity of putting"; and to delete "enact" after "allied health staff and" and substitute with "enacting"."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr CHEUNG Man-kwong to Dr Joseph LEE's motion, be passed.

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

(Members raised their hands)

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

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the amendment passed.

PRESIDENT (in Cantonese): As Mr Alan LEONG is not present now, he cannot

(Mr Alan LEONG hurried back to the Chamber)

PRESIDENT (in Cantonese): Mr Alan LEONG, as Mr CHEUNG Man-kwong's amendment has been passed, you may now move your revised amendment.

MR ALAN LEONG (in Cantonese): President, I move that Dr Joseph LEE's motion as amended by Mr CHEUNG Man-kwong be further amended by my revised amendment.

Mr Alan LEONG moved the following further amendment to the motion as amended by Mr CHEUNG Man-kwong: (Translation)

"To add "; the relevant measures should include: (a) to establish related independent statutory bodies, with members drawn from the allied health staff concerned and representatives of various sectors in society; (b) to regulate the registration and licensing examinations for practitioners of the various professions, in order to ensure and facilitate the attainment of

recognized standards of practice by the respective professions; (c) to put in place a framework for monitoring professional conduct, so as to ensure practitioners' professional integrity; and (d) to increase the transparency of the respective professions and provide adequate information, with a view to educating and guiding members of the public on choosing the treatment appropriate to them" immediately before the full stop."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Mr Alan LEONG's amendment to Dr Joseph LEE's motion as amended by Mr CHEUNG Man-kwong be passed.

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

(Members raised their hands)

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

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the amendment passed.

PRESIDENT (in Cantonese): Dr Joseph LEE, you only have one second to reply. Do you wish to make a reply?

DR JOSEPH LEE (in Cantonese): Thank you all for your support. Thank you, President. *(Laughter)*

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Dr Joseph LEE, as amended by Mr CHEUNG Man-kwong and Mr Alan LEONG, be passed.

PRESIDENT (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion as amended passed.

PRESIDENT (in Cantonese): Second motion: Post-office employment arrangements for politically appointed officials.

Members who wish to speak in the debate on the motion will please press the "Request to speak" button.

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

POST-OFFICE EMPLOYMENT ARRANGEMENTS FOR POLITICALLY APPOINTED OFFICIALS

DR MARGARET NG (in Cantonese): President, as pointed out in paragraph 9.54 of the Report of the Select Committee to Inquire into Matters Relating to the Post-service Work of Mr LEUNG Chin-man, the Select Committee has noted that the post-office employment of politically appointed officials are subject to a different set of control arrangements which are less

stringent than those governing the taking up of post-service work by directorate civil servants. Nevertheless, as politically appointed officials have greater access to sensitive information and stronger influence on policy formulation than directorate civil servants, the Select Committee is of the view that it is essential for the post-office employment of politically appointed officials to be subject to control, and the relevant control arrangements should also be very stringent. As members of the public may have an even greater concern about the post-office employment of these officials, the Select Committee therefore urges the Government to expeditiously conduct a review of the matter. The motion debate today is proposed in the light of the recommendations of the Select Committee.

President, undoubtedly, politically appointed officials would have greater access to sensitive and even very sensitive information. First of all, as all of them are members of the Executive Council, they often have access to this kind of information. Secondly, the fact that they have "stronger influence on policy formulation" is more obvious. What is more, they involve in policies which are even more important, such as the development of the Lok Ma Chau Loop, the Link REIT, land policy, the \$67.9 billion Guangzhou-Shenzhen-Hong Kong Express Rail Link project, the \$60 billion bid — I have no idea how many billions of dollars it now costs — to host the Asian Games, compulsory land sale, to put up the Government Hill for auction or conservation, and so on. As all these policies involve substantial pecuniary interest, the significance of politically appointed officials far outweighs the directorate civil servants.

After the LEUNG Chin-man incident, people from all walks of life have become more aware of issues relating to deferred rewards and negative public perception, and so on. These issues are not only important when directorate civil servants are involved; they are even more important when politically appointed officials (especially accountability officials appointed by the State) are involved. This is because politically appointed officials impress the public more, they have greater influence on the SAR Government, and they play a more significant role in maintaining good governance of Hong Kong.

In the aftermath of the LEUNG Chin-man incident, the Chief Executive appointed Ronald ARCULLI to lead a review and compile the Report on Review of Post-Service Outside Work for Directorate Civil Servants (Review Report). Chapter 6 of the Review Report also touched on politically appointed officials. A number of members of the Committee on Review of Post-Service Outside Work for Directorate Civil Servants (Review Committee) were concerned about

the control arrangement for post-service employment of politically appointed officials. They considered it an important cause for concern. They had therefore consulted public views on this matter. According to paragraph 6.08 of the Review Report, "the public was also concerned about perception or suspicion of 'deferred reward' in post-office work of politically appointed officials". Furthermore, public views also indicated that the control over politically appointed officials should be "no less stringent than that for directorate civil servants".

As Members may be aware, most of the public views collected by the Review Committee at that time came from civil servants. Therefore, as noted from the Review Report, many civil servants actually considered that the Government's control over civil servants was pretty stringent, whereas its control over politically appointed officials was very loose. That was extremely unfair and not conducive to promoting good governance in the Government. Hence, in paragraph 6.11 in Chapter 6 of the Review Report, the Review Committee stated its views and conclusion, it reads that: "In view of the importance of the matter and given the public concern, the Review Committee urges the Chief Executive to carry out a separate review". President, this Council, members of the public or Honourable Ronald ARCULLI — He is no longer a Member of this Council but a member of the Executive Council — ARCULLI's report pointed out that people were aware of the urgency of this issue.

As a matter of fact, this Council does not start showing concern about this issue after the LEUNG Chin-man incident; it has all along been concerned about this issue. And yet, no acceptable arrangement has been put in place so far. First of all, it is worth noting that the current requirement governing the post-office employment of accountability officials is far lower than that of directorate civil servants. The most notable difference is the absence of a sanitization period for the former, and only a one-year control period has been imposed. What is more, no vetting and approving procedure is required, except that the advice of a committee appointed by the Chief Executive has to be sought.

Secondly, although there is a one-year control period, the control is very loose. President, we have looked up a lot of information. In the Code for Principal Officials under the Accountability System (the Code) issued by the Government in June 2002, there are only three brief paragraphs describing the arrangements for the post-office employment of government officials. The three

paragraphs are 5.15, 5.16 and 5.17. According to paragraph 5.15, within one year after stepping down from office, officials shall seek the advice of a committee appointed for this purpose by the Chief Executive before commencing any employment, and the proceedings of the committee shall be kept confidential but the advice given shall be made public. Furthermore, within one year after stepping down from office, principal officials are required not to be involved in any claim, action, demand, proceedings or transaction against the Government. Also, within one year after stepping down from office, principal officials shall not engage in any lobbying activities on matters relating to the Government. These are indeed minimal requirements because whatever the official concerned does one year later will basically not be subject to any control. This is in stark contrast with the requirement of directorate civil servants. What is more, the wordings of those three paragraphs are pretty loose.

In 2005 the Code was introduced in 2002, but it was not until 2005 that the Government announced the establishment of the Advisory Committee on Post-Office Employment for Principal Officials under the Accountability System (Advisory Committee). At that time, the Advisory Committee was comprised of Judge of the Court of First Instance of the High Court Justice PANG Kin-kee, Prof LEE Chack-fan and Mr Henry FAN Hung-ling. The Advisory Committee was instructed by the Government to draw up principles and criteria, and to advise principal officials on the arrangements for post-office employment and the procedures for submitting the relevant applications.

President, these events took place in 2005, that is, after 2002. Given that the Advisory Committee was only established in 2005, when did the Government finally introduce the relevant criteria? The full set of criteria was only introduced in April 2008. The criteria set out in the 2008 Report — in fact, the whole report only has five pages, President, together with some annexes, and that is it. What is more, according to the website, this report only has an English version but no Chinese version is available. Where can we find the criteria then? Five criteria were set out in paragraph 5: First of all, what requirements had the members of the Advisory Committee laid down? They demanded that — President, I am going to do some sight translation though I am not a professional translator — Firstly, whether the employment of the former official will adversely affect the Government's performance of its functions? Secondly, whether the proposed employment would give rise to any reasonable public perception that the Government's performance of its functions is worse than that

during the former official's term of office? Thirdly, whether the proposed employment will cause reasonable negative public perception? Fourthly, whether the former official's access to privileged information would enable the prospective employer to gain any unfair advantage over its competitors? Last of all, whether the deprivation of the former official's right to take up the proposed employment would restrict his technical skills and experience? These are the criteria.

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

Furthermore, the procedures concerned are of extremely low transparency. Members may compare the form set out in that report with the one to be filled by the relevant directorate civil servants as set out in the Select Committee Report. They may notice that the former only has a few lines of words It only requires the applicants to answer a few questions, including whether the Government's performance will be adversely affected, whether it is unfair, and so on. After answering these questions, the application will then be approved. Similarly, the relevant departments to be consulted would also be asked to give their advice purely on the basis of those few questions. The persons-in-charge of various departments would simply be asked to advise, *inter alia* if the Government's performance will be adversely affected. Therefore, all in all, the whole process is too lax.

As for the announcements made by the Advisory Committee, only a few announcements have been made so far. Given the time restraint, I can only read out the latest announcement concerning the post-office employment for Norman CHAN. What was the content of the announcement of the Advisory Committee? All it says is that: "The Advisory Committee was satisfied that Mr CHAN's appointment as the Chief Executive of the Hong Kong Monetary Authority would not give rise to any conflict of interest, nor would it adversely affect or compromise the Government's performance." This is the content of the announcement. Members who have read the report on LEUNG Chin-man may be aware of the amount of work undertaken by the Government, and they will understand why I said that the whole process undertaken by the Advisory Committee is too lax. The current situation is that for those of a higher or more important rank, for those who can access to more confidential information and

have greater influence, the vetting and approving process becomes more lax in manner — that is not even a vetting and approving process, it is just a kind of review.

Deputy President, we therefore propose that a review should be expeditiously conducted to improve the present situation. As to how far the improvement should go, I trust that Members of this Council will express various views today. Let me briefly highlight a few points: First, a sanitization period should be introduced. As the sanitization period for directorate civil servants is no less than one year, the same should apply to accountability officials. Second, the control period should be extended. In my opinion, the Government should not adopt a broad-brush approach. Rather, consideration should be made to the power that had been exercised by the official concerned during his service. If the power concerned might lead to a conflict of interest and certain major interests still prevail, he should not take up employment with the relevant organization. This point must be clearly stated so that the public can rest assured. Third, this is also the most important point, an independent vetting and approving committee, which is accountable to the public, must be set up to replace the existing Advisory Committee, which is a black-box operation. Fourth, the procedures should be more finely stipulated. For instance, what kind of information should be furnished in the form? It should be set out more clearly. Fifth, the criteria for approval should be clearly stipulated and explained. It should be stated that restrictions are imposed not for indiscriminately denying the applicant an opportunity to work, but in consideration of public interest. It is vital to specify clearly how an application is vetted and approved, what kind of information must be furnished by the accountability officials leaving the service, and what the consequences are for failing to furnish detailed information. Also, the officials concerned must be clearly informed of their responsibility to provide the necessary information. If Members may still remember, in the course of inquiring into the post-service work of LEUNG Chin-man, we noted that former civil servants should continue to be held responsible for upholding the credibility of the Government even after they had left the Civil Service. And yet, we fail to see that accountability officials have such a responsibility. I therefore find it necessary to stipulate clearly the vetting and approving criteria. Sixth, the justifications must be made public. It is not enough to simply say that the Government's performance has not been compromised or there is no conflict of interest. The relevant justifications must be clearly set out. Seventh, the results must be uploaded to the website for public inspection. Members of the public may submit their

views if they identify any slips in the work of the vetting and approving committee. These are indeed some very basic requirements, and it is hoped that they could attract the discussion of Members today.

Last of all, I would like to speak on the amendment proposed by Dr Philip WONG. In Dr WONG's amendment, he has impolitely deleted a substantial part of my motion and replaced it with a mere accusation that the control over the post-office employment of politically appointed officials is less stringent. He therefore urged the Government to expeditiously conduct a review of the issue. Honestly speaking, I opine that the public will not be satisfied with such general proposals. However, I fail to see any reason to oppose Dr WONG's amendment as the wordings are strictly in line with those adopted by the Select Committee. I think that it is most important for us to be united and support this motion, such that the Government will be urged to expeditiously conduct a review and bring equity to civil servants and members of the public. Thank you, Deputy President.

DEPUTY PRESIDENT (in Cantonese): Dr NG, please move your motion.

DR MARGARET NG (in Cantonese): Okay. I should have moved the motion right at the beginning. Deputy President, I now move that the motion, as printed on the Agenda, be passed. Thank you, Deputy President.

Dr Margaret NG moved the following motion: (Translation)

"That, as politically appointed officials have greater access to sensitive information and stronger influence on policy formulation than directorate civil servants, the control over the post-office employment of politically appointed officials should correspondingly be more stringent than that of directorate civil servants; however, under the existing Code for Principal Officials under the Accountability System, the control over the post-office employment of politically appointed officials is very loose; in this connection, this Council urges the Government to review the vetting system for the post-office employment of politically appointed officials, including introducing a sanitization period, extending the control period, and setting up an independent and highly transparent vetting and approving committee to vet politically appointed officials' applications for

post-office employment, so as to allay public concern about any possible conflicts between accountability officials' exercise of powers and responsibilities and their pursuit of private interests, and to maintain public confidence in the governance of the HKSAR Government."

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

DEPUTY PRESIDENT (in Cantonese): Dr Philip WONG will move an amendment to this motion. This Council will now proceed to a joint debate on the motion and the amendment.

I now call upon Dr Philip WONG to speak and move the amendment to the motion.

DR PHILIP WONG (in Cantonese): Deputy President, I move that Dr Margaret NG's motion be amended.

There are two major reasons for my proposing this amendment. The first reason is that the wordings of the motion seem to have gone beyond the views set out in the Report of the Select Committee to Inquire into Matters Relating to the Post-service Work of Mr LEUNG Chin-man.

The Select Committee Report is a consensus among Members across different political parties and groupings after detailed discussion, and was endorsed by this Council at the meeting on 15 December last year. Generally speaking, being a member of the Select Committee, Dr NG should support the views set out in the Select Committee Report concerning the control over the post-office employment of politically appointed officials.

I wish to quote from the Select Committee Report again (I quote): "In the course of its inquiry, the Select Committee has noted that the post-office employment of politically appointed officials are subject to a different set of control arrangements which are less stringent than those governing the taking up of post-service work by directorate civil servants. The Select Committee

recognizes that politically appointed officials are different from civil servants in that they have no fixed tenure of office and will very likely pursue employment after leaving the Government. Nevertheless, as politically appointed officials have greater access to sensitive information and stronger influence on policy formulation than directorate civil servants, the Select Committee is of the view that it is essential for the post-office employment of politically appointed officials to be subject to control, and the relevant control arrangements should also be very stringent. The Select Committee is aware that the control over the post-office employment of politically appointed officials is not within its purview. Nevertheless, it believes that members of the public may have an even greater concern about the post-office employment of these officials. The Select Committee urges the Government to expeditiously conduct a review of the matter." (End of quote) Just as Dr Margaret NG has said, the conclusion and recommendations are set out in paragraph 9.54 of Chapter 9 of the Report. I trust that Members should have read it.

In my opinion, although politically appointed officials responsible for the formulation and promotion of policies of the SAR Government must be subject to very stringent control over their post-office employment, the regulation should not be too harsh. After all, politically appointed officials are different from civil servants, as they are subject to two distinctive appointment systems, thus a direct comparison between the two are not appropriate.

Firstly, civil servants are appointed on permanent terms but the term of office of politically appointed officials would generally not exceed that of the Chief Executive, which is five years. Some politically appointed officials may have to assume political responsibility by stepping down. As they do not enjoy any security of tenure, they should therefore enjoy reasonable protection in their right to work after leaving the service.

Secondly, civil servants are generally protected by pensions or mandatory provident funds, but politically appointed officials do not have contract gratuities or retirement benefits. For those politically appointed officials who come from the professional sectors, such as professors, doctors or lawyers, they can only serve in their own professional sector for the rest of their life. If they are not allowed to resume their previous professions after leaving the service, their livelihood would undoubtedly be affected.

I therefore consider that a more sensible, reasonable and appropriate approach is to impose different measures to regulate the post-office or post-service employment of politically appointed officials or civil servants respectively.

In my view, the original motion has digressed from the main theme of the Report, and it has proposed some pretty stringent control measures including the introduction of a sanitization period, an extension of the control period and the setting up of an independent and highly transparent vetting and approving committee which is publicly accountable. Nonetheless, these proposals are inappropriate.

My second reason is that we should respect and safeguard the freedom and right to work of politically appointed officials after leaving the service. Such freedom and right should not be limited.

Hong Kong is the freest metropolis of the world and it also a business city with intense competition. It is no easy task for Hong Kong to achieve today's prosperity and stability, and this is mainly attributable to a large pool of precious talents. In recent years, different sectors of Hong Kong have been suffering from a lack of talents, which has created succession problems. I do not want to see these people being barred from serving the community with their talents for this would be a loss to the Hong Kong society. Worse still, we may even lose our reputation as the freest economy in the world. I believe these talents will be able to strike a balance between personal rights and public perception, such that human resources can be properly and fully utilized. I had already expressed my personal views at the Council meeting on 15 December last year.

Perhaps Dr Margaret NG has her own views with regard to politically appointed officials, but I think most of these officials were recruited for their special merits. Their long-accumulated experiences and capabilities are widely acclaimed, and more important still, their credibility can stand up to challenges. Generally speaking, they have served in the business sector, professional sector or other areas for many years, and have attained great accomplishments in their respective fields. For sure, they earn more in their own sector than in joining the Government. Nonetheless, they have chosen to quit their existing service and join the Government to serve the community. This demonstrates that they have a sense of dedication and commitment, and in particular, a sense of mission, and they should earn the commendation of the community. They should not be

regulated by excess measures. I believe they treasure their reputation more than anything else, and thus the attraction of "underhand dealings" with business organizations would be greatly reduced. It would be desirable if they can continue to work for a certain period of time to serve the community with their remaining passion after leaving office. If such a legal right is being deprived of or prejudiced, I think this not only wastes their precious time, but is also inconsistent with the overall interests of the community.

Similarly, if politically appointed officials' freedom and right of post-office employment after leaving office are being unduly restricted, people who are interested in joining the Government to serve the public might be deterred from doing so, thereby limiting the field of candidates of politically appointed officials for selection and recruitment. This is undoubtedly a loss to the governance of the Government.

Deputy President, I have briefly explained the two reasons. However, it does not mean that I do not agree or even oppose the imposition of proper control. Rather, I think that proper control and officials' honesty and integrity are mutually reinforcing. All in all, although politically appointed officials are different from civil servants in that they do not enjoy any security of tenure, given that they have greater access to sensitive information and stronger influence on policy formulation, in order to avoid public concern about any possible conflicts of interest between their exercise of powers and responsibilities and their pursuit of private interests, and to maintain public confidence in the governance of the SAR Government, I urge the Government to expeditiously conduct a review of the control arrangements governing the post-office work of politically appointed officials by drawing reference from the experience of other advanced countries and regions, with a view to identifying a solution to the problem.

Thank you, Deputy President.

Dr Philip WONG moved the following amendment: (Translation)

"To delete "correspondingly be more stringent than that of directorate civil servants" after "appointed officials should" and substitute with "be very stringent"; to delete "very loose; in this connection, this Council urges the Government to review the vetting system for the post-office employment of politically appointed officials, including introducing a sanitization period, extending the control period, and setting up an independent and

highly transparent vetting and approving committee to vet politically appointed officials' applications for post-office employment, so as to allay" after "appointed officials is" and substitute with "less stringent than the existing control over the post-service work of directorate civil servants; although politically appointed officials are different from civil servants in that they do not enjoy any security of tenure, in order to avoid"; and to add ", this Council urges the Government to expeditiously conduct a review of this issue" immediately before the full stop."

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Dr Philip WONG to Dr Margaret NG's motion, be passed.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Deputy President, the motion proposed by Dr Margaret NG today urges the Government to "review the vetting system for the post-office employment of politically appointed officials" and implement a series of proposals, whereas the amendment proposed by Dr Philip WONG urges the Government to expeditiously conduct a review of the control over the post-office employment of politically appointed officials. However, the original motion and the amendment have different wordings and emphasis. I wish to respond to the original motion in three perspectives.

First of all, the SAR Government strongly agrees that politically appointed officials must have the highest integrity and conduct, it also understands that members of the public consider that the performance and behaviour of politically appointed officials should be subject to proper regulation.

In order to allay the concerns of the community and the Legislative Council, the SAR Government issued the Code for Principal Officials under the Accountability System in June 2002, which was subsequently amended as the Code for Officials under the Political Appointment System (the Code) in October 2007. The Code aims to cover all politically appointed officials and subject them to its provisions concerning the declaration of interests, protection of official secrets, post-office employment, and so on.

Regarding the provision of post-office employment, paragraph 5.15 of the Code stipulates that within one year after stepping down from office, politically appointed officials shall seek the advice of the Advisory Committee on Post-office Employment for Former Chief Executives and Politically Appointed Officials (Advisory Committee) appointed by the Chief Executive before commencing any employment, becoming a director or a partner in any business or profession or starting any business or profession on his own account or with others.

Upon receipt of requests for advice on the post-office employment or appointment of former officials, consideration shall be made by the Advisory Committee on the basis of the following guidelines:

- (a) Whether the proposed employment or appointment will adversely affect or compromise the Government's performance of its functions;
- (b) Whether the proposed employment or appointment will arouse negative public response or negative public perception issue;
- (c) Whether the proposed employment or appointment would enable the prospective employer to gain any unfair advantage over its competitors by making use of privileged information obtained by the former official while in office; and
- (d) Whether the right of the former official to work and to exploit his/her technical skills and experience would be unreasonably restricted.

In the course of handling requests for advice, the Advisory Committee will not only consider the information furnished by former officials, but will also seek advice and assessment from the government departments concerned when judging whether the duties the former official was engaged in while in office is related to the proposed employment or appointment, and whether it will constitute any conflict of interest.

On completion of the vetting procedure of the request, the Advisory Committee will make public a summary of the former official's personal

particulars and the proposed employment or appointment that will be taken up, as well as the opinion of the Advisory Committee for public information.

Members can therefore note clearly that the existing regulations on politically appointed officials' post-office employment are substantiated and justified, but not so loose as Dr Margaret NG has said.

Secondly, Dr Margaret NG also considers that "the control over the post-office employment of politically appointed officials should correspondingly be more stringent than that of directorate civil servants", and urges that the SAR Government should "review the vetting system for the post-office employment of politically appointed officials, including introducing a sanitization period, extending the control period".

I must highlight that the terms of employment of politically appointed officials and civil servants are different.

Civil servants are appointed on permanent terms while politically appointed officials' terms of office would not exceed the five-year term of the Chief Executive, who nominated or appointed them. Subject to the general principle of the prevention of conflict of interest, if the proposed measures unduly restrict the freedom and right of politically appointed officials to pursue employment upon expiry of the term of office, people from professional, business or other sectors who are interested in joining the Government's top echelon might be deterred from doing so, thereby limiting the field of candidates of politically appointed officials.

Therefore, when formulating the policy and measure of control, a balance should be struck between the protection of public interest and individual's right. We consider the existing control arrangement appropriate.

As a matter of fact, public interest and politically appointed officials' right to work are not necessarily contradictory. On the premise of an absence of conflict of interest, if former politically appointed officials possessing the professional expertise and experience are allowed to continue to give play to their abilities and contribute to the Hong Kong community, we would regard this as a positive mobility of talents, which is in line with the overall interest of our society.

Thirdly, regarding Dr NG's request for the "setting up an independent and highly transparent vetting and approving committee to vet politically appointed officials' applications for post-office employment", we do not consider this necessary.

At present, after handling a case of request for advice, the Advisory Committee will make public a summary of the former official's personal particulars and the employment or appointment to be taken up, as well as the opinion of the Advisory Committee. This would facilitate the effective monitoring of members of the public, the media and the Legislative Council on politically appointed officials' post-office work arrangements. We consider that the existing arrangements have achieved a certain degree of transparency and are appropriate.

I also wish to take this opportunity to respond to the amendment proposed by Dr Philip WONG. The wordings of Dr WONG's amendment is broadly in line with the viewpoints of the Report of the Select Committee to Inquire into Matters Relating to the Post-service Work of Mr LEUNG Chin-man (Select Committee Report) on the control of post-office employment of politically appointed officials. The opinions set out in the Select Committee Report is a set of views expressed by different political parties and groupings after detailed discussions, and the SAR Government appreciates the views expressed by different political parties and groupings and individual Members.

We consider that, overall speaking, the existing control arrangement governing the post-office employment of politically appointed officials is effective. Nonetheless, the Government will continue to gauge public views on the actual operation and other matters relating to the political appointment system. Of course, careful consideration will be made to the views expressed by Members in this Chamber today.

Deputy President, in this first reply, I will highlight these main points. After listening to Members' views, I will again give a reply later on.

Thank you, Deputy President.

MR JEFFREY LAM (in Cantonese): Deputy President, the effective governance of the SAR Government owes much to the leadership of the political

accountability team that is responsible, capable and dedicated, as well as to the concerted effort and support of a team of professional, impartial and clean civil servants. Members of the public will naturally have grave concerns and high expectations over the effective co-operation of the two teams in serving the community.

We hope that the governing team of the Government can attract more outstanding personalities and educated talents to serve the community. We often say that Hong Kong lacks political talents, and there are inadequate methods and systems for training of political talents. As a matter of fact, political talents are either recruited from different sectors of society through the accountability system, or from the Civil Service. Promising people are groomed through internal training and after they have accumulated certain experience, they can serve the community.

The provision of training in the civil service system is a long-term policy, and the nurturing of talents takes time. At this moment, we fail to identify any fresh new blood in the Government who can be entrusted with important responsibilities. On the contrary, under the Accountability System for Principal Officials, attractive remuneration package can be offered to attract people from all walks of life. After all, participation in politics is like entering a "hot kitchen", it is not particularly appealing to political talents from the private sector or the community. If undue restrictions are imposed, I am afraid that the enthusiasm of people with insight in joining the Government will be dampened.

Deputy President, this Council has just had a motion debate on the Report of the Select Committee to Inquire into Matters Relating to the Post-service Work of Mr LEUNG Chin-man (Select Committee) at the end of last month. This incident had dragged on for two-odd years, and there had been widespread public concern. The Report pointed out that there were loopholes in the post-service work applications from senior civil servants, and inadequacies in the vetting and approval process of the Civil Service Bureau and the relevant vetting and approving committee at the initial stage of the incident. The Report has also suggested the direction for improvement and follow-up.

In my speech delivered at that time, I said that instead of extending the control period across the board, the Government should seek improvements to the existing vetting and approving process. What we did not want to see was that after the LEUNG Chin-man incident, officials responsible for vetting and

approval would adopt an overkill attitude of "rather killing them wrongly than letting them off". In that case, it would only demoralize the Civil Service and affect their inclination to take up post-service employment.

These remarks were made in the light of the post-service employment arrangements for directorate civil servants. There are other views as well, pointing out that as politically appointed officials have greater access to sensitive information and stronger influence on policy formulation than directorate civil servants, the control over the post-service employment of politically appointed officials should be more stringent than that of directorate civil servants. I have reservation about this point.

Deputy President, the community has mixed responses and divergent views on the accountability system during its eight years of implementation. In my opinion, the control over the post-office employment of politically appointed officials is less stringent than that of directorate civil servants. I therefore consider it necessary for the Government to listen more to different views and identify the inadequacies of the system. Subsequently, a review should be conducted to enhance the system's transparency, with a view to boosting public confidence in the accountability team. This is the kind of attitude that the Government should adopt.

And yet, we must note that the accountability system and the civil service system are two distinctive systems and independent of each other. The two systems differ in areas of employment terms, welfare benefits, as well as the responsibilities and impact of the officials on the public. The remuneration package of principal officials under the accountability system does not include housing allowance, passage allowance, children's education allowance, gratuity or retirement benefit. Moreover, they have to bear political responsibilities and they do not enjoy any security of tenure. As a result, the risk borne by accountability officials is higher than that of civil servants. Thus, further tightening the control over their post-office employment will have implication on their right to work in future, thereby affecting the inclination of elites from different sectors to join the accountability team.

Deputy President, the imposition of control over accountability officials is essential, and similar regulations on appointed officials or accountability teams can also be found in overseas countries. While some arrangements for specific post-office employment are pretty loose, some are more stringent than that of

Hong Kong. Hence, on the one hand, the Government can draw reference from the experience of overseas countries and conduct a review of the post-office employment arrangement for accountability officials, thereby drawing on the strong points of others to make up its weaknesses and upholding the spirit of the Basic Law by ensuring that Hong Kong residents enjoy the right to choose their occupation. On the other hand, it should broaden its vision and consider how it can strengthen the Government's good governance by nurturing and recruiting more political talents to join the accountability team and the civil service team.

Deputy President, I so submit.

MR RONNY TONG (in Cantonese): Deputy President, in fact, we are quite familiar with the topic under discussion today. We just had a debate on the report on the post-office employment of Mr LEUNG Chin-man one month ago. At that time, I had moved an amendment similar to the one proposed by Dr Margaret NG today.

Deputy President, not only is the subject familiar to us, the response of the Government also sounds familiar. When Chief Secretary Henry TANG gave a response to my amendment on 15 December, he also turned down my proposals by highlighting the difference between the employment terms of politically appointed officials and civil servants. The speech given by the Secretary today is actually more or less the same.

Deputy President, Chief Secretary Henry TANG advised that civil servants are appointed on permanent terms but politically appointed officials' terms of office would not exceed that of the Chief Executive, which is five years. He worried that if politically appointed officials are unduly restricted in respect of their freedom and rights to work upon expiry of the term of office, this would deter aspiring people from joining the Government's governing team, thereby limiting the field of candidates of politically appointed officials. Deputy President, we find this reason absolutely unacceptable. This is because, first of all, regardless of whether the nature of their appointment is different or not, politically appointed officials do have much greater access to sensitive information and stronger influence than civil servants, hence it is inappropriate to subject them to lax control simply because of a difference in appointment. This indeed is a total neglect of the major underlying principle of decision-making.

It is also very difficult for me to accept or believe that aspiring people who intend to join the Government's governing team will consider: "What will be the impact on my future pursuit for employment if I take up this job?" Or, they have joined the service just to prepare themselves for their next employment. In my opinion, this is indeed an insult to aspiring people who intend to join the SAR Government's governing team.

Deputy President, for this reason, if politically appointed officials are unwilling to make contribution, it only reflects their lack of commitment in Hong Kong's governance and political system. I think the motion proposed by Dr Margaret NG today is very important and worth thorough consideration by the Government. It should cast aside the long-standing and familiar excuses adopted to turn down our proposal, and review the proposal from a wider perspective.

Deputy President, undoubtedly, politically appointed officials play a more important role than that of civil servants, and their policy areas cover a wider scope. They have decision-making power and the final say in the formulation of government policies. Deputy President, Spiderman said that "the greater the power, the heavier the responsibilities". Given that they have greater power than civil servants, their regulated responsibilities would be heavier. In case there are omissions, inadequacies or irrecoverable mistakes in the formulation of policies, they should be prepared to take the blame and resign. Having said that, why do they refuse to accept a certain degree of restriction upon the completion of their tenure? After all, we are not saying that they should never take up other employments. The restrictions should at least be on a par with the civil service team.

Deputy President, under this circumstance, if civil servants are willing to contribute and make commitments, I fail to see why accountability officials are reluctant to do the same. What we are saying has actually been subject to reviews at various levels. The Committee on Review of Post-Service Outside Work for Directorate Civil Servants (Review Committee) chaired by Mr Ronald ARCULLI, a member of the Executive Committee, had put forth 23 recommendations in July 2009 (that is, before the publication of the report of the Select Committee to inquire into the case of LEUNG Chin-man) to tighten the control over the post-service employment of directorate civil servants. The measures included an extension of control period to five years for D8 officials

and four years for D4 to D7 officials. And yet, in this report — very unfortunately — there is also no mention of the control of accountability officials. We can therefore conclude that even the Review Committee chaired by Mr Ronald ARCULLI considered it necessary to extend the control period for the post-service employment of civil servants, despite their responsibility is lower than that of accountability officials. Having said that, I fail to see why people shy away from discussing the control system governing the post-office work of accountability officials, or why do they think that there is any reason to conduct a review.

Deputy President, I think that there is another very important issue that should not be overlooked. That is the issue of public perception. In the course of our inquiry of LEUNG Chin-man, we also considered that this was the major factor leading to the incident. As a matter of fact, there is a direct relationship between public perception and the credibility of the governing team. If the Administration thinks that accountability officials can freely enjoy the so-called deferred rewards or pave way for their future career by exerting their influence while in office, this would deal a serious blow to the credibility of the governing team. Should the Government consider it necessary to increase its credibility as perceived by the public before the implementation of universal suffrage, this would be an essential improvement to be made.

Deputy President, I fail to see why the SAR Government considers this review unnecessary. It would certainly become unnecessary on the day when we have universal suffrage, because by that time, all officials will probably have the mandate of Hong Kong people (*The buzzer sounded*)

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

MR RONNY TONG (in Cantonese): and by then they will be willing to accept a certain degree of restriction.

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

MR CHEUNG MAN-KWONG (in Cantonese): Deputy President, over the past decade, the Legislative Council has discussed the control over the post-service employment of directorate civil servants and politically appointed officials time and again on different occasions. Members and the public generally consider that the existing control system for officials is too lax and loose, and has completely failed to exercise effective control. Many senior officials would take up high-paid jobs at major consortia immediately after they had taken their pre-resignation leave. The public has the impression that the Government has facilitated the collusion between the business sector and the Government, as well as the transfer of benefits between them. Most sarcastic of all, scandals involving post-service employment of senior officials have happened time and again, including the recent case of LEUNG Chin-man, and the earlier case of CHUNG Lai-kwok, we feel shocked and distressed.

As early as February 2005, I proposed a motion debate in the Legislative Council, urging the Government to formulate effective measures to strictly monitor the post-retirement employment of the Chief Executive, accountability officials and directorate civil servants in the private sector. At that time, the advisory committee on post-office employment of principally appointed officials had yet to be set up. The committee was only set up two months later, during the interim period, at least three Directors of Bureaux under the appointment system had left office successively. No one knows what kind of control they were subject to.

Regarding the reasons for imposing more stringent control over the post-office employment of politically appointed officials, apart from the fact that they have greater access of sensitive information and stronger influence on policy formulation as pointed out in the original motion, a more important reason is that they have built up an extensive career and social network while they are in office. When they leave the Government to join the private sector or start their own business, they will enjoy numerous conveniences which other people do not have. I think such networks are priceless. Thus, the success of control hinges not only on the imposition of stringent provisions, but also on the conscience of the people concerned.

Certainly, the conscience of people varies. In the past, we have seen many senior officials leaving the Civil Service clean-handed, they engaged in education and volunteer work without being blinded by money. Their integrity

should definitely be respected. However, there are also many heart-breaking cases. People are frustrated and have nowhere to vent their resentment. As a result, there are greater voices against the collusion between the business sector and the Government and the emergence of an anti-rich sentiment. This has not only undermined the reputation of Hong Kong's civil servants, who have great integrity, but has also dealt a blow to the prestige of the governance of the Government. After all, the culprit is the SAR Government.

The findings of a recent opinion poll indicated that economic matter is no longer the public's utmost concern. What do they concern most then? It is justice. They wish to have a justice society and an impartial system; this also applies to the post-office employment of appointed officials. Therefore, control through stringent provisions is equally important. I agree with Dr Margaret NG's proposal to review the vetting system of post-office employment of politically appointed officials. In my opinion, it should at least be on a par with that of the incumbent D8 directorate civil servants. For instance, a sanitization period, which is non-existent at present, should be introduced to strictly prohibit politically appointed officials from taking up salaried jobs during that period, and the one-year control period should be extended. Furthermore, just as I have proposed before, the Government should closely monitor the changes in the job nature of their approved post-service employment with the private sector, so as to ensure that their present work will not have conflict of interest with their previous duties in the Government.

Deputy President, the most essential of all, which is also the issue that I have highlighted time and again in recent years, is to guard against the existence of deferred rewards, that is, whether the accountability official concerned has, during his service at the Government, favoured his prospective employer or transferred benefits to his prospective employer with his privileged power, in exchange for a job with attractive remuneration package or deferred rewards upon his leaving the office. Thus, the Government should work closely with the Independent Commission Against Corruption to guard against the existence of deferred rewards, so as to prevent the recurrence of the LEUNG Chin-man incident and bring the Government into disrepute.

For the post-service employment of directorate civil servants and politically appointed officials of particularly high ranks, even more stringent control has to be imposed. After all, this is common sense. We therefore fully

support the entire motion moved by Dr Margaret NG. As for Dr Philip WONG's amendment, we notice two points: first, the existing control over the post-office employment of accountability officials is less stringent than that of directorate civil servants. It should therefore be expeditiously reviewed to make it very stringent. The words "very stringent" are his emphasis. However, he deleted the part proposed by Dr Margaret NG on the details of the review, including the introduction of a sanitization period, the extension of the control period and the setting up of an independent, highly transparent vetting and approving committee.

The Democratic Party agrees with the details of the review proposed by Dr Margaret NG, and shares Dr Philip WONG's suggestion that the control over accountability officials should be very stringent. We hold that as soon as the review proceeds, no one can shy away from the details of the review as the public will not be convinced. Thus, the Democratic Party hopes that the Legislative Council can come to a consensus on the following measures today: expeditiously proceed with the review of the control over accountability officials' post-office employment; and in respect of the accountability officials in the new term commencing from 2010, eliminate all suspicions and possibilities of collusion between the business sector and the Government, transfer of benefits and deferred rewards, with a view to creating a pool of clean and respectable accountability officials and directorate officials. Thank you.

MR IP KWOK-HIM (in Cantonese): Deputy President, the LEUNG Chin-man incident has aroused public concern about the control over the post-office employment of politically appointed officials. Members of the public have two major concerns: Firstly, senior official may, after leaving the office, continue to make use of the government information in his possession and his social network to gain personal benefits. Secondly, senior official might have shown favour to giant consortia while in office in exchange for high positions with handsome pay after leaving the Civil Service, which is deferred reward.

The Legislative Council's Select Committee to Inquire into Matters Relating to the Post-service Work of Mr LEUNG Chin-man has, in its report, expressed concern about the control over the post-office employment of politically appointed officials, and requested the Government to expeditiously conduct a review of this matter. The Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) agrees with the Select Committee Report, and

urges the Government to respond seriously and expeditiously conduct a review to strengthen its control.

Regarding the enhancement of control over the post-office employment of politically appointed officials, there are currently two major views. One group of people opine that there should be more stringent control over the post-office employment of politically appointed officials in comparison to directorate civil servants; and other group of people are of the view that the imposition of unduly stringent measures on the post-office employment of principal officials may impede the Government's recruitment of outstanding personalities.

The DAB holds that the Government's implementation of the accountability system for principal officials serve three main objectives: first, to provide political responsibility; second, to maintain the Civil Service's political neutrality and third, to attract talents.

The so-called political responsibility requires that politically appointed officials should, when formulating policies, keep a close tab on the interests of people and the community as a whole, so as to give better play to justice and impartiality. Accountability officials should also assume responsibility for the mistakes made in the course of policy implementation and supervision. While public apologies would have to be made for less serious mistakes, they should step down for serious ones.

The introduction of the accountability system in Hong Kong has not only heightened public awareness of the accountability of officials, but also public's expectation of politically appointed officials. The DAB supports the implementation of the accountability system mainly because it hopes that through this system, government officials will reach out to the public, thereby formulating policies that can meet public sentiments, aspirations and opinions.

The DAB considers that as politically appointed officials have enormous power and responsibilities, members of the public naturally have very high hopes and expectations of them, and thus more stringent control should be imposed on their post-office employment. Stepping up the control over the post-office employment of politically appointed officials not only meets with the demand of the public, but also manifests the spirit of accountability.

Politically appointed officials and directorate civil servants are government officials of different nature. One of the objectives of implementing the accountability system is to maintain the political neutrality of the Civil Service, so that they can implement policies at ease, without being prejudiced by political considerations.

Therefore, unlike civil servants, it is impossible to establish standardized terms of employment for politically appointed officials. Neither is it possible to establish a standardized system for promotion, reward and punishment, and security of tenure. Similarly, it is also reasonable for the control over the post-office employment of politically appointed officials to be different from that of civil servants.

Another objective of the accountability system is to attract talents from the community. The system has opened a door for people with different talents as required at particular times and by the community to join the governing team and serve the community, with a view to opening up the political system. The DAB considers that the Government should, on the one hand, step up supervision, enhance transparency, prevent the abuse of public power for private interests, curb the transfer of benefits and eliminate deferred rewards; and on the other hand, should maintain its openness by relaxing the requirements so as to attract various talents to engage in politics, thereby raising the level of governance of the Government.

Deputy President, Hong Kong is now heading towards its ultimate goal of universal suffrage. The Government should not hesitate to step up its control over the post-office employment of politically appointed officials, and improve the political appointment system to facilitate the development of the political system. There are views that no system is reasonable before the implementation of universal suffrage, and hence should be refuted. However, the DAB considers such an attitude unreasonable. We should stay alert and guard against such dangerous idea.

With these remarks, I support Dr Philip WONG's amendments. Thank you, Deputy President.

MS LI FUNG-YING (in Cantonese): Deputy President, the Legislative Council's Select Committee to Inquire into Matters Relating to the Post-service Work of Mr

LEUNG Chin-man (Select Committee) had just completed its work. The Select Committee had not only expressed concern about the control over the post-service work of directorate civil servants, but also highlighted the problem of control over the post-office employment of accountability officials in paragraph 9.54 of its report, urging the Government to expeditiously conduct a review of the matter. I hope that in today's debate, the Government would listen carefully to the views expressed by this Council and adopt them as the basis of the review.

Regarding the post-service employment of public officers, be they directorate civil servants or accountability officials, I think that the principle set out in paragraph 9.6 of the Select Committee Report is applicable in all circumstances (I quote): "The Select Committee is of the view that safeguarding the public interest is the cornerstone of the Control Regime. While an appropriate balance has to be struck between the protection of the public interest and protection of the individual's right to work, the Select Committee is firmly of the view that the protection of the public interest must take precedence at all times. Only by doing so can the credibility of the civil service be upheld and effective governance be achieved by the Government." (End of quote)

Deputy President, judging from this principle, the Code for Officials under the Political Appointment System (the Code) issued by the Chief Executive's Office has only stipulated three points regarding the control over the post-office work of accountability officials. The relevant control only focuses on the post-office employment of principal officials within one year after stepping down from office, and after which they would be completely free. Furthermore, within the one-year control period, the only emphasis is that, if any principal officials wish to take up employment within one year after stepping down from office, they shall seek the advice of a committee appointed by the Chief Executive. This provision is nonetheless not binding at all, and can hardly convince the community and members of the public that the Code has imposed sufficient control over accountability officials, not to mention the need to meet the principle mentioned by me earlier.

As a matter of fact, the Advisory Committee on Post-office Employment for Former Chief Executives and Politically Appointed Officials and the Advisory Committee on Post-service Employment of Civil Servants (ACPE) do have something in common. The two committees have low transparency and their

nature of work is similar; they are chaired by the same person with overlapping membership. Given that the LEUNG Chin-man incident took place despite the vetting of the ACPE, similar cases may also occur after vetting by the Advisory Committee on Post-office Employment for Former Chief Executives and Politically Appointed Officials. The incidence rate may be even higher because a set of procedures has already been established to govern the post-service work of directorate civil servants, but no such procedures have been formulated for politically appointed officials.

Deputy President, when I spoke on the motion on the submission of the Select Committee Report to this Council, I had stressed the importance of reforming the vetting and approving committee. In my opinion, it is vital for the ACPE to play the supervisory role of the vetting and approving system in a practicable and independent manner. Actually, this is a crucial factor in determining whether similar incidents would recur in future. I eagerly hope that the Government will reform the ACPE's composition and operation, and widely consult public views on the basis of the recommendations made by the Select Committee. I believe the same principle should apply to the reform of the Advisory Committee on Post-office Employment for Former Chief Executives and Politically Appointed Officials.

Deputy President, last of all, I would like to point out that it is not my wish to bring the post-service work arrangement of directorate civil servants on a par with politically appointed officials, given the fundamental difference in the nature of civil servants and accountability officials. While the former is basically a lifelong career, the tenure of the latter, who are cabinet members of the Chief Executive, shall tie in with the Chief Executive's term of office. Therefore, the job as an accountability official is nothing but a midway station of their career. We should, on the premise of safeguarding the largest degree of public interest, properly arrange the control over the post-service work of directorate civil servants and accountability officials, and achieve a proper balance in the actual operation of the system.

It is indeed a revolving door system for people to switch from the private sector to serve as accountability officials, and then return to the private sector. While the existing "easy come, easy go" system is very undesirable, I do not wish to see a complete closure of this revolving door, or people being deterred from using this revolving door in an objective sense. Where is the balancing point

then? I trust that the community should have extensive discussion. No doubt, however, there is a need for the Advisory Committee on Post-office Employment for Former Chief Executives and Politically Appointed Officials to be reformed.

Deputy President, I so submit.

MR LEUNG YIU-CHUNG (in Cantonese): Deputy President, given that LEUNG Chin-man had handled the disposal of the Hunghom Peninsula, his employment with the New World group as top management upon retirement has aroused public concern about the post-service employment arrangement of senior government officials. Apart from the abovementioned post-service employment arrangement, the incident has also exposed a problem, and that is, the perception of a close tie between government officials and the business sector. This has given rise to a problem, named as collusion between the Government and the business sector.

(THE PRESIDENT resumed the Chair)

In my view, the incident has not only exposed this problem, but also another problem, which is very important. What is it? That is government officials shielding one another. Why would they do so? President, a select committee had been set up by the Legislative Council for this incident and an inquiry report was already published. Yet, what is the response of the Government upon the release of the report? As usual, it has treated the matter lightly, and that is: "No doubt, those officials had not performed well." Then what? Is that the end of the incident and no further actions will proceed. What is the latest development of the incident? No follow-up actions have been taken so far; neither has the Government done anything to look into the loopholes as exposed in the incident, and how these loopholes can be plugged. Nothing has been done at all.

Regarding the Select Committee Report, I fail to see any points in the Government's response that are noteworthy. For instance, it has not suggested any area for improvement. Are our officials connived at such incidents, or have we over-reacted? This is precisely the case. Are we making an unnecessary

move? Should we adopt such an attitude? If not, why does the Government not address the issue seriously?

Certainly, the Government may say that this is not the case, as an advisory committee has been set up to govern accountability officials. This advisory committee is tasked to formulate the relevant principles and criteria, advise the Advisory Committee on Post-office Employment for Former Chief Executives and Politically Appointed Officials, as well as consider and advise on the post-office work applications according to the adopted principles and criteria.

However, President, if the information I have in hand is right, a total of seven post-office employment applications submitted by accountability officials have been processed since 2005. What final conclusions did the advisory committee draw after the relevant officials left the Civil Service? The majority of the conclusions are like this: It will not constitute any conflict of interest; it will not cause any negative public response or perception; or it will not create unfairness to other members of the trade. However, President, on what basis or how these so-called conclusions have been drawn up? We do not know, as the system is not transparency. In fact, we all know that the advisory committee is powerless. What is our impression of the entire mechanism? It appears that the mechanism only exists in name, being unable to perform its function. We fail to see how it upholds justice and neutrality. In order to deal with this problem, we need to have a highly transparent and independent vetting and approving committee.

Having said that, I must tell Dr Margaret NG, you are wasting your time in moving this motion today. Why? Because there should not be any vetting and approving of post-office employment of accountability officials in the first place. What did the SAR Government say when the posts of accountability officials were initially created? It said that it aimed to nurture future political elites so as to tie in with the future democratization progress, and bring them to the political track. It has never come to our mind that these accountability officials will work in other sectors after being employed as Political Assistants, Deputy Secretaries or Directors of Bureaux. Why? That is because the original intent of the accountability system is to nurture elites. What kind of elites does it nurture? Not business elites, but political elites. This is the original intent of the accountability system. So, what is the point of stipulating the criteria for vetting and approving accountability officials' post-office employment applications? In principle, the matter should not be discussed. Otherwise, it is a manifestation

that the accountability system has failed. What is the cause of its failure? It turns out that the Government has failed to nurture these people, so that they will, after years of service in the Government, engage in the work of politics and administration in future. It turns out that these people will, upon expiry of their contracts, leave the Government and return to the private sector.

This is the problem, and what does this reflect? It precisely reflects what I said just now, and that is, the accountability system has failed. Why do we not abolish it as early as possible since it is a flop, why do we have to spend so much time discussing issues such as the extension of the sanitization period and how vetting can be done in a stringent manner? In fact, we need not take any actions at all, just abolish the accountability system and that is it.

Regarding the issue under discussion today, I certainly support Dr Margaret NG. All I want to say is that the accountability system should not have existed. If our democratic system can be more open and there is a publicly accountable government, why do we need that system? In this connection, to address our concerns, such as collusion between business and the Government, officials shielding one another, officials paving for their future work, the best way is to open up our constitutional system, and set up a genuinely accountable government. By so doing, the problems will be resolved.

I cannot guarantee that all problems can be resolved by this method, but this is certainly better than making patching-up amendments, figuring how the vetting system can be strengthened or extending the sanitization period. In my opinion, a more effective solution is to abolish the accountability system. Of course, I support Dr Margaret NG's motion, but I do not think that her proposed suggestions can solve the problem. The best solution is to establish a comprehensive, transparent and responsible democratic government. That would be very ideal.

President, I so submit.

MR ALBERT CHAN (in Cantonese): President, Dr Margaret NG's motion can be likened to an emperor's new clothes. Although everyone can see that the emperor is naked, the emperor himself thinks that he is wearing a robe.

The system of appointed officials can be said to be the most weird and ridiculous system in the world, which has neither the backing of any principle nor logic. This is because the system is set up by the Chief Executive who did not have public mandate, it is a self-claimed accountability system which does not require officials to undertake responsibility. The case of LEUNG Chin-man well illustrates the absence of accountabilities and responsibilities. Hong Kong people, especially junior civil servants, are enraged at the entire system as junior civil servants will be subject to disciplinary action or even dismissal for minor mistakes. Penalties for the disciplinary force are particularly heavy. I had once pursued judicial review for a group of police officers who are subject to disciplinary actions, and I helped them challenge the Government. Junior civil servants suffer while senior and accountability officials enjoy preferential treatment, one can see very clearly how ugly the accountability system is.

Let us take a look at the absurdity of the accountability system. Officials are not held responsible for the mistakes they make. This can be evident from the airport incident in the early days, in which the official in charge, Mrs Anson CHAN, could go free. If such a high-ranking civil servant as Mrs Anson CHAN could be exempted from all responsibilities at that time, why would incumbent officials need to be held responsible now? If someone could be exempted from being responsible for the incident which turned Hong Kong into a laughing stock of the world, why should other officials be blamed for the current scandals or farce? If we take a look at the entire accountability system, we can find instances of haphazard appointment or deployment of personnel. The appointments of Secretaries of Departments and Directors of Bureaux are often made under nepotism, for example, a person was appointed as a Director of Bureau after curing the eye disease of a person from the Liaison Office of the Central People's Government in the HKSAR. Very often, the appointment of a person is totally unrelated to his profession.

Some Deputy Secretaries always shy away from the spotlight, their only concern is to distribute their name cards. Regarding the work on the fair competition law, they are so messy, there has been no lobbying; they are totally in lack of logical thinking and have no knowledge about the relevant trade. They have only started learning when they took up the post as Deputy Secretaries. Do you think this is bad enough? Another example is the discussion of the Asian Games. The Deputy Secretary's lobbying effort really has my admiration. Very often, there is no definite relationship between the issue and the political system. It is not related to one's background, development or past experiences,

or the post. Nonetheless, the haphazard deployment of personnel has slackened the whole executive structure, lacking in team spirit and team work. Even for a football team, it is important for the defenders to know how to defend and for strikers to know how to kick the ball into the net. The present situation is that the defenders very often fail to dribble the ball, and the strikers are sluggish. What can the team do then? Dr LAM Tai-fai should know very well what I am trying to illustrate. When we play football together, he plays with force.

President, let us compare our accountability system with that of overseas countries. First of all, I have to thank the Research Division of the Legislative Council Legislative for collecting the information for our reference. After reading the comparison table, I cannot help shaking my head and sigh. In some overseas countries, the post-office employment of politically appointed officials is governed in two respects, that is, the sanitization period imposed on officials after they have stepped down from office, and the consequences for non-compliance of the regulation on post-service employment. For some ministerial posts in France, the sanitization period is five years; the period ranges from three months to two years for some posts in the United Kingdom; in the United States, the sanitization period for some posts is one year whereas for some posts, the sanitization period is lifelong. The period is one year in California, and the same for Ontario of Canada. In Hong Kong, just as Dr Margaret NG has said clearly earlier, no such time limit has been set. Regarding the punishments and sanctions, French ministers who fail to comply with the requirements of post-service employment will be fined and jailed. In the United States, the officials in question will also be fined and jailed. In certain Canadian states and provinces, there are sanctions but not imprisonment. At least a system has been put in place, but this is not so in Hong Kong.

The present situation is that junior civil servants who make minor mistakes will be reprimanded, subject to salary reduction, and will even be dismissed with pensions confiscated. Yet, Secretaries of Departments and Directors of Bureaux who fail to comply with certain provisions can be exempted from sanctions or punishments. Their privileges have overridden punishments of all systems. Just imagine, if I were a member of the 160 000 civil servants, would I be happy? For the highest ranking official of the political structure, their salary ranges from \$3 million to \$4 million a year. This is indeed a huge sum of money which some people can never earn in their lifetime. And yet, these officials are not subject to any system of sanctions or penalties for making mistakes or non-compliance with certain provisions. What a ridiculous and totally weird

system. The fact that the standards are lax at the top but stringent at the bottom has placed junior staff under undue pressure. They become so nervous at work, fearing that they would be dismissed at any time or lose their job if being complained. On the contrary, senior officials who have made mistakes can still walk around in a high-profile fashion as if nothing has happened. Even if they have made serious mistakes, they would have collective memory loss. They can just get away on the pretext of collective memory loss under the leadership of the Director of Bureau. This system will only make people think that the Government is not only biased, but also colludes with the business sector; it practises favouritism and is blind.

DR LAM TAI-FAI (in Cantonese): President, I am a member of the Select Committee to Inquire into Matters Relating to the Post-service Work of Mr LEUNG Chin-man (Select Committee). Over the past two years, I have taken part in numerous meetings and discussions, and I truly understand that if senior officials, after leaving the Civil Service, take up employment which has potential or apparent conflict of interest with their previous service in the Government, this would definitely spark serious political storm and hamper public interests. Given that there are still serious deep-rooted conflicts in Hong Kong, these cases would certainly heighten Hong Kong people's attention to the "deferred rewards" that senior officials might receive after leaving the Civil Service. Should cases similar to the LEUNG Chin-man incident occur again, I believe the allegations made by the people about the collusion between business and the Government and officials shielding each other will go even further. This would definitely severely undermine and deal a serious blow to the SAR Government's credibility or its governance.

Generally speaking, politically appointed officials will undoubtedly have greater access to sensitive information and stronger influence on policy formulation than directorate civil servants. So, logically speaking, the control over their post-office employment should be more stringent. However, if we look from another angle, the greatest difference between politically appointed officials and directorate civil servants is that the former do not enjoy retirement benefits such as pension, which the latter is entitled to. To put it simply, if a politically appointed official does not work leaving the Civil Service, he will not have any income.

President, another difference is that while directorate civil servants usually leave the government service at retirement age, politically appointed officials might have to look for another job when there are changes in the Chief Executive. In other words, politically appointed officials may still be very young when they leave the government service and have yet to reach the retirement age. It is necessary for them to look for new jobs to earn a living. I hope Members would get this point, which is the reality.

Furthermore, most of the politically appointed officials are deployed on the basis of their professions and qualifications. This is very different from the generalist-led civil service system developed by the United Kingdom. I always admire those senior officials who were previously civil servants because it is very easy for them to find jobs that do not have any conflict of interest with their previous duties in the Government. On the contrary, it would be very difficult for politically appointed officials to find jobs that go beyond their professions.

As a matter of fact, the ranks and functions are also different among politically appointed officials. It is therefore undesirable to adopt a broad-brush approach to develop control arrangements governing the post-office employment of politically appointed officials. For instance, Deputy Secretaries or Political Assistants may not necessarily have greater access to sensitive information than directorate civil servants. I would say, to a certain extent, the mandatory introduction of a sanitization period on all politically appointed officials is pretty unfair.

President, both the Government and members of the public should understand that Article 33 of the Basic Law provides that Hong Kong residents shall have freedom of choice of occupation, whereas Article 39 provides that people enjoy the right to work as vested by the international labour conventions. It is therefore rather difficult to subject politically appointed officials, who are in their prime years, to the same sanitization period as retired directorate civil servants, which spans probably six months or one year, or even longer. Honestly speaking, politically appointed officials are not necessarily rich. I am aware that many of them do need a job to support their families or repay the mortgage loans of properties after leaving the political circle. Given that they do not receive any pension, their living would probably be affected if they are not allowed to work for six months or one year. This is what Members should take into consideration. In addition, over-regulation of post-office employment would also deter elites who have the passion to engage in politics from joining

government service. As a result, the Government may not be able to find the most suitable person. Looking from this angle, this is not beneficial to members of the public either.

Therefore, I have reservation about the introduction of a sanitization period on the post-office employment of politically appointed officials. As for the extension of the control period, honestly speaking, I really think that the existing control requirements are rather loose and broad. One of the requirements is that within one year after stepping down from office, officials are prohibited from representing any person in connection with any claim, proceedings, transaction, or engage in any negotiation or lobbying activities on matters relating to the Government. In fact, similar binding provisions are commonly found in the private sector. Senior staff of large-scale organizations, in particular, is governed by similar provisions. Thus, I consider it necessary to step up the control in this regard. Actually, I do not object the Government to proactively conduct in-depth studies and researches on this matter.

President, I demand that the Government should exert greater force in the vetting and approving work and enhance the quality in this regard. Apart from improving the structure of the existing Advisory Committee on Post-office Employment for Former Chief Executives and Politically Appointed Officials (Advisory Committee) and expanding its coverage and size, the Government should also enhance its transparency and independence by carrying out detailed examinations of all applications. This would avoid giving people an impression that it is a black-box operation. Another problem is that the advice given by the Advisory Committee is not legally binding at all. It can only issue press releases indicating "no objection" or "objection" without making public the criteria of consideration for public inspection. This is in fact too loose and with low transparency. I therefore suggest that the Government should expeditiously consider how the relevant loopholes can be plugged.

President, members of the public actually have very high expectation of politically appointed officials. I therefore consider that, before they join the Civil Service, they should be subject to an integrity checking that is more stringent than that of incumbent civil servants. Good integrity is definitely the most important consideration. Talented people with poor integrity should not be allowed to play an important role.

President, I so submit.

MR ALBERT HO (in Cantonese): President, in September 2008, not long after the LEUNG Chin-man case came into light, the Government established the Committee on Review of Post-service Outside Work for Directorate Civil Servants (Review Committee), of which I am a member. Subsequently, the Legislative Council also set up a select committee to inquire into the case of LEUNG Chin-man. The Review Committee published a report in July 2009 and put forth 23 recommendations.

According to the report, the public do not only concern about the post-service employment of directorate civil servants, but similar concern is also raised over accountability officials. Apart from me, other members including Ms Audrey EU, Mr Paul CHAN and Mr Haider BARMA had raised questions on the control over the post-office employment of accountability officials, and expressed concern about the control system governing the incumbent directorate civil servants. It appears that the accountability system of principal officials is pretty lax and loose. And yet, as advised by the Chairman of the Review Committee at that time, subject to the terms of reference, the Review Committee was not allowed to conduct thorough discussions on the issues, but could only relay their concern to the Chief Executive.

Since July 2009, we have never seen or heard the Chief Executive conducting any further investigation on the post-office employment of accountability officials, or the control over the nature of work in particular. As we all know, following the introduction of the accountability system, politically appointed officials are vested with the decision-making power, whereas the directorate civil servants are politically neutral and they are only responsible for enforcing policy decisions. Although both of them are officials belonging to the core of the power structure, there is a clear delineation in the relationship of their power and responsibilities.

After the LEUNG Chin-man incident, while there is still room for improvement regarding the control over directorate civil servants, the public and Members are also gravely concerned about the lax and loose control system governing accountability officials. The control over post-office employment as set out in Chapter 5 of the Code for Principal Officials under the Accountability System (the Code) contains very simple descriptions. In this chapter, it states that within one year after stepping down from office, principal officials shall seek the advice of a committee appointed for this purpose by the Chief Executive

before commencing any employment, becoming a director or a partner in any business or profession or starting any business or profession on his own account or with others. Furthermore, it also states that within one year after stepping down from office, principal officials shall be prohibited from engaging in any negotiation or lobbying activities on matters relating to the Government.

As we can see, the description is indeed very brief. Furthermore, we do not even know how that committee operates, and we can in no way know whether the committee can effectively prevent problems of our concern, such as conflict of interest, potential conflicts and deferred rewards. In other words, under such a loose system, the authorities are incapable of effectively exercising any regulation or control over the post-office employment of accountability officials. For instance, if they join the business sector or take up important posts in private organizations, what can be done to prevent any conflict with their previous service as accountability officials, or the much-concerned possible conflict of interest like deferred reward?

In fact, the LEUNG Chin-man incident is a lesson to be learnt. If the Government continues to turn a blind eye to the problems arising from the post-office employment of accountability officials, and if, as mentioned by some colleagues, similar cases like LEUNG Chin-man incident have happened again, the community would be seriously shaken. Again, the Government would be accused of permitting the collusion between the Government and the business sector, thereby giving rise to conflict of interest. Against this background, the Government does have unshirkable responsibility in this regard.

Although the concerns expressed by the Review Committee only apply to directorate civil servants, we fail to see why they cannot apply to politically appointed officials as well. As a matter of fact, with respect to these two kinds of people, the factors to be considered, the viewpoints to be taken into account and the need to balance the interests of the public or an individual, are very similar. The sanitization period, control period or employment committee as mentioned in the original motion are worthy of the Government's serious consideration. If the Government is still reluctant to commit that it would seriously consider amending the Code, and perfunctorily maintain the *status quo*, I really think that the Government pays no heed to the fact that the community has no trust in the Government. Worse still, the Government has permitted the prevalence of injustice and unfairness in society. I hope that the Secretary will

seriously consider this issue and look squarely at the fact that people still do not have trust in many of the decisions and systems of the Government.

I support the original motion.

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

MR LEUNG KWOK-HUNG (in Cantonese): President, today's topic has actually been discussed many times, the saying "power corrupts and absolute power corrupts absolutely" has also been said for more than a century. Today, it is again brought up for discussion, but no doubt, it is corny.

The current system of politically appointed officials was invented by the Chief Executive, who was elected by 400 people, and he claimed that the purpose of this system was to further enhance accountability. What is this system about? We can simply describe it in eight words: "cannot be held accountable, needless to be responsible". Whom should the officials be responsible to? They must be responsible to someone. How can they be responsible if no one is held accountable? They should be responsible to the person who appointed them, that is, to a person alone.

In the course of the LEUNG Chin-man incident, we have observed some genuinely weird scenes. I recall that when Mr CHENG Kar-shun replied to the Select Committee, he mentioned another senior official Mr LEUNG Po-wing, who is now serving in another company of Mr CHENG. I asked him what merits he thought LEUNG Po-wing has. After talking a lot of nonsense, he said "social network" in the end. In other words, LEUNG Po-wing was employed because of his social network.

Where does a civil servant or an accountability official get his social network? We give it to him by enabling him to build up his relations with the right person on the right occasion, at the right time. Also, it is because he has the power and authority that people would establish relations with him. Take me as an example. I had once met with CHANG Chen-yue of the Urban Renewal Authority I forgot his name — it should be CHEUNG Chun-yuen. I always mix up his name with that of a pop singer. The temperature was only about 11°C or 12°C on that day. A group of victims and I were waiting for him

when he suddenly called off the meeting on the pretext that he had no time. We then waited for him on the ground floor of the building where his office located. Again, after one and a half hour, he said, "Sorry, Mr LEUNG, I do not have time." So, we all rushed to his office and we had some conflicts.

What is the subject of discussion today? It is the post-office employment arrangements. Who is actually in charge of this system? The system is manipulated by the Chief Executive, Secretaries of Departments and Directors of Bureaux. In politics, I have never heard of anyone giving up his interests or the chance of exercising a conflict of interest for no reason. Let us first talk about TUNG Chee-hwa. TUNG Chee-hwa owns a large consortium. His Orient Overseas (International) Limited had greatly revived while he was the Chief Executive, and like the granting of territories by the emperor, the consortium was generously allocated two pieces of land, one in Shanghai and the other one in Beijing. Who will pursue the accountability of this?

The incumbent Chief Executive was born in a family of outstanding persons. TSANG Yum-pui, the former Commissioner of Police, was immediately employed by a consortium. Has our Chief Executive done anything dirty? I do not know. And yet, the policies formulated by him or by accountability officials appointed by him are, objectively speaking, always tilted towards the business sector under this corrupt system. There is always collusion between the business sector and the Government or collusion between the Government and the business sector.

As a matter of fact, the system itself has conflict of interest. Some people said that "Long Hair" always disrupted the order of the Chamber, accusing the collusion between the business sector and the Government. However, buddy, the system itself has actually permitted the existence of conflict of interest as the people concerned are not elected by universal suffrage. Rather, they have to secure rich people's votes, am I right? This proves that we are not talking nonsense. The question is how we can exercise further supervision on them. Ms LI Fung-ying and Dr Margaret NG — I only play a minor role in the inquiry of the LEUNG Chin-man incident as I am too lazy — they have done a lot of hard work which should otherwise be done by the Directors of Bureaux. The Government, however, has casually delegated Ronald ARCULLI to compile a report to rival against ours. Has he made any response after reading our report? Did he point out the part is right or wrong?

Perhaps the Secretary will not face any conflict of interest in his post-office employment. As his behaviour reflected that "the eunuch is more anxious than the emperor" and "he has found his backing in the authority", I think that he would probably remain in government service and it is unlikely that he will leave office. It is even possible that he might climb further up the echelon. Despite what we have done, the Government still turned a blind eye to us. And yet, the purpose of our report is precisely to hold the Government accountable. What it has done verify what I said earlier, "needless to be responsible, cannot be held accountable", it also confirmed that "power corrupts and absolute power corrupts absolutely". However, sometimes relative power corrupts relatively. *(The buzzer sounded)*

PRESIDENT (in Cantonese): Mr LEUNG, your speaking time is up.

MS MIRIAM LAU (in Cantonese): President, the conflict of interest arising from post-service employment of senior government officials has always been a matter of public concern. This issue is not only confined to senior government officials, but also applies to accountability officials.

However, even though accountability officials are subject to a one-year control period after stepping down from office, they are only prohibited from engaging in any lobbying activities or acting as representatives in connection with any proceedings, transaction or negotiation involving the Government. If an accountability official intends to take up post-service employment during the control period, he is only required to seek prior advice from the Advisory Committee on Post-office Employment for Former Chief Executives and Politically Appointed Officials.

In comparison, the control over directorate civil servants is more stringent. For example, D8 directorate civil servants are prohibited from taking up full-time paid employment within the one-year sanitization period after leaving government service. After the sanitization period, they are still subject to a control period of three years during which applications for post-service employment would require vetting and approval.

The Liberal Party considers that the level of restrictions on these two groups of officials is too wide apart and unreasonable. Like senior civil

servants, accountability officials will also gain access to confidential information of the Government and take part in the decision-making of major policies; hence the problem of conflict of interest will also arise once they take up employment after stepping down from office.

This point is particularly valid for Directors of Bureaux as they have even greater powers than directorate civil servants. However, notwithstanding their status as the highest decision-makers of their respective Policy Bureaux, the existing control arrangement for their post-office employment is very loose. They are subject to even lesser restrictions than D1 directorate civil servants, and this is incommensurate with their powers and responsibilities.

In fact, members of the public have long been concerned about this issue. For example, in November 2009, Frederick MA, former Secretary for Commerce and Economic Development who resigned out of health reasons, took up employment as a non-executive director of a listed company immediately after the expiry of the one-year control period. While he has not breached any rule, this has aroused public speculation as to whether poor health was the *bona fide* reason for his resignation. Moreover, there was the concern about whether the control period was too short.

Incidentally, in the series of investigations triggered off by the LEUNG Chin-man incident, both the Committee on Review of Post-service Outside Work for Directorate Civil Servants and the Legislative Council Select Committee have pointed out in their reports that the control arrangements on post-office work of politically appointed officials are much looser than similar arrangements on directorate civil servants; and they both urged the Government to review the situation expeditiously.

However, the Government has been non-committal in this matter. Not only has the Government failed to initiate a review, it does not even have any inclination to review. The officials often cite the excuses such as, "the conditions of employment of politically appointed officials and civil servants are different" and "it is inappropriate to overly restrict the freedom to and rights of work of former officials", and avoid giving a direct response. This is very disappointing indeed.

Moreover, with the passage of the Report of the Select Committee, the Legislative Council has endorsed the recommendation that the control periods of

different ranks of directorate civil servants should be extended. Given Members' agreement that more stringent control should be imposed on post-service employment of civil servants who exercise relatively less powers, how come the control over the team of accountability officials who exercises greater powers should remain unchanged?

Therefore, the Government must review the situation as soon as possible. Regarding the direction of review, apart from issues of public concern such as whether the control period should be extended and whether a sanitization period should be introduced, we notice that the advice given by the Advisory Committee on Post-office Employment for Former Chief Executives and Politically Appointed Officials does not have any binding effect. We consider that this issue should also be reviewed.

In order to strengthen public confidence over control arrangements for post-office employment of accountability officials, we opine that in addition to the consideration of setting up an independent and highly transparent vetting and approving committee to vet the concerned applications as proposed under the original motion, the Government should also examine the setting up of a vetting mechanism that has binding effect to replace the advisory and non-binding system currently in place.

However, when conducting the review, the Government must pay special attention to the different nature of the Political Appointment System and the Civil Service. Unlike civil servants who are employed on permanent terms and can work in the Government until retirement, accountability officials would leave the Government after serving their term of office. Hence, accountability officials would have a greater need for post-office employment than civil servants.

As such, if the control on post-office work of accountability officials becomes so stringent that they have employment difficulties after leaving the Government, it might create an adverse impact of deterring aspiring persons from joining the Government. The right balance must be maintained between these two considerations.

In last year's Policy Address, the Government suggested that consideration should be given to adopting more flexible arrangements such as a revolving door. But how flexible this revolving door should be? Should it be as flexible as that in the United States? For example, former Governor of California Arnold

SCHWARZENEGGER had received many offers from the business sector even before he left office, and he was free to work in the business sector once he stepped down. Is this the kind of flexibility we want?

The Liberal Party considers that unlike the vast territory of the United States, Hong Kong is a small place and interpersonal connections are much more complicated. If there is no suitable control over post-office employment of officials, it will surely create conflicts of interest much more easily. Hence, we should not follow the practice of overseas countries indiscriminately. This is something that the authorities should take note of.

With these remarks, President, I support the original motion and the amendment proposed by Dr Philip WONG.

MS CYD HO (in Cantonese): President, if we are concerned about the public outcry caused by LEUNG Chin-man taking up employment with New World after his involvement in selling the Hunghom Peninsula at dirt-cheap prices, there are no reasons why we have to let loose the control of post-office employment of politically appointed officials nor handle the matter carelessly.

In the Code for Officials under the Political Appointment System formulated by the Chief Executive's Office, there are three paragraphs which specify the control of post-office employment of politically appointed officials. First, the relevant applications shall be vetted by a dedicated committee. Second, within one year after stepping down from office, politically appointed officials shall not represent any person in connection with any claim, action, proceedings or transaction involving the Government, and they shall not engage in any lobbying activities relating to any officials. Actually, these two requirements are also stated in the relevant code for post-service employment of civil servants but their control periods are much longer. Under the current recommendation, civil servants should be subject to the control of the Advisory Committee on Post-service Employment of Civil Servants for five years after leaving service.

In fact, politically appointed officials including Directors of Bureaux, Deputy Directors of Bureaux and Political Assistants are responsible for policy formulation during their term of office and they hold more powers than civil

servants. In that case, we must ask why their powers and responsibilities do not match up? Why do members of the current governing team have no regard for their own reputation? In view of the grave public concern caused by the post-service employment of LEUNG Chin-man, why does the Government still refuse to review the control over the post-office employment of politically appointed officials? Actually, the problem is not about the lack of control on the Government's part, it dares not forsake its control; but its control is neither effective nor thorough.

For both civil servants and politically appointed officials, their priority task is to maintain public confidence in the Government. Nowadays, members of the public often say they have no confidence in government officials, but they must still try to win the confidence of the people. The Government has pledged to foster a caring society, and it says government officials should have more smiles and conduct more visits to the districts. Notwithstanding their numerous efforts, the damage done by one senior official taking up post-service employment in the business sector will nullify all these efforts. If they can take up post-office employment after a mere 12 months, it will create embarrassment for and draw criticisms on the Government. The efforts made by the Government on a day-to-day basis will be wasted. It should not be the case unless the Government is telling me it does not mean what it said.

Today, the interest of this group of politically appointed officials has to be defended by a politically appointed official. This is already a major conflict in itself. Unfortunately, this is an inherent shortcoming of our current political system, and there is nothing we can do about it. We must ask them to come and give us a reply. In regulating civil servants or politically appointed officials, the top priority is to gain the public's confidence in the Government's governance.

Both Dr Philip WONG and Secretary Stephen LAM have just said that officials have a high regard of their own reputation and they will not act recklessly. If that is the case, why are they not willing to come under control? In fact, these views are mostly made out of the interest of the officials and not the public. Hence, we question to whom the Government is accountable? Is it acting to protect the interest of its officers and being accountable to them, or is it being accountable to the people? In fact, the benefits received by politically

appointed officials who take up post-office employment in the business sector are insignificant when compared with the need to maintain public confidence in the Government. As such, it is not worthy for us to express so many views and do so much in the matter generally, while they are let loose after leaving the Government.

Nonetheless, I also have a big question. As the Government does not impose any control on these officials, members of the public would invariably ask whether there is collusion between the Government and business. The governing team would rather be criticized for perpetuating collusion between the Government and business than impose control, and feels aggrieved for such criticisms. It is indeed very contradictory.

President, I must also respond to the view that it would fail to attract talents or deter them from joining the Government. I must state clearly, for those professionals or talents who want to make big bucks or think that they have not earned enough money before taking up public offices, my advice to them is that they should never take up public offices — particularly if they think that they have not earned enough money when taking up public offices and hope to make more money after stepping down — because there would be even greater suspicion about conflict of interest. Therefore, I hope those who are committed to serving the public and the community should stay so throughout, instead of just being committed during their term of public office. After they step down, they must still aim at maintaining the credibility of the Government's governance and accept valid control.

In overseas countries, looser control is possible because as I have often said, they have elections. For example, when making appointments to certain senior positions, the person nominated by the President of the United States must get the confirmation of the Congress. In the vetting process, there were cases where the candidates were found to have evaded tax or employed illegal worker. For the appointment of the Secretary of State, it may take three or four rounds of nomination before the office is eventually filled by someone with an almost impeccable record. But we do not have these procedures in Hong Kong. First, we do not have democratic elections. Second, the appointments do not require the vetting of the Legislative Council. Moreover, given the loose control over post-office employment, the public has little confidence in the Government's governance.

There is a recent example. On 11 July 2008, Mr Frederick MA, former Secretary for Commerce and Economic Development, resigned for health reasons. But on 10 November 2009, he took up employment with China Strategic Holdings with an annual salary of \$3.5 million, which is insignificant when compared to the 100 million option shares given to him. If this is the reward for his work during his term of office, it is an astronomical sum indeed. It does not matter even if he has not received any salary in the past few years, because his salary over that period would just be some \$20 million only.

Please do not say our view is biased because there is another example. Mr Antony LEUNG, former Financial Secretary, stepped down from office in July 2003 amidst his scandal. Subsequently in 2007, he joined Blackstone. As there was a three-and-a-half year gap in between, it attracted no criticism because the control period was longer.

Presently, one of the senior officials, Ms Katherine NG, has worked as the Director of Merrill Lynch's Legal Department before joining the Government as a Political Assistant. If there is no control, can she go back to work for Merrill Lynch right away after stepping down from office? Would it be acceptable to the public? Hence, President, in order to maintain public confidence in the Government's governance, there must be control over post-office employment of senior officials. Thank you, President.

MR CHEUNG KWOK-CHE (in Cantonese): President, it has been nine years since former Chief Executive, TUNG Chee-hwa, implemented the Principal Officials Accountability System and "outsourced" top official posts in the SAR Government. Honestly speaking, Directors of Bureaux and Deputy Directors of Bureaux, who are supposedly to be accountable, are not accountable at all. Even if there are major flops in the implementation of policies, nobody has to accept political responsibility. The Accountability System is but a name with no substance. It is likewise ridiculous that these Secretaries of Departments and Directors of Bureaux are only subject to a control period of merely one year for taking up post-office employment, and the vetting and approving system is very loose and lacks transparency. This is a matter which the Government must deal with squarely.

At present, arrangements relating to post-office employment of accountability officials are only set out in paragraph 5.15 of the Code for

Officials under the Political Appointment System, which reads as follows. "Within one year after stepping down from office, politically appointed officials shall seek the advice of a committee appointed for this purpose by the Chief Executive before commencing any employment, becoming a director or a partner in any business or profession or starting any business or profession on his own account or with others. The proceedings of the committee shall be kept confidential but the advice given shall be made public."

It is quite clear that the requirement stipulated under this Code is very simple and loose. We might as well compare this with the post-service employment arrangements for directorate civil servants. In addition to the restriction of sanitization periods ranging from six months to one year where outside employment is prohibited, directorate civil servants are subject to a control period as long as three years where they must obtain the prior approval from the Government before taking up any outside employment.

On the other hand, the heads of Policy Bureaux are only subject to a control period of one year and this does not seem logical. This is because the time taken for the incubation, formulation and implementation of a policy must at least take one year or even several years. Even after the one-year control period, information about upcoming policies or internal proposals of the Government may still have considerable commercial value. Moreover, as the highest decision maker in the Policy Bureau, they can even gain access to the most confidential official documents and information.

If directorate civil servants must accept these stringent restrictions, it is unreasonable to apply a shorter restriction on post-office employment of accountability officials whose annual salaries amount to several millions dollars. Furthermore, this brings another question. Given the loose restriction on the control period of accountability officials, directorate civil servants such as Permanent Secretaries can effectively shorten their control periods for post-service employment by changing jobs as Directors of Bureaux or Deputy Directors of Bureaux. This would make it easier for them to take up post-service employment in the private sector.

Another problem lies with the advisory committee responsible for vetting applications for post-office employment of accountability officials. At present, all its members are appointed by the Chief Executive. Its decision-making

process lacks transparency and it is not accountable to the public. Although the committee will publish and explain its decisions, from my observation of the records on the eight applications it handled since its establishment in 2005, the explanations given are brief and general, which is just slightly better than nothing.

Therefore, I agree that an independent vetting and approving committee should be established to vet the post-office employment applications from accountability officials under the political appointment system so as to allay public concern.

For accountability officials under the political appointment system who work for the people, I think, in addition to making a living or earning good salary, they must have an honourable mission of serving the community when they decided to work in the Government. That is what drives them to do better in their jobs. As such, while many people have expressed concern that a stringent control period for post-office employment of accountability officials may deter talents from joining the Government, I think such worry is unwarranted. If these people are so calculating that they contemplate the opportunity to earn big bucks by taking up post-office employment in the private sector, they would not be able to do their jobs well.

President, I so submit.

MR LEE WING-TAT (in Cantonese): President, while issues relating to politically appointed officials do not fall under the purview of the Select Committee to inquire into the LEUNG Chin-man incident, Members would sometimes discuss them in private. After the Report of the Select Committee was released, I learnt the view held by some civil servants that considering the current control regime of the Government, the review conducted by the committee chaired by the Honourable Ronald ARCULLI and the recommendations made by the Legislative Council Select Committee, it is inevitable that more stringent control would be further imposed on post-service employment of directorate civil servants, both in terms of the control period and sanitization period.

However, what about the accountability officials who can access even more sensitive and confidential information, or even formulate more significant

policies than directorate civil servants in general? Ordinary citizens can hardly distinguish between the two and they are categorically seen as senior officials. As I gather from ordinary folks, senior officials should work to the best of their ability. Upon retirement, they should of course not take up any work which may create conflict of interest with their original duties. This is the thinking of ordinary folks from their common sense. However, several cases in recent years such as the Elaine CHUNG incident and LEUNG Chin-man incident have aroused strong public concern about post-retirement employment of serving senior civil servants or accountability officials as it might create conflict of interest with their former duties. I think Secretary Stephen LAM would also notice that there are many discussions and newspaper articles about this issue lately. Members of the public consider that if the matter is not handled properly, the Government would have either blatantly or covertly opened a door for officials to take up inappropriate positions that might be tantamount to receiving benefits or having conflict of interest with their former duties.

Although there are points in the amendment proposed by Dr Philip WONG which I do not agree, I very much hope that by arriving at a conclusion in the Legislative Council, the Government is forced to review the matter because in a number of public statements made in the past, the Government seemingly considers that there is no need for any review. Of course, it does not mean the Government is adopting a hands-off or denial attitude, I would rather say its view is too rational. Under the systems adopted by many other countries, it is nothing unusual for accountability officials under political appointment system to take up employment in the business sector immediately after stepping down from office. It is in fact the general practice in the United States. For example, Hank PAULSON, former Secretary of the Treasury of the United States, had previously worked in The Goldman Sachs Group, Inc. before he was invited to join the United States Government as Secretary of the Treasury. After he stepped down from office, he went back to work in the private sector. I have not studied the reasons for such a civil service culture in the United States. But according to some colleagues, it is because the democratic system of the United States is relatively more advanced. The President of the United States is elected by the people. If a public officer he appoints has conflict of interest after stepping down from office, it will undoubtedly create a great impact both on his political party and the person he nominated. This is the first point.

Second, there are certain practices in the political system of the United States which I do not identify with, such as the requirements on election expenses

and the work of lobbyists. These are things I detest from the bottom of my heart. Hence, regarding the view held by some people that the democratic camp will gladly embrace everything from the United States, I must clarify here that there are certain practices in the American system that are unacceptable to the democratic camp, particularly persons like me. Money politics and the intertwining relationships between commercial interests and politics in the United States are much worse than that in Hong Kong. In fact, I am very proud of the election system of Hong Kong. Elections are relatively clean and with a relatively low ceiling of election expenses, many people can stand for elections. I think it is a good thing that the people of Hong Kong are highly concerned about post-retirement employment arrangements for senior officials.

Will it be too harsh on senior officials? When I talked to a Director of Bureau today, it was mentioned that people who have more powers and money might sometimes be put under more intense scrutiny by the public and they might occasionally be put under overly stringent scrutiny. I think this should rightly be the case because if a person has more powers and money, he must sometimes set an example for the community. Therefore, it is natural for them to come under scrutiny.

The Secretary may initially say that if the system is too stringent, it might deter aspiring persons from going into politics. Actually, this view has been around for quite some time and I think this problem must be tackled by a change of the Government's policies and principles. I find that there are indeed talents in the community and the business sector, and many of them are willing to put aside their personal and financial interests. In fact, this is something very important for people who engage in politics and take up public offices. If someone who just becomes an accountability official and all he can think of is how to make "fast money" after stepping down from office three to five years later, it is indeed a very dangerous thought. I am certain that this is a highly dangerous thought. If he wants to re-enter the business sector so earnestly to make "big money" and is so concerned about post-office work, I would rather the Government not invite him in the first place.

Moreover, the restriction that we are talking about is not a total ban on employment. I remember once when I met the chairman of a trade union of senior civil servants on City Forum, I told him clearly that the restriction was not to ban them from post-service employment. But if the post-service employment

constituted some actual or *prima facie* conflict of interest with their former official duties, such applications must undergo a vetting and approving process. It would be alright for them to take up such employment if no conflict was found.

Hence, one should not always say that the development of political talents would be hindered by the restriction on post-office employment. That is simply not true. My view is that if certain control is imposed on directorate civil servants, there is no reason why accountability officials under the political appointment system including Directors of Bureaux, Deputy Directors of Bureaux and other officials are not subject to similar control. I even think that for Directors of Bureaux, they should be subject to more stringent control. Thank you, President.

DR RAYMOND HO (in Cantonese): President, the Accountability System for Principal Officials was first implemented on 1 July 2002 and the current term of Government has taken the system a step forward by establishing an additional 24 posts of Under Secretary and Political Assistant. In May 2008, 17 appointments to these posts were made and two more people joined the team later on. At that time, their appointments had created many controversies and the Chief Executive also came under criticisms from all sides. Although the political appointment system has been implemented for almost nine years, arrangements for the appointment, dismissal and post-service employment of politically appointed officials, including the principal officials, Director of the Chief Executive's Office, under secretaries and political assistants still become issues of public concern from time to time.

Under paragraph 5.15 of the Code for Officials under the Political Appointment System which relates to post-office employment of accountability officials, it is stipulated that, "Within one year after stepping down from office, politically appointed officials shall seek the advice of a committee appointed for this purpose by the Chief Executive before commencing any employment, becoming a director or a partner in any business or profession or starting any business or profession on his own account or with others. The proceedings of the committee shall be kept confidential but the advice given shall be made public."

There have been past cases involving politically appointed officials taking up new employment within one year after they stepped down from office. They had observed the relevant requirement and sought the advice of the Advisory Committee on Post-office Employment for Former Chief Executives and Politically Appointed Officials (Advisory Committee) appointed by the Chief Executive. Although the proceedings of the Advisory Committee when considering the concerned requests for advice should be kept confidential, the advice it gave must be made public so that the public was aware of the factors considered by the Advisory Committee when giving its advice.

As far as I can recall, post-office employment arrangements of politically appointed officials have so far been less controversial than the case of former Permanent Secretary for Housing, Planning and Lands LEUNG Chin-man taking up post-retirement employment with a real estate developer. However, that case has again triggered off public concern on the matter. Comparatively speaking, the restriction on post-office employment of politically appointed officials is looser than the control on post-service employment of directorate civil servants. Politically appointed officials, especially principal officials, would have as much opportunity as directorate civil servants in gaining access to sensitive information, steering the formulation of policies and getting involved in potential conflict of interest. Hence, it is quite understandable that many members of the public feel dissatisfied with the relevant arrangement.

Of course, the Government must respond to the concern of the public and review the situation accordingly. However, in order to attract top-notch talents to join government service and work as politically appointed officials, the control and arrangements for their post-office employment must not be overly stringent. Otherwise, I believe many talents, especially the younger ones, would be deterred. If the pool of suitable candidates is substantially reduced, it might impact on the quality of the Government's governance. The Government must strike a reasonable balance between alleviating the concern of the community and facilitating the joining of government service by outside talents.

President, I believe it will be a difficult task to strike the right balance, and the Government must try its best to overcome the challenge. Of course, there are people who consider that the Government should, when reviewing the control arrangements, be mindful that accountability officials under the political appointment system would have the political sensitivity to make responsible judgments. Moreover, the Government must enhance the transparency of the

vetting and approving mechanism for post-office employment of these officials so as to boost public confidence on the system. President, with these remarks and on behalf of the Professional Forum, I support the amendment proposed by Dr Philip WONG. Thank you, President.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): Before I invite Dr Margaret NG to speak on Dr Philip WONG's amendment, I would like to say that as I think all the business on the Agenda of this Council meeting could be finished not too late tonight, I shall adjourn the meeting after all items of business on the Agenda have been finished.

PRESIDENT (in Cantonese): Dr Margaret NG, you may now speak on Dr Philip WONG's amendment. The speaking time limit is five minutes.

DR MARGARET NG (in Cantonese): President, I believe Dr Philip WONG must be one of the most conservative Members of the Legislative Council in terms of his political views. However, Dr Philip WONG's views are surprisingly similar to mine today. Both of us disagree to the comment raised by Secretary Stephen LAM just now, he claimed that appropriate post-office employment arrangements for accountability officials under the political appointment system were now in place and, hence there was no need for review. Dr Philip WONG's amendment and my original motion share one important point, that is, he is also concerned that the control over post-office employment of accountability officials should supposedly be very stringent, yet it is now even less stringent than the relevant control over post-service employment of directorate civil servants. As such, he has also requested the Government to expeditiously conduct a review.

Why do Dr Philip WONG and I have the same view? Actually, President, of the many Honourable Members who spoke just now, it does not matter if they support my original motion or Dr Philip WONG's amendment, they are aware that the situation must be reviewed because it would impact on public confidence

in the Government. Why do people of Hong Kong have so little trust for the Government? The reason is that the Government has not practised strict self-discipline. If the situation continues, the credibility of the Hong Kong SAR Government will certainly collapsed. Moreover, we can hardly see any so-called team spirit among the accountability officials. If the Government still refuses to review the control over the post-office employment for politically appointed officials, and allow these officials, after stepping down from office to If someone still say that we should not control the post-office employment of officials, or we should not control their making "big bucks" in future, then members of the governing team will only care about their own interests, they will not work concertedly and put protect public interest as their priority of concern.

Just now, Dr Philip WONG also mentioned that the matter must be handled with caution, and that the control should not be overly stringent, otherwise aspiring persons would be discouraged to be the politically appointed officials. However, we must ask ourselves, what kind of accountability officials do we want? Do we want people who, once they join the Government, think of how to make use of their employment to make money in future? Even though these persons may be very bright and talented, are they our choice? Do we want these persons or do we prefer those who are committed to serving Hong Kong, the country and the people, who really want to change the society, who want to build up a team spirit and who are willing to put public interest first? I think accountability officials must have these qualities before a united government team can be established.

At the same time, if a truly united governing team of the Government is to be established, the Civil Service must also be convinced. Hence, the control of post-office employment arrangements for accountability officials under the political appointment system must be strengthened and tightened. This is a common theme in both my original motion and Dr Philip WONG's amendment. We both disagree to the Secretary's view.

What is the difference between the views of Dr Philip WONG and mine? We differ mainly in terms of the specific changes to be introduced, namely whether, as I suggest, an independent vetting and approving mechanism should be established and whether a longer control period or a sanitization period should be introduced? Earlier, some Members have pointed out that considering the differences in the nature of the Political Appointment System and the Civil Service, the term of their public offices in the Government and the ranking of the

posts, they do not necessarily agree with each and every proposal in my original motion. There is a reason for this view, President. I think Dr Philip WONG wants to avoid discussion on specific details and I think this is acceptable.

The Civic Party always considers it vital to seek the widest possible consensus in the Legislative Council so that the motions passed by this Council will have power. I know many people want to see Dr Philip WONG's amendment negatived and Dr WONG then votes down my motion. In that case, both of us would lose. I think we should not let this happen. Therefore, the Civic Party will support Dr WONG's amendment. We also hope Members who have spoken on the motion today will support either the original motion or its amendment so that we can reach a consensus and demand a review from the Government. It is only through tighter control and more stringent arrangements that the system will gain the trust of the people. Thank you.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, I wish to thank Honourable Members for their valuable views on the political appointment system of Hong Kong. As the range of views raised by Members in their speeches is similar, I will only respond to some of the major points raised.

First of all, I must reiterate that the Hong Kong SAR Government would never allow principal officials and politically appointed officials to get involved in cases related to conflicts of interests during and after their tenure. Everyone agrees that this overriding principle must be steadfastly upheld. In the meantime, several Members, including Mr Jeffrey LAM and Dr LAM Tai-fai, have mentioned that the freedom of employment of Hong Kong residents is enshrined in the Basic Law. It is stipulated in Article 33 of the Basic Law that, "Hong Kong residents shall have freedom of choice of occupation." Therefore, regardless of whether they are civil servants or politically appointed officials, their rights after leaving government service must be safeguarded in accordance with the Basic Law. The problem lies with how to strike the right balance. Hence, when the political appointment system for Principal Officials was first introduced in 2002, discussions had been held on this matter and the current employment arrangements for politically appointed officials under the Accountability System for Principal Officials were formulated accordingly.

Dr LAM Tai-fai has specifically mentioned that under our current system, regarding applications of intended post-office employment made by politically appointed officials, the Advisory Committee on Post-office Employment for Former Chief Executives and Politically Appointed Officials is only required to publish its decisions through press releases. Is this an adequate arrangement? President, our discussion today is about politically appointed officials. During their five-year term of office, they are responsible for handling the policies and legislative proposals of the SAR Government. They have to be politically accountable to the Legislative Council and the public. Under the system, post-office employment arrangements for these officials would be considered by a committee and monitored by the mass media and the Legislative Council. As such, the system itself is powerful enough to prevent politically appointed officials from taking up post-office work that might have potential or real conflict of interest with their former official duties. This system of public monitoring and the public monitoring faced by politically appointed officials on a day-to-day basis are in fact two sides of the same coin.

Next, I would like to comment on the point raised by Mr LEUNG Yiu-chung. He mentioned that the political appointment system was originally intended to train up and nurture a group of political elites in Hong Kong. I do not think the term "political elites" is the most appropriate description. In fact, the entire political appointment system is intended to broaden the spectrum or opportunities of political participation, so that apart from getting elected as members of the Legislative Council or district council, aspiring persons, regardless of whether they have any affiliation with political parties, can join the Government and work as Secretaries of Departments, Directors of Bureaux, Deputy Directors of Bureaux or Political Assistants. These channels of going into politics, together with elections of the Legislative Council and district councils, will ensure that the means of political involvement are more diversified and comprehensive. In all open and democratic societies around the world, people can either go into politics by standing in council elections or becoming members of the cabinet.

However, so long as there is election, nothing is certain. The same team of officials will not stay in office forever. With the emergence of new talents and under this political appointment system, there is of course the need for a "revolving door" arrangement as well as a vetting and approving system of post-office employment. Hence, regarding Mr LEUNG Yiu-chung's conclusion

that the system might as well be abolished from now on, I am afraid that it can neither meet the need of Hong Kong, nor the democratization process of progressively moving towards universal suffrage elections for the Chief Executive and Legislative Council in 2017 and 2020 respectively, as well as the system of government of Hong Kong.

Mr LEUNG Kwok-hung has simply stated that our political appointment system is in fact a system of no accountability. In reply, I would simply ask: If there is no accountability, why do we come to this Legislative Council Building day in and day out to account for our work to the Legislative Council and the public? Why are there cases involving the resignation or stepping down from office of principal officials after certain incidents have happened? This is exactly the proof that the political appointment system implemented since 2002 has been working.

President, lastly, I would like to reiterate several important points. First, the current arrangements for post-office employment of politically appointed officials and post-service employment of senior civil servants are different because the two systems are diametrically different and they have different terms and conditions of employment. Civil servants are employed on permanent terms and they can work in the Government until 55 or 60 years of age. After leaving government service, they are entitled to retirement benefits in the form of either pension or Mandatory Provident Fund. Therefore, when designing the control arrangements for post-office employment of politically appointed officials in 2002, we had imposed a shorter control period.

Second, we had actually made reference to the systems in overseas countries, such as various American and European countries as mentioned by Honourable Members. Members may notice that in countries such as the United Kingdom and the United States, their senior officials can go back to work in the business sector soon after they had stepped down from office. For example, former Prime Minister of the United Kingdom, John MAJOR, worked for a bank after stepping down from office. Another example is Hank PAULSON, former Secretary of the Treasury of the United States, which was mentioned by Members just now. Members may also notice that after stepping down from office, Bill CLINTON, former President of the United States, had written books and travelled around the world to deliver talks for monetary gains. Hence, our system is not particularly loose. We have actually made reference to the arrangements

adopted in other jurisdictions to deal with the issue before formulating the present system which has been implemented since 2002.

Third, I would like to say that for many years in the past, principal officials have all along respected and observed the system when handling their post-office employment. The established system has been working well. For example, there is the case of Honourable Mrs Regina IP who, after resigning from the post of Secretary for Security, had taken up further studies overseas for several years before coming back to work in Hong Kong. For example, after stepping down from office, former Secretary Dr YEOH Eng-kiong had taken up the position of visiting professor in the university. Another example is former Financial Secretary Mr Antony LEUNG who re-entered the financial sector after a certain period of time.

Hence, it is true that principal officials have very important duties while in office, but they have also greatly respected the system after stepping down from office. Generally speaking, no conflict of interest has so far arisen from post-office employment of former principal officials. Therefore, it is our view that the current system has been working well. Nonetheless, the Government will carefully study the numerous thorough and detailed views made by Members today.

President, I so submit and thank Honourable Members for their views.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the amendment, moved by Dr Philip WONG to Dr Margaret NG's motion, be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by

functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the amendment passed.

PRESIDENT (in Cantonese): As Dr Margaret NG has used up her speaking time, this debate has come to a close.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Dr Margaret NG, as amended by Dr Philip WONG, be passed.

PRESIDENT (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion as amended passed.

PRESIDENT (in Cantonese): Motion for adjournment.

PRESIDENT (in Cantonese): Under Rule 16(6) and (7) of the Rules of Procedure, the total speaking time for this debate is one and a half hours, of which 75 minutes are Members' speaking time. Under rule 18(b) of the House Rules, each Member (including the mover of the motion) may speak for up to five minutes. The public officer making a reply may speak for up to 15 minutes.

PRESIDENT (in Cantonese): It is now 8.45 pm, the debate will now proceed.

Members who wish to speak will please press the "Request to speak" button.

I now call upon Mr LEUNG Kwok-hung to speak and move the motion.

MOTION FOR THE ADJOURNMENT OF THE COUNCIL

MR LEUNG KWOK-HUNG (in Cantonese): President, thank you very much for allowing me to move a motion for adjournment. I know you are acting according to the rules. Of course, many people say that you have made a reckless move, and that you are like the Chinese god "Wong Tai Sin", who grants every wish. As you should remember, Chairman MAO once said, "The sky will not fall down if you let people speak." Right?

Actually, I move this adjournment motion just to provide a platform for us to speak. If WANG Dan or other overseas pro-democracy figures come to Hong Kong, they are merely returning to their home country. Hong Kong is, of course, a Special Administration Region (SAR), a SAR within the territory of the People's Republic of China. They should have the right to return to their home country and their hometown long ago. However, of course I know that "dead people" is a highly sensitive subject in the Chinese politics. An example is the death of HU Yaobang. I recall that in 1989, 200 000 undergraduates hoped they could send some representatives to pay their last respects to HU Yaobang, but their wish was not granted. Three of them went down on their knees, but LI Peng just walked by without taking a glance. The reason was that he thought they were not qualified to mourn the death of HU Yaobang. It was also because the Chinese Communist Government considered such an act detrimental to their rule. After Premier ZHAO Ziyang passed away, his funeral was also held with much difficulties. People who wished to attend his funeral were not allowed to do so, even though these people were in the territory of the People's Republic of China.

Speaking of WU'ER Kaixi and WANG Dan, WU'ER Kaixi had been to Hong Kong before, and so had CHAI Ling. Yet WANG Dan cannot come to Hong Kong. Actually there is a subtle point in this. Why is it difficult for

WANG Dan to get approval to come to Hong Kong? It is because he cannot bear to get the nationality of another country. As we know, today LI Lu is no longer what he used to be. He is an important assistant to Warren BUFFETT. His advice for Warren BUFFETT to invest in China has brought Warren BUFFETT huge profits. Hence, now LI Lu stands in the limelight. He could go to inspect the automobile factory in China by car, surrounded by the international media. Can WANG Dan come to Hong Kong to pay his last respects to Mr SZETO Wah, this is certainly a humanitarian issue, since paying respects to the deceased is just a manifestation of humanity. That explains why I have commented that what the Secretary said that day was really too insincere, inhuman and inhumane. It was also a deprivation of human rights.

Let us make a further assumption, suppose this time WANG Dan is denied entry into Hong Kong, but if unfortunately Ms WANG Lingyun, his mother, has passed away, can he return to his home country to attend her funeral? How come some people can return to their home country while some others cannot? Secretary, WANG Guangya was certainly playing a trick on you. Of course he was happy making wild comments like, "Let it be handled by the Hong Kong people." Having been China's Permanent Representative to the United States and being a diplomat, of course he will not shoulder the trouble for you and admit that they participate and play an important role in Hong Kong's immigration control. Right? Thus, not only do I wish to advise Donald TSANG in this Chamber, I also hope that Mr WANG Guangya and the Chinese Communist Government will really give the Secretary some leeway so that he may allow Mr WANG Dan or other pro-democracy figures to come to Hong Kong.

President, Louis Auguste BLANQUI broke the world's record of imprisonment of political prisoners. After he passed away, 800 000 people in Paris attended his funeral. At that time the French Government did not collapse, only that the Socialist Party later came to power. Allowing someone to attend a funeral will not wreck a political regime. Hence, I hope the Chinese Communist Government will, like what Mr WANG Guangya has said, allow the Chief Executive and the Secretary to have certain discretion to exercise humanitarianism. Thank you, President.

Mr LEUNG Kwok-hung moved the following motion: (Translation)

"That this Council do now adjourn for the purpose of debating the following issue: the HKSAR Government's handling on humanitarian

grounds of matters relating to overseas pro-democracy figures' entry into Hong Kong for mourning the death of Mr SZETO Wah."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That this Council do now adjourn.

MR FREDERICK FUNG (in Cantonese): President, "Uncle Wah" passed away at 12.58 pm on 2 January. That afternoon our Chief Executive expressed his grief over Mr SZETO Wah's passing away, and he published a statement. I would like to read out his statement to you. Mr Donald TSANG said (the following is his statement), "Passionate about China and Hong Kong, Mr SZETO Wah was devoted in promoting democracy. Upright, industrious and unwavering in the pursuit of his ideals, Mr SZETO earned great respect from across the community. Hong Kong's democratic development remained close to his heart even when he was battling cancer. He supported the 2012 constitutional reform package and strived to convince members of both his political party and the general public of its merits. The eventual passage of the package, which marked a big leap forward in Hong Kong's path to full democracy, owed much to his unfailing efforts. Mr SZETO was diligent in his duties as a long-serving Member of the Legislative Council. He also built a distinguished career spanning four decades as an educator, inspiring generations of young people with his wealth of knowledge. He had been at the helm of the Hong Kong Professional Teachers' Union for years and his contribution to Hong Kong's education sector is well recognized. My colleagues join me in extending our deepest condolences to Mr SZETO's family. He will be dearly missed."

After listening to this statement, what would you feel? I think our Chief Executive has shown much respect to Mr SZETO Wah. Perhaps let me call him "Uncle Wah". I find the comments given by the Chief Executive on the lifelong contributions of "Uncle Wah" in education, democracy and political reform highly positive. As we know, this time the so-called overseas pro-democracy figures are actually Chinese. They were the students who promoted democracy and reform in China back then. It is only because "Uncle Wah" had helped them at that time that they were able to survive and hang on today with a strong desire to go back to the Mainland to serve their mother country. Their request to come to Hong Kong to mourn "Uncle Wah" is rather normal, natural and reasonable,

because had there not been "Uncle Wah", there would not have been any of them today.

How come when WANG Dan expressed his wish to come to Hong Kong to mourn Uncle Wah, our Secretary Ambrose LEE said that mourning did not necessarily have to take place in Hong Kong? Is Hong Kong inaccessible? If Hong Kong was on the moon, in space or on Mars, of course there was no need to go. As nowadays the transportation network around the world is so convenient, simple and direct, why can he not come?

WANG Dan has made a "three-nos" pledge. That is, no interviews with reporters, no press conferences and no public events. Yet such a pledge did not work. Later, he added the fourth "no", which was no overnight stay in Hong Kong. Actually this request was very modest indeed. President, I even found it too modest. It was so modest that I thought, WANG Dan, is that necessary? Why is the Hong Kong Special Administrative Region (SAR) Government so iron-hearted and unable to accept these conditions? What on earth is it afraid of? Is it afraid that WANG Dan and WU'ER Kaixi are up to something in Hong Kong? That they will revolt? That they will incite other people? That they will make 500 000 people take to the street in Hong Kong? That there will be a riot? I do not know what the Government is afraid of.

President, actually history has told us that the Government has selectively allowed pro-democracy figures to come to Hong Kong. In 2004 WU'ER Kaixi came to Hong Kong to mourn the artist Anita MUI at her funeral. Last year LI Lu, a pro-democracy figure on the wanted list after the 4 June incident, could travel to Shenzhen and Beijing with Bill GATES and Warren BUFFETT, the two American tycoons, and received VIP treatment. Why can WANG Dan not come to Hong Kong? Why can he not come to mourn Uncle Wah? Why? President, why? I do not understand.

We exercise "one country, two systems" in Hong Kong. Provided that everything follows and complies with the laws of Hong Kong, I cannot see why he should not be allowed to come to Hong Kong. At present, not only "one country, two systems" is in place, even the Central Government had previously permitted WU'ER Kaixi and LI Lu to visit Hong Kong, Shenzhen and Beijing. Why not let WANG Dan come to Hong Kong? Now WANG Guangya, Director of the Hong Kong and Macao Affairs Office of the State Council, has remarked

that this issue was up to the SAR Government to handle, I hope the Secretary and the Chief Executive will really handle it properly and let WANG Dan come to Hong Kong.

MR RONNY TONG (in Cantonese): President, under "one country, two systems", Hong Kong is a modern and open society rather than an outdated iron-curtain country. The law has empowered the Security Bureau to decide who can and cannot come to Hong Kong, but this is not an absolute power. Such a power has to be exercised with justification, in compliance with principles and in line with Hong Kong's unique status under "one country, two systems". So the Secretary cannot say, "You do not necessarily have to come to Hong Kong to mourn." Actually what the Secretary should say or ask himself is, what causes him to think that WANG Dan and WU'ER Kaixi cannot come to Hong Kong to mourn?

President, if the Secretary's power is so absolute that he does not need to consider these factors at all, that he may exercise his power merely because he finds today not a good day or anyone's political ideology unacceptable to him, actually this amounts to abuse of power.

President, the main factor which the Secretary needs to consider is that if this person comes to Hong Kong, will he pose a threat to the safety of Hong Kong and to the stability of the Hong Kong society? Frankly speaking, I really cannot see how allowing someone to enter Hong Kong will affect its safety or stability, not to mention that Mr WANG Dan has already made a number of promises which, in my opinion, should be able to put any government at ease.

President, putting aside these promises, the Secretary also has the power to impose conditions on anyone who seeks entry into Hong Kong. He may request that person to stay only one day, one week or one month in Hong Kong. He may lay down some other conditions, for example, to prohibit him from being engaged in any employment or from doing something which will cause disturbance in Hong Kong. The Secretary has such a power. However, if he ignores all these circumstances and blindly says that the Central Authorities may be displeased or that person's political status may displease the Central Authorities, his exercise of power in such a way will amount to abuse of power. It should not be accepted by this society. President, abuse of power may

actually degenerate into a political tool. The Government's power should not degenerate to serve as a political tool.

The Government's decision in this regard must be based on the overall interests of Hong Kong. I do not find that Hong Kong people do not wish to see WANG Dan or WU'ER Kaixi come here. On the contrary, we are very sure that the vast majority of Hong Kong people regard their visit to Hong Kong to mourn the death of "Uncle Wah" as a reasonable act. If the Secretary considers that political reasons prevail over legal restrictions or override reasonable requests, President, I think the Secretary is very wrong.

I am glad that up to this moment, the Secretary has still not indicated that WU'ER Kaixi or WANG Dan cannot come to Hong Kong for sure. Chief Executive Donald TSANG has not said so, nor has the Central Authorities. As such, President, I do not wish to see that in the end, the Secretary will abuse his power in obscurity and become enslaved by politics, turning his power into a political tool.

President, I very much hope that in the coming days the Secretary will, in compliance with the aspirations of Hong Kong people, review the matter from a humanitarian perspective and allow the pro-democracy figures, not only WANG Dan or WU'ER Kaixi but all those who wish to come to Hong Kong to mourn the death of "Uncle Wah", to visit Hong Kong and pay their last respects.

Thank you, President.

MR ALAN LEONG (in Cantonese): President, after the 4 June incident, Mr SZETO Wah, with his perseverance and boldness, exerted himself to save the Mainland participants in the student movement and set up the Hong Kong Alliance in Support of Patriotic Democratic Movements of China (the Alliance), shouldering the mission of promoting democratic movement in China. Over the past 20 years, the Alliance faced a lot of pressure, but "Uncle Wah" still actively liaised with and supported pro-democracy figures inside and outside China, winning deep respect of the Chinese people in support of democracy all over the world.

After "Uncle Wah" passed away early this month, all people overseas who had experienced the 1989 pro-democracy movement mourned his death. In the

past 20 years, owing to political reasons, they were unable to fight shoulder to shoulder with "Uncle Wah" on China's land for vindication of the 1989 pro-democracy movement. Now, for the same political reasons, they are even hindered from attending his funeral. Previously our Chief Executive has published a statement which said, "Upright, industrious and unwavering in the pursuit of his ideals, Mr SZETO earned great respect from across the community." A number of senior officials have attended memorial activities one after another and commended "Uncle Wah" for his contributions. Mr WANG Guangya, Director of the Hong Kong and Macao Affairs Office, has already expressed his stance that the SAR Government might handle this issue on its own. Yet the Government has still not made any decision. Should the Administration's political considerations override basic human conscience? Can all humanitarian grounds and human rights be brushed aside?

President, if the Administration adopts double standards, depriving the overseas pro-democracy figures of the right to pay homage and last respects to "Uncle Wah", we doubt whether the Government officials have genuine respect for Uncle Wah's contributions, or it is just a kind of political spin. To manifest the spirit of "one country, two systems", "Hong Kong people ruling Hong Kong" and "high degree of autonomy", it is all the more necessary for the SAR Government to exercise the right to which it is entitled and allow WANG Dan and others to come to Hong Kong to pay their last tribute to "Uncle Wah". Otherwise it is tantamount to destroying the core meaning of "one country, two systems". It will also fully demonstrate the SAR Government's lack of sympathy and mercy.

President, leaders of the student movement like CHAI Ling and WU'ER Kaixi had visited Hong Kong before. Several months ago LI Lu even accompanied Warren BUFFETT, the legendary American stock picker, and Bill GATES, Microsoft's founder, to visit Shenzhen and Beijing. Now WANG Dan has put forward a "four-nos" pledge. That is, no interviews with reporters, no public events, no press conferences, and now in addition, no overnight stay in Hong Kong. It shows that WANG Dan has repeatedly made concessions and compromised in order to pay his last respects to "Uncle Wah". Right now the ball is in the SAR Government's court. If the Government arbitrarily insists on denying WANG Dan entry into Hong Kong, Hong Kong's immigration policy will be disgraced.

President, whether or not WANG Dan can come to Hong Kong to pay his last tribute to "Uncle Wah" is a test for humanity and conscience. The pro-Government Members have also conveyed their respect for "Uncle Wah" a number of times and even expressed support for allowing WANG Dan to come to Hong Kong. I hope they will not preach one thing but act differently. Today they can still speak in support of the motion and call on the Government to allow overseas pro-democracy figures like WANG Dan to attend the funeral in Hong Kong. Moreover, the SAR Government should not impose any restrictions. It should promise as early as possible to let them come to Hong Kong to pay their last tribute and respects to "Uncle Wah".

I so submit.

MR CHEUNG MAN-KWONG (in Cantonese): President, many Chinese in Hong Kong and overseas are saddened by SZETO Wah's passing. They hope they can attend SZETO Wah's memorial service to mourn in remembrance of him.

I hope the memorial service will be conducted peacefully, so that SZETO Wah may rest in peace in God's embrace. However, as SZETO Wah had been involved in politics his whole life, people who wish to join the service in memory of him include those in Hong Kong as well as in overseas countries. There are also some pro-democracy figures, including WANG Dan and WU'ER Kaixi. As friends of SZETO Wah, their attendance and participation are just for expressing their grief and respect for the deceased.

To show his sincerity, WANG Dan put forward a "three-nos" pledge about what he would not do after arriving at Hong Kong. That is, no interviews with reporters, no press conferences and no public events. Later, it became a "four-nos" pledge with an additional promise of "no overnight stay in Hong Kong". He would leave on the same day right after the memorial service. As we all know, WANG Dan has been imprisoned twice due to the democratic movement. In 1998, on grounds of "humanitarianism", he was granted release on medical parole and went to study in the United States.

Strictly speaking, having fulfilled his legal obligations, WANG Dan should no longer be on the wanted list; otherwise China would not have allowed WANG

Dan to leave the country. On the contrary, LI Lu, who had been a fugitive, could accompany Bill GATES, the richest man in the world, and Warren BUFFETT, the legendary stock picker, to go to China. After the handover of sovereignty, WU'ER Kaixi could also come to Hong Kong to mourn Anita MUI. This illustrates that the Central Authorities and the Special Administrative Region (SAR) Government have respectively adopted a flexible approach to allow LI Lu to return to his home country and WU'ER Kaixi to come to Hong Kong.

Given LI Lu's and WU'ER Kaixi's precedents of flexibility, how come WANG Dan, who is no longer a criminal, cannot be permitted to come to Hong Kong to attend SZETO Wah's memorial service? Is it that if you are in the company of an international tycoon, you may return to your country; or if you wish to mourn an artist, you may come to Hong Kong, but if you wish to mourn SZETO Wah, who is respected by Hong Kong people, you will be shut out? It turns out that the SAR Government's humanitarianism is even worse than that in Mainland China. The "one country, two systems" in Hong Kong cannot even accommodate WANG Dan, a single person.

During his meeting with representatives of the senior management of Hong Kong's media, WANG Guangya, the new Director of the Hong Kong and Macao Affairs Office of the State Council, was asked if WANG Dan could be granted entry to mourn SZETO Wah. WANG Guangya said, under "one country, two systems", the Mainland would not interfere with the SAR's affairs. He believed the SAR Government would handle the relevant issue very well. What WANG Guangya said is very clear, and I interpret it from a positive angle. WANG Dan's visit to Hong Kong is within the purview of "one country, two systems". Besides, WANG Dan is not a criminal. His visit to Hong Kong is to do what a friend should do. He has promised that no politics will be involved, and he will depart immediately after giving his bow in the funeral. Such a request is a manifestation of self-restraint. It is also a humble request to the extreme. Everybody, be they leftists, centrists or rightists, and regardless of political parties and groupings, consider that this request should be accommodated. So, in terms of law and sensibility or humanity and humanitarianism, WANG Dan should not be rejected.

Whether WANG Dan can come to Hong Kong to mourn SZETO Wah is no longer a personal issue. Rather, it is a test for Hong Kong's "one country, two systems" and "high degree of autonomy". If WANG Dan cannot come to Hong

Kong, Hong Kong people will think that either there has been interference from the Central Authorities, which the SAR Government has to follow rigidly, or the SAR Government has tried to second-guess the wish of its superiors and set restrictions on itself, because Hong Kong people really cannot find any other reason for refusal. No matter what, this will undermine Hong Kong people's confidence in the Central Authorities and the SAR Government. It will also make a mockery of Hong Kong's "one country, two systems" and "high degree of autonomy".

Actually apart from WANG Dan, there is WU'ER Kaixi. I hope he and WANG Dan can come together to pay their last respects and last tribute to Mr SZETO Wah, who is highly respected by them and Hong Kong people.

MR LEUNG YIU-CHUNG (in Cantonese): President, many people are saddened by the passing of "Uncle Wah". In fact, in respect of education, social livelihood issues and democratic movement, whether it be in Hong Kong or on the Mainland, "Uncle Wah" has made tremendous contributions. Thus many Hong Kong people are deeply saddened by his passing. Right now the funeral committee for "Uncle Wah" is having a headache in dealing with the funeral procedures, including how to arrange his relatives and friends as well as members of the public to mourn him. It reflects that many people wish to pay their respects to "Uncle Wah" at this very last moment when he rested in peace.

I have noticed that the Hong Kong Alliance in Support of Patriotic Democratic Movements of China, the Hong Kong Professional Teachers' Union and the Democratic Party have placed a book of condolence at the entrance of the Legislative Council. I have also seen many senior officials go there to sign their names to express their condolences. Chief Executive Donald TSANG has also signed. It shows that actually we all wish to have the chance to pay our respects to "Uncle Wah" in remembrance of him. WANG Dan has once contributed to the democratic movement in China. Both he and "Uncle Wah" have cherished the hope that China will have further development in the future. They share the same thinking and have common objectives. Hence, WANG Dan very much hopes that he can come to Hong Kong to pay homage to SZETO Wah and to express his respect for him. In that case, why do we not allow him to come to Hong Kong to express such feelings?

President, I really do not wish to see the following Chinese saying manifest under such circumstances. Is it true that we will "give officials full licence to commit arson while forbidding ordinary people even to light their lamps"? President, why do I say so? Even the officials and the Chief Executive personally came to sign the book of condolence in mourning. Why is WANG Dan unable to do so? Unless their mourning — President, I hope I have made a wrong guess — was an act for the other people to see. Otherwise, if the mourning shown by them was genuine, why did the Secretary not, like what he said, mourn at home? Right? Donald TSANG could also mourn at home. Why did he go there personally to sign the book of condolence? As we all wish to mourn by way of a ceremony, how come the officials' wish can be realized while WANG Dan's cannot be granted? I really do not want to say that, but that is exactly the impression we have.

On the contrary, what are you afraid of? He will come to Hong Kong alone, but you say he will endanger or pose a threat to Hong Kong. Are the security measures in Hong Kong so lousy that they cannot even keep an eye on a single person and guard against a single person? Is the Secretary for Security really so incompetent? Otherwise, why can he not tell us expeditiously that they — not only WANG Dan but also other people regarded as dissidents by China — are allowed entry into Hong Kong, so that they will have the chance to mourn and pay their respects to "Uncle Wah"?

President, I so submit.

MR TAM YIU-CHUNG (in Cantonese): President, a kaifong who highly respects "Uncle Wah" asked me, Mr LEUNG Kwok-hung, who proposed this motion today, had bad-mouthed "Uncle Wah" as "having cancer in his brain". He even said in the Chamber that if Mr SZETO Wah's brain could still function as it used to be, he would never have reached such a conclusion. He had cursed "Uncle Wah" a number of times. So why

(Mr LEUNG Kwok-hung rose)

PRESIDENT (in Cantonese): Mr LEUNG, what is your point?

MR LEUNG KWOK-HUNG (in Cantonese): President, I request elucidation. I did not say that SZETO Wah

PRESIDENT (in Cantonese): Mr LEUNG, you have already spoken. Please be seated and let other Members speak.

MR LEUNG KWOK-HUNG (in Cantonese): But he was saying that I

PRESIDENT (in Cantonese): Please do not interrupt other Members.

MR TAM YIU-CHUNG (in Cantonese): This is what that kaifong said. I was just quoting his words. Let me continue. He said, how come after "Uncle Wah" passed away, he immediately made use of "Uncle Wah" to stir things up and make political gestures? Is he taking political advantage of "Uncle Wah", or is he trying to atone or remedy for his past deeds? I did not know how to answer his question, but I promised to relay his views.

Back to the views of the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB). The DAB considers that whether the Special Administrative Region Government should allow overseas figures to come to Hong Kong rests with the purview of the Director of Immigration under the law. Both the Security Bureau and the Immigration Department have a set of established procedures to handle the relevant issue. In my view, if the Legislative Council intervenes too much in such an issue and even exerts pressure on the Security Bureau or the Immigration Department, it will disrupt the original established procedures. Therefore the DAB is against such an act. We have expressed such a view right at the beginning, and in this adjournment debate, we simply wish to restate our view. Thank you, President.

MR ALBERT HO (in Cantonese): President, Mr SZETO Wah was a highly respected public figure not only in Hong Kong but also in overseas countries and on the Mainland. Fighting for democracy and freedom for his whole life and persevering till the end, he had indeed won the great respect of many people.

Since his passing, I know people in overseas countries and even on the Mainland have organized various kinds of memorial activities for him. Some activities are very simple in nature. Recently I have seen on the Internet tens of farmers whose dwellings have been demolished hoisting a self-made banner of "Uncle Wah", paying him a silent tribute. At the same time, many people, with deep sincerity and profound feelings, wish to come to Hong Kong personally to attend the funeral of "Uncle Wah", to bid farewell to him and pay him their last respects. People who have profound feelings for "Uncle Wah" certainly include those who were able to leave China and regain freedom with the assistance offered by "Uncle Wah" and some kind-hearted people during the 1989 pro-democracy movement. Not too many people can understand their profound feeling for "Uncle Wah". They really wish to express such sentiment in his funeral ceremony. It is as simple as that. This is merely a kind of manifestation of human feelings.

How the Hong Kong Government is to face this issue is actually very simple. That is, according to the policy of "one country, two systems" and the stipulations of the Basic Law, the decision solely rests with us. Hong Kong is a free international city which allows people overseas to come to participate in various kinds of activities, including ceremonies like funerals. This should be a very simple matter, but today it has become complicated. Maybe the Secretary is worried that among those people who wish to come to Hong Kong to attend Uncle Wah's funeral, some of them are not welcomed by the Central Government because they hold different political views or are even regarded as its political opponents. Is this the reason why the Hong Kong Government has to impose self-censorship and restrictions on itself, and then arbitrarily and callously refuse to let these people come to Hong Kong to attend Uncle Wah's funeral? If the Government does that, not only will it go against the obligations which the Basic Law has entrusted it with, it will also make us feel that the Central Government has interfered with Hong Kong's internal affairs, thereby subjecting the Central Government to be under such accusation.

In fact, Mr WANG Guangya has stated very clearly that this issue is to be handled by the Special Administrative Region (SAR) Government. I hope the SAR Government will treat this matter with empathy and common sense, consider the most sincere request made by WANG Dan or other persons and let them come to Hong Kong to pay the final tribute to a respectable elderly person who had passed away, this is a simple task which people with compassion and

feelings would wish to do. If the Government even fails to do so and makes things difficult for them, I believe it will enrage the whole society. All civilized societies around the world will look down on such despicable behaviour of the Hong Kong Government.

MR WONG KWOK-KIN (in Cantonese): President, regarding this adjournment debate today, speaking from a compassionate perspective, the Hong Kong Federation of Trade Unions (FTU) will be happy to see it work. However, we have the following three points to make: firstly, we remain of the view that debating this issue in such high profile manner in the Legislative Council is of no help to the whole matter. If we truly and sincerely hope that the overseas pro-democracy figures can come to Hong Kong to pay their respects, I consider this adjournment debate today an act to no avail. Secondly, in our opinion, the Immigration Department has always been independent in implementing the immigration policy, and such a practice has been effective. Being the legislature, should the Legislative Council interfere, in a high profile manner, with the executive authorities in its exercise of power in accordance with the law? I have such a doubt. Thirdly, so far I have not heard the Government formally indicate that it does not approve somebody's entry. Before there is any conclusion, that means before we actually know whether the Government will grant approval or not, if we proceed with this debate on the presumption that the Government will not grant approval for sure, and then criticize the Government in advance, are we debating just for the sake of debate? I have doubt about this too.

Owing to these three reasons, the FTU has already stated in the House Committee that we are against this adjournment debate. Thus we will not participate in this debate tonight. Thank you, President.

MS AUDREY EU (in Cantonese): President, I have just heard the speeches made by Mr WONG Kwok-kin and Mr TAM Yiu-chung. When this issue was previously discussed at the House Committee, Mr IP Kwok-him had also voiced his views. In fact, their stance generally is that while they hope for a favourable outcome in this matter or consider it a good thing by itself, they think this debate is unnecessary because the good intention may backfire or no positive effects can be attained.

President, I want to state clearly why we have to speak in support of this motion, that is, the SAR Government should allow WANG Dan and other overseas pro-democracy figures come to Hong Kong to mourn for "Uncle Wah". We are neither taking political advantages nor doing a disservice out of good intentions. I think those who say we are doing a disservice out of good intentions have made two mistakes. First, they are second guessing the wish of Chinese leaders, saying that our discussion will jeopardize the whole thing. Second, they are in fact imputing injustice to the Central Authorities and the SAR Government. They claim that the Central Government and SAR Government will not act according to public opinion. The more we ask, the higher chance of their refusal to take actions. Do you not think that they are imputing injustice to the Central Authorities and SAR Government? Even the Director of the Hong Kong and Macao Affairs Office has said that the matter was to be decided by the SAR. The SAR should make use of this golden opportunity to demonstrate the implementation of "one country, two systems" in Hong Kong. Why do we have to second guess the wish of Chinese leaders? It is no big deal if we guess wrong, but if we impute injustice to them, the consequence is far reaching.

Moreover, they often subject themselves to self-imposed restrictions and refrain from doing what should be done. I think this is a major fallacy in Chinese history, thinking that the will of rulers would change consequently. Hence, they would set limits for themselves first and avoid doing certain things. As a result, they often forget what is righteous and avoid discussions on what should be done. Actually, we all hope for a favourable outcome in this matter. What does that mean? It means this is actually a righteous action that should be taken. Owing to "Uncle Wah", "Operation Yellowbird" or the Hong Kong Alliance in Support of Patriotic Democratic Movements of China, the lives of these pro-democracy figures have been changed. "Uncle Wah" had spent all his life helping rights activists in the Mainland and the Chinese people. After he passed away, people who had previously criticized him also said he was a patriot. In that case, why do we not support or request lenient treatment for those people, whose lives had been changed with the assistance of "Uncle Wah", to come to Hong Kong for mourning and paying their last respects? This is the righteous thing to do. As Members of the Legislative Council, we should say the righteous words, why should we have to worry that owing to our words, these people cannot come to Hong Kong because we have got the nerve of someone in power or the SAR Government, so that they purposely refuse the entry of these people into Hong Kong? Why do we have to impute injustice to them?

Therefore, President, I must make this point clear. I strongly object to this view held by many people because it perpetuates the Chinese tradition of treating powers as a taboo or something negative. If we consider it a good thing, we must say so directly. I think "Uncle Wah", being a person who held fast to what is good, would want us to be frank and direct. Unless we do not want these people to come to Hong Kong, we must make ourselves clear. If we want these people to come to Hong Kong or consider that they should come, we must speak out our mind. Why should we fear that the outcome would be consequently affected? We must believe that both the SAR Government and the Central Government will listen to us, to our comments on the righteous act to be taken, and allow these people to come to Hong Kong to pay their last respects to "Uncle Wah" in his memorial service.

Hence, I sincerely implore the Secretary to allow these people to come to Hong Kong on human rights and humanitarian grounds. Thank you, President.

MR LEE WING-TAT (in Cantonese): President, I have known "Uncle Wah" for many years, he was my good mentor. I recall that I first met him in 1978 during the Precious Blood Golden Jubilee Secondary School incident. At that time, I was a member of the student union and he was the Chairman of the Hong Kong Professional Teachers' Union. I was very young then and we discussed the Golden Jubilee incident in which he had played a pivotal role. As I was then quite inexperienced, I often sought his advice. I remember I once asked him whether the Golden Jubilee movement would be successful, and he replied in the affirmative because he had asked Dr Rayson HUANG to head the Committee of Inquiry into the incident. Finally, the Ng Yuk Secondary School was established.

Without doubt, "Uncle Wah" had made great contribution in the educational, political and democratic movements in Hong Kong since the 1960s. Of course, political movements in every society require the involvement of many people and, most important of all, the participation of the local people or the general public. However, we cannot deny that in those days, he was willing to forsake himself and steadfastly engaged in these movements. "Uncle Wah" was exactly that kind of person. I remember I once told him during our casual conversation that he was a difficult model to follow, because he was more or less leading a puritan life. President, although I am not a pleasure seeker, I would

sometimes go for a drink, or have gatherings with my college friends for drinks or meals say, once or twice a year. People always need some entertainment, but "Uncle Wah" seldom indulged himself in our so-called recreational activities. Sometimes, I asked him whether he had any recreational activities, he replied that he found amusement in reading and calligraphy.

His steadfastness not only lies with big things, but also small things. Let me cite an example. I remember during the days of the United Democrats of Hong Kong (UDHK), Members of the Legislative Council belonging to the UDHK had once scheduled a meeting with the Governor, but "Uncle Wah" said he could not attend. When we asked him for the reason, he said he had already promised to give a talk in a primary school one or two months before the meeting between the Governor and the caucus of the UDHK was fixed. Many friends wondered why he did not cancel or reschedule the talk so that he could meet with the Governor, but "Uncle Wah" refused to do so because he had a commitment with that primary school, and he would not care even if it was a meeting with the Governor.

Moreover, it has been mentioned in the press that "Uncle Wah" was very punctual. Being quite punctual myself, I had been scolded by him for being late for our meetings by just one or two minutes. From these examples, we can see that "Uncle Wah" did not only preserve in major issues of right and wrong, he had in fact set many examples on how to conduct oneself in life. Many young people in modern times may find these examples or approach incomprehensible, or they may even feel out of touch with such kind of person. In my view, it does not matter if you are involved in a major social movement, or if you are just a common guy, like what "Uncle Wah" had said when he left the Legislative Council in 2004, not everyone has to go great things, it is good enough to be a good guy, to make some contribution to your families and the community, and play a good role in your respective positions.

Although not all remarks made by "Uncle Wah" carried great truth, I think some of his comments were incisive. Hence, I hope the Government can handle the present case with leniency. Of course, I know the Secretary may not be able to give us any concrete reply today, and I do not want to make harsh criticisms against his reply. I can only say, "Heaven is watching everything that one does." If Mainland China has allowed the return of some pro-democracy figures — if the Central Government has allowed pro-democracy figures to return home to mourn

the death of their parents — honestly, why is it such a big deal to let these pro-democracy figures come to this free society of Hong Kong and pay their last respects to a friend? Thank you, President.

MS CYD HO (in Cantonese): I do not understand why holding this debate by the Legislative Council will not help resolve the issue of pro-democracy figures coming to Hong Kong for mourning? Why must we take secretive acts to make things work? If this kind of logic applies, the Legislative Council should not hold any debate and everything must be discussed secretly behind closed door. Does it mean that Members belonging to the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) and the Hong Kong Federation of Trade Unions also acknowledge that the Central Authorities are indeed not modernized enough? Is it still acting like a monarch in the old days, if permission is not granted, you cannot get it done by yourself, and you cannot even talk about it?

Does the Legislative Council have the power to interfere with the Immigration Department? I must remind Honourable Members that a subcommittee has been formed under the Legislative Council to study issues relating to Mainland-SAR families. At the meetings of this subcommittee, we would strongly urge the Immigration Department and the Security Bureau to revise the immigration policy, so that members of Mainland-SAR families can come to Hong Kong early for reunion. Is there anything wrong about we are doing? This subcommittee also comprises Members belonging to the DAB. How come another set of logic applies when it comes to WANG Dan and WU'ER Kaixi coming to Hong Kong for mourning? In fact, many people would rush to say the final goodbye to their dying family members; this is human nature and ethical relationships. We want to thank our beloved ones for the last time, to hear their final words, and to untangle long-standing complexes. If we can meet our beloved ones before they died, we would have no regrets; otherwise, it will leave deep regrets for the living ones. This is what "Uncle Wah" must have felt.

Last Friday, I watched a replay of a television documentary about "Uncle Wah". He said, "It does not matter if you are no longer a Member, but it matters to lot to live as a man." I would like to tell the Secretary on this occasion, though being a Director of Bureau, he should first and foremost be a man. Once being a government official, how come he casts human nature and ethical

relationships all away? These people are not even asking to visit "Uncle Wah" at his deathbed, they merely want to pay their last respects. In this connection, WANG Dan has made several pledges, he is so conciliatory and self-restrictive that I consider that he has gone too far, and it is aggrieved for him to do so. Even WANG Guangya had said publicly that the matter should be decided by the SAR and the ball is now in the SAR Government's court. Given the implementation of "two systems", what are the reasons for refusing entry of WANG Dan and WU'ER Kaixi? What laws of the SAR have they contravened? Even the Central Authorities have said that the matter should be decided by the SAR itself, and the entry of these overseas pro-democracy figures into Hong Kong will absolutely not threaten Hong Kong's public order. Even if they come to Hong Kong, it will not increase the posthumous influence of "Uncle Wah" because as we can see, "Uncle Wah" had already won unprecedented support in the people's heart. Today, I can say with confidence that none of the former senior government officials have won so much support and respect of the people as "Uncle Wah" at this moment. Even if the SAR refuses the entry of WANG Dan and WU'ER Kaixi into Hong Kong, it will neither mitigate the posthumous political power wielded by "Uncle Wah" nor save the face of the Central Government. This is because if they are refused entry, it will only highlight the indifferent and unrighteous attitude of the SAR Government and deepen the public's query about the perceived manipulation of the Central Government behind the scene.

President, the authorities have spent a lot of money to promote "one country, two systems", claiming that Hong Kong can enjoy autonomy in all matters except defense and foreign affairs. The authorities have invited many singers and artists to promote this principle through a lot of air time on the electronic media. If a wrong decision is made today, all the previous promotion efforts would be wasted. No matter what the authorities have said previously, if WANG Dan, WU'ER Kaixi and other pro-democracy figures are not allowed to come to Hong Kong to mourn "Uncle Wah" under the principle of "one country, two systems", it will be a complete violation of "one country, two systems" and go against public aspiration. Thank you, President.

MS MIRIAM LAU (in Cantonese): President, "Uncle Wah" is one of the most respected elderly for many Hong Kong people and me. The life of "Uncle Wah" is just like a mini-history of modern China and Hong Kong. According to his

personal account in interviews, when fleeing back to his hometown, Hoiping, with his family during the Japanese invasion, he had witnessed the brutal killings of Chinese compatriots by the Japanese army. This has instilled in him a strong sense of patriotism. During the difficult era of the 1940s, instead of pursuing his dream of becoming a writer through seafaring and reading, he had studied in a college of education so as to start working early to support his family. In the 1970s, he founded the Hong Kong Professional Teachers' Union to fight for the rights of teachers. Starting from the 1980s, he took the broader stage of politics and assumed his role in the pursuit of democracy.

I must also mention that when the constitutional reform package was finally passed by the Legislative Council last year, although "Uncle Wah" was not physically present in this Chamber as he was actively fighting his illness, he still functioned as an anchor, trying his best to fend off the attacks lashed out by the radicals on the revised package, which was reached through co-ordination. Ultimately, the package was spared from the repeated fate of being vetoed by the Legislative Council, and his achievement is remarkable.

Throughout his life, "Uncle Wah" held a passionate love for China and Hong Kong. He dedicated himself to education and taught his students selflessly. This has deeply touched our hearts because many students have benefited from his teaching. He also dedicated himself to the pursuit of democracy right until his last breath and this had won the respect of numerous overseas and local persons. His life events had touched a chord in our hearts about the past. His passing signifies the end of an era and it has brought back many old memories.

Therefore, many condolence points have been set up over the territory lately and they are crowded with people paying their last respects to "Uncle Wah".

A condolence point has also been set up outside the Legislative Council Building. Last Thursday, several members of the Liberal Party who had worked with "Uncle Wah" in the Legislative Council, including James TIEN, Selina CHOW and me had gone there especially to bow before his photo to show our respect.

While it is easy for us to pay our tribute, it would be difficult for some people if they want to do the same. This is exactly the reason why we are holding this adjournment debate today so that we can call on the SAR Government to allow pro-democracy figures to come to Hong Kong to pay tribute to "Uncle Wah".

Secretary for Security Ambrose LEE once said, "Mourning does not necessarily have to take place in Hong Kong and we have our own systems and immigration policy." I want to point out that the Secretary's view only covers the legal and rational aspects of the argument; despite the importance of making a legal and rational decision, it does not necessarily mean that the human aspect cannot be considered.

Moreover, the pro-democracy figure in question has made himself clear time and again, that in addition to the "three-nos" condition for entering into Hong Kong, he has added another "no"; that is, in addition to "no interviews with reporters, no press conferences and no public events", he pledged that there will be "no overnight stay in Hong Kong and he will leave the territory on the same day".

This pro-democracy figure has further said that his visit to Hong Kong for "mourning the death of SZETO Wah has nothing to do with politics, but everything to do with human nature". He only wants to come to Hong Kong in person to pay his last respects to "Uncle Wah" because he regards "Uncle Wah" as his mentor, his elder and family member.

Of course, we understand and respect that the decision of whether or not a person is allowed to enter into Hong Kong will be made by the Immigration Department after taking into account various factors and considerations. However, given the public pledges made by the person concerned, I think the Government should consider his application with a totally open attitude. Moreover, even WANG Guangya, the Director of the Hong Kong and Macao Affairs Office, has stated clearly that, "the SAR Government will well handle" this matter. Now is the time to test the wisdom of the SAR Government and see if it can make a proper decision which is acceptable to the public while being humanistic and lawful under the principle of "one country, two systems". President, I so submit.

MISS TANYA CHAN (in Cantonese): President, I believe among the many Honourable Members who speak on this motion today, I may have the least relationship with "Uncle Wah" because we have not worked together and we do not belong to the same political party. I am not a teacher either. But my memory of and respect for "Uncle Wah" are on a par with everyone else.

Of course, my most vivid memory of him is related to the 4 June Incident. When I was young, I would often gaze at "Uncle Wah" from a distance. After entering into politics, I had two close encounters with "Uncle Wah". I clearly remember the following scene, one day, when I was walking with my mother in Wan Chai, we saw "Uncle Wah" writing New Year scrolls for the public. It was a very cold day, when "Uncle Wah" was writing the scrolls, a song was played continuously in the background. Even today, I can still remember vividly the lyrics of the song: "Uncle Wah's writing New Year scrolls, Uncle Wah's writing New Year scrolls". The second time I met him was at a meeting. He still had a sharp mind and good analytical skills and that was only about one year ago.

Being a junior, I feel grief and lost about the passing of a senior. We are lucky to be in Hong Kong, for we can go to various places in memory of "Uncle Wah", to pay tribute to him or mourn for his death. We can also sign the condolence book or dedicate flowers to him. Since the passing of "Uncle Wah", there is something which has been lingering in my heart. The Secretary may feel uncomfortable when I mention again his reply to reporters that day when he was asked whether pro-democracy figures could enter into Hong Kong to mourn "Uncle Wah". Maybe the Secretary had not thought carefully over the matter, or maybe it was just a slip, anyhow he said that mourning did not necessarily have to take place in Hong Kong, and those people could do so in other places. I think if someone we respect very much or if our family member had passed away, even if we cannot stay by his side right till the end, we still wish to pay our last respects to him personally.

I think people of Hong Kong respect "Uncle Wah" very much. They also understand that they should bid farewell to him in a calm and rational manner. For the pro-democracy figures, "Uncle Wah" is their saviour and they respect this elderly person very much. While they may have some strong emotions, I do not see their coming to Hong Kong will possibly cause any insurmountable challenge or security concerns for the Government, the Security Bureau or the police. I very much hope that the Secretary will, in the coming few days — the final 10-odd days — before the memorial service, bring good news to the public so

that they can feel relaxed, that is, to allow all pro-democracy figures to come to Hong Kong. It does not matter whether the decision is based on grounds of human rights or humanitarianism or whatever, as long as the Secretary will allow them to enter into Hong Kong, he can find a reason to substantiate his decision.

I so submit.

MR PAUL CHAN (in Cantonese): President, I speak to call on the SAR Government to be flexible in handling WANG Dan's application to come to Hong Kong for attending the funeral of Mr SZETO Wah. Actually, many Members have mentioned that WANG Dan has already undertaken to co-operate with the Hong Kong Government. He only wants to come to Hong Kong to attend Mr SZETO Wah's funeral to pay homage and last respects to him who had offered him assistance during the 4 June Incident. Moreover, he will not engage in other activities that diverge from his stated purpose for entry.

President, there is no other information to suggest that WANG Dan's pledge is not genuine. Hence, I think the SAR Government should actively consider his application for entering into the territory.

Throughout his life, Mr SZETO Wah had made numerous contributions to the social development and democratization of Hong Kong. Last year, Mr SZETO Wah had also played a crucial anchoring role in ensuring that Hong Kong's constitutional development could take a step forward in 2012.

Throughout his life, Mr SZETO Wah had demonstrated his upright character, unwavering pursuit of his ideals and passion for the country. Apart from earning the respect of the people of Hong Kong in general, Mr SZETO Wah was widely acknowledged by people with different political stands, and he was highly praised by overseas and local persons. I think it is the public's aspiration that Mr SZETO Wah be remembered with the highest of respect. I also think it is the mainstream public opinion that Mr WANG Dan and others should be allowed to enter into Hong Kong to attend Mr SZETO Wah's funeral.

The SAR Government should take heed to good advice and approve WANG Dan's application for coming to Hong Kong, so that the freedom given to Hong Kong under the "one country, two systems" principle can be fully realized.

I think the decision to allow their entry into Hong Kong is justifiable, rational and lawful. Thank you, President.

MR LEE CHEUK-YAN (in Cantonese): President, I clearly remember that on 2 January, the day "Uncle Wah" passed away, the Chief Executive issued a statement proclaiming his respect for "Uncle Wah", as well as praising "Uncle Wah" for his contribution to Hong Kong's education sector and his upright character. However, his statement had an unnecessary appendage, that is, the mentioning of the important role played by "Uncle Wah" in the constitutional reform. This is just a move intended to take advantages. Throughout his life, "Uncle Wah" had made numerous contributions, from his role in the Hong Kong Professional Teachers' Union to the democracy movement in 1989 and until today. Apart from the constitutional reform, the Chief Executive had not mentioned about his other contributions in these several decades. I think it is really a move intended to take advantages. The Chief Executive Donald TSANG does not need to do so, as the constitutional reform had been endorsed, why then does he still need to take advantages?

Given the Chief Executive's statement that he respected "Uncle Wah", I think he must show his respect genuinely. How can he show genuine respect then? He should respect the wish of pro-democracy figures including WANG Dan and WU'ER Kaixi to come to Hong Kong and bid farewell to "Uncle Wah". This is just something human. We are telling the authorities that this is just a human consideration. We very much hope that the SAR Government will have higher regard for this human consideration than other factors in this matter. I do not know whether some political considerations are involved. I have not figured out the whole thing even until now. What political considerations are involved actually? Is it really because the Central Government does not like the idea?

However, this is not what the Central Authorities said. WANG Guangya has already said that he very much believed Donald TSANG would handle the matter well. As he believes the Chief Executive can handle the matter well, he has entrusted it to the Chief Executive. He thinks the Chief Executive will handle the matter properly. This also means he does not intend to get involved. If he has no intention of getting involved and he trusts the SAR Government's handling of the matter, the decision-making power is really in the hands of the Chief Executive. If the decision-making power lies with the Chief Executive, I am really clueless as to why he has yet to make a decision.

All along, it has been said that immigration matters relating to the applications made by WANG Dan and WU'ER Kaixi for entering into Hong Kong will be decided by the Director of Immigration. If the decision can be made by the Director of Immigration, I have no idea why he has yet to give a reply to the Hong Kong Alliance in Support of Patriotic Democratic Movements of China. We are waiting for his reply every day. WANG Dan is also waiting for his reply. When will he be notified that he can come to Hong Kong? However, no reply is forthcoming. If it is a matter to be decided by the Director of Immigration, what is the difficulty then? If he must wait for the direction of the Central Authorities, WANG Guangya had already given his assurance. Can the authorities make a decision as soon as possible and give us a reply?

I also believe that if these persons are allowed to enter into Hong Kong, it will boost public confidence in the SAR Government as the people can actually find that the principle of "one country, two systems" is being upheld by the SAR Government. This is in fact a good thing for the SAR Government. Hence, we very much hope that the SAR Government will not let the people down in this matter. Basically, this is also the people's aspiration. This is not only about WANG Dan coming to Hong Kong to bid farewell to "Uncle Wah", it is also about "one country, two systems". Therefore, I hope the SAR Government will do what is best for itself. Thank you, President.

DR MARGARET NG (in Cantonese): President, just now, I have been thinking about how to say the word "heavy-handed" in Cantonese. I do not know how to express the meaning in Chinese. Nonetheless, I consider the SAR Government's handling of this matter "heavy-handed". Why must it turn everything into a big issue? Why can it not learn from others and casually play down this issue, which may be turned into a political incident? Why can it not say something like this: This person wants to come to Hong Kong because his good friend who is very important to him has passed away, and he wants to attend the funeral; should we allow this person to come to Hong Kong and stay a short while? If the Government handles this incident in this way, people who want to turn this into a political incident should bear the blame. But this is not how the Government has handled the incident. Other people are appealing to the Government on humanistic grounds while it turns the matter into a political incident.

Why does it act so stupidly? Why is it so dumb? How does this Government work? This is really annoying because this is in fact a very minor incident and the Government has turned it into a major issue. I do not know how it intends to clean up the mess. If the Government refuses entry of these persons, all the people of Hong Kong will say, "We respect 'Uncle Wah' very much. If this young man, WANG Dan, wants to say goodbye to 'Uncle Wah', and he is denied by the Government, surely it is the Government's fault." If he is allowed to come to Hong Kong now, it gives the impression that the Government is bending under political pressure. WANG Dan is even made to give his undertaking of "three nos", "four nos", "five nos", "six nos" or even "seven or eight nos". Is that how the Government will eventually stop? Why does it have to mess up everything?

The Government should have said right from the beginning that it has not received any applications, and if applications are received, it would handle the case. Why does it not handle the case from a humanistic perspective? Why does it not handle the case from the perspectives of family and inter-personal relationships? The Government should cast politics aside, and if other people want to politicize this issue, it would be their fault. However, this is not how the Government has handled the case. People have to beg for favours, and what favours do they ask for? They merely beg for giving consideration to the feelings between human beings. Apart from politics, there are feelings and emotions between human beings.

Why were we so afraid of communism when we were young? That is because communism has placed human relationships in a secondary position. In communism, there is no place for human relationships, there is only the state. Why does the Government not learn the good way and has to go backwards? I really do not understand. If any government is faced with the same situation, or let us not say other countries but the Central Government of China, if the Central Government wants to release a certain person, it will use humanitarian ground as the reason for releasing that person on medical parole. It will not say whether that person should be convicted or imprisoned. It will only say that person is sick and let him go. In that case, nobody will say anything.

President, I really do not understand the whole thing. I am getting annoyed as I listen more. Why do my Honourable colleagues keep asking the Government for flexible, special or humanitarian treatment? Sorry, Ms Audrey EU that is, the matter should be handled on humanitarian and

humanistic grounds. I find this very strange because the whole incident should have been taken lightly because it is really a simple issue.

President, this farce should stop. Secretary, I hope when you speak later on, you will tell us, "There is no problem. If WANG Dan wants to come, there is no problem. I believe he will not create any trouble. I can see no reasons why anyone would want to stir things up in a solemn memorial ceremony." In that case, the matter will come to an end and we can go back to our normal lives. Please, do not politicize every issue. We are mourning the dead and it is not out of politics. It is out of human feelings. Thank you, President.

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

(No Member indicated a wish to speak)

SECRETARY FOR SECURITY (in Cantonese): President, regarding the motion for the adjournment debate proposed by Mr LEUNG Kwok-hung and the speeches made by several Members just now, I would like to respond as follows.

Devoted to educational work his whole life, Mr SZETO Wah founded the Hong Kong Professional Teachers' Union. He also served as a Legislative Council Member for many years, and he spared no effort in paving the path for democracy in Hong Kong. Although not everyone supports Mr SZETO Wah's political views or political stance, I believe many Hong Kong people will agree that his personality has earned the respect of all sectors. Unfortunately, on 2 January this year, Mr SZETO Wah passed away. The Special Administrative Region (SAR) Government would like to express its deepest condolences to Mr SZETO Wah's family.

Under the principle of "one country, two systems", the Hong Kong SAR enjoys high degree of autonomy. The Basic Law ensures that Hong Kong people are entitled to freedom of speech, assembly, procession, and so on. At the same time, the Basic Law has also authorized the SAR Government to exercise immigration control. On the major premise of protecting Hong Kong's interests, we welcome genuine visitors from all places around the world.

According to the long-standing policy of the Immigration Department, the Government will not comment on individual cases or disclose information on individual cases. Regarding individuals outside the territory who wish to apply for entry into Hong Kong to participate in the memorial activities held by Mr SZETO Wah's funeral committee at the end of this month, I would like to stress that the Immigration Department will definitely uphold the principle of safeguarding the overall interests of Hong Kong and, with an open and pragmatic attitude, consider each entry application sensibly and reasonably in accordance with the legal requirements and established policy. Under this major premise, in dealing with each application, the Immigration Department will consider whether the visitor meets the normal immigration conditions, including whether the visitor applying for entry possesses a valid travel document, whether he has the arrangements and facilities required to return to his place of domicile, whether he has sufficient funds during his stay in Hong Kong, whether he has any known adverse records, his genuine purpose in visiting Hong Kong, and whether he will pose any security problem. Apart from these usual requirements, the Immigration Department will, based on the special circumstances put forward in the individual applications, give careful consideration from the visitor's perspective on the premise of not going against the law and the Government's policy.

Just now some Members mentioned that in the past there were cases where pro-democracy figures were allowed entry into Hong Kong. On the premise of not commenting on individual cases, let me reiterate that in dealing with each entry application, the Immigration Department will, in compliance with the law and the immigration policy, give due consideration to all factors and circumstances pertaining to the application before making the decision. Individual entry applications have their own unique circumstances. As a result, we should not make any generalization or direct comparison. Actually I have explained before when answering questions in the Legislative Council that according to our immigration policy, we will not flatly reject a visitor's entry application simply because he has a different religion or political stance. The fact that a certain applicant has been granted or denied entry does not necessarily mean that he will automatically be granted or denied entry again in the future. The Immigration Department will give careful consideration and make an appropriate decision based on the relevant factors and the prevailing situation for

each entry application. Such an approach is consistent with the one adopted by other immigration authorities in the world.

Let me reiterate here, according to the Basic Law, the Hong Kong Special Administrative Region enjoys "high degree of autonomy" in a number of aspects, including the implementation of the immigration policy. Any decision made by the Immigration Department to allow or deny entry into Hong Kong will be based on the law and the established policy of the Hong Kong SAR after giving due consideration to the circumstances of the case.

As I have just said, although our political views or stance may be different, I highly respect Mr SZETO Wah's personality. I have known "Uncle Wah" for years. Like many Members and members of the public, I am deeply saddened by his passing, and I sincerely mourn for him. I also truly believe that many people who know and respect Mr SZETO Wah, whether in Hong Kong or other places, are lamenting and mourning him in different ways.

Lastly, on behalf of the SAR Government, may I express our deepest condolences to Mr SZETO Wah's family again. Thank you, President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That this Council do now adjourn. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion passed.

NEXT MEETING

PRESIDENT (in Cantonese): I now adjourn the Council until 3 pm tomorrow.

Adjourned accordingly at two minutes past Ten o'clock.

Appendix I**WRITTEN ANSWER****Written answer by the Secretary for Labour and Welfare to Mr WONG Kwok-hing's supplementary question to Question 2**

As regards the number of hidden elders with language barriers who need support services (for example, new arrivals from the Mainland) and the assistance offered to them by the Government, we do not have statistics on the number of hidden elders who need support due to language barriers. Nevertheless, according to information collected by the Social Welfare Department from the elderly centres in various districts, of those elders approached by social workers, only a few have difficulty communicating with them due to language barriers. As the social workers and volunteers of the elderly centres are very familiar with the local community and have rich experience in elderly services, they will ask their colleagues who know different dialects, or the elders' neighbours, fellow townsmen or relatives to assist in the interpretation when necessary. In most cases, the language barriers can be overcome and do not affect the provision of services to the elders.