

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 22 June 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

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

THE HONOURABLE LEE CHEUK-YAN

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

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

DR THE HONOURABLE MARGARET NG

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

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

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

THE HONOURABLE LEUNG YIU-CHUNG

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

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

THE HONOURABLE LAU KONG-WAH, J.P.

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

THE HONOURABLE MIRIAM LAU KIN-YEE, G.B.S., J.P.

THE HONOURABLE EMILY LAU WAI-HING, J.P.

THE HONOURABLE ANDREW CHENG KAR-FOO

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

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

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

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

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

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

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

THE HONOURABLE WONG KWOK-HING, M.H.

THE HONOURABLE LEE WING-TAT

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

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

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

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

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

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

THE HONOURABLE CHIM PUI-CHUNG

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

THE HONOURABLE KAM NAI-WAI, M.H.

THE HONOURABLE CYD HO SAU-LAN

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

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

THE HONOURABLE CHAN HAK-KAN

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

THE HONOURABLE CHAN KIN-POR, J.P.

DR THE HONOURABLE PRISCILLA LEUNG MEI-FUN

DR THE HONOURABLE LEUNG KA-LAU

THE HONOURABLE CHEUNG KWOK-CHE

THE HONOURABLE WONG SING-CHI

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

THE HONOURABLE IP WAI-MING, M.H.

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

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

DR THE HONOURABLE PAN PEY-CHYOU

THE HONOURABLE PAUL TSE WAI-CHUN

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

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

THE HONOURABLE LEUNG KWOK-HUNG

THE HONOURABLE TANYA CHAN

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE WONG YUK-MAN

MEMBER ABSENT:

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

PUBLIC OFFICERS ATTENDING:

THE HONOURABLE HENRY TANG YING-YEN, G.B.M., G.B.S., J.P.
THE CHIEF SECRETARY FOR ADMINISTRATION

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

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

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

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

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

THE HONOURABLE TSANG TAK-SING, G.B.S., J.P.
SECRETARY FOR HOME AFFAIRS

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

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

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

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

CLERKS IN ATTENDANCE:

MS PAULINE NG MAN-WAH, SECRETARY GENERAL

MISS ODELIA LEUNG HING-YEE, ASSISTANT SECRETARY GENERAL

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY
GENERAL

MRS PERCY MA, ASSISTANT SECRETARY GENERAL

TABLING OF PAPERS

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

Subsidiary Legislation/Instruments	<i>L.N. No.</i>
Declaration of Increase in Pensions Notice 2011	105/2011
Widows and Orphans Pension (Increase) Notice 2011.....	106/2011

Other Papers

Report of the Committee on Members' Interests on its consideration of a complaint against Ir Dr Hon Raymond HO, Hon Jeffrey LAM and Hon Abraham SHEK

Report No. 26/10-11 of the House Committee on Consideration of Subsidiary Legislation and Other Instruments

Report of the Bills Committee on Legislation Publication Bill

Report of the Bills Committee on Stamp Duty (Amendment) (No. 2) Bill 2010

ADDRESSES

PRESIDENT (in Cantonese): Address. Mrs Sophie LEUNG will address the Council on the "Report of the Committee on Members' Interests on its consideration of a complaint against Dr Raymond HO, Mr Jeffrey LAM and Mr Abraham SHEK".

Report of the Committee on Members' Interests on its consideration of a complaint against Ir Dr Hon Raymond HO, Hon Jeffrey LAM and Hon Abraham SHEK

MRS SOPHIE LEUNG (in Cantonese): President, in my capacity as Chairman of the Committee on Members' Interests (CMI), I table before this Council the

"Report of the Committee on Members' Interests on its consideration of a complaint against Ir Dr Hon Raymond HO, Hon Jeffrey LAM and Hon Abraham SHEK" (the Report). I will highlight its contents here.

On 31 December 2009, the Clerk to the CMI received a complaint alleging that Dr Raymond HO, Mr Jeffrey LAM and Mr Abraham SHEK might have conflict of interest and role in respect of their failure to disclose their being non-executive directors (NEDs) of companies which were involved in the project to construct the Hong Kong Section of Guangzhou-Shenzhen-Hong Kong Express Rail Link (XRL Project) or had indicated an interest in bidding for the XRL Project before they spoke at the meetings of the Subcommittee on Matters Relating to Railways (Railway Subcommittee), which was set up under the Panel on Transport of the Legislative Council, held from September to November 2009 to discuss the XRL Project.

Preliminary consideration was conducted by the CMI to ascertain the subject of the complaint and the provisions of the Rules of Procedure (RoP) relevant to the allegations in question. As the complaint involves Rule 83A of the RoP, which provides that: "In the Council or in any committee or subcommittee, a Member shall not move any motion or amendment relating to a matter in which he has a pecuniary interest, whether direct or indirect, or speak on any such matter, except where he discloses the nature of that interest", it is within the terms of reference of the CMI, as provided in Rule 73(1)(c) of the RoP, to handle the complaint.

In this connection, the CMI held 20 meetings in camera and met with Mr Abraham SHEK in one of these meetings. After preliminary consideration, the CMI is of the view that the complaint against Dr Raymond HO, being an NED of the China State Construction International Holdings Limited (CSC), for failing to disclose his interests in the XRL Project before speaking at the relevant meetings of the Railway Subcommittee is not substantiated as the date of submission of tender by the CSC for the Tai Kong Po to Tse Uk Tsuen Tunnels contract under the XRL Project in a joint venture with Maeda was 26 March 2010, which is after the material time of the complaint, that is, from September to November 2009.

In respect of the complaint against Mr Abraham SHEK for failing to disclose his interest in the XRL Project by virtue of his being an independent non-executive director (INED) of the MTR Corporation Limited (MTRCL) before speaking at the relevant meetings of the Railway Subcommittee, the CMI

accepts Mr SHEK's admission that it was an oversight on his part for the non-disclosure and that he had no intention of hiding his interest as an INED of the MTRCL. Mr SHEK had registered his interest as an INED of the MTRCL in the Register of Members' Interests and he had declared that he was an INED of the MTRCL at previous meetings of the Panel on Transport and the Railway Subcommittee on other matters. Nevertheless, the CMI is of the view that Mr SHEK's failure to disclose the nature of his interests in the XRL Project by virtue of his being an INED of the MTRCL is in breach of Rule 83A of the RoP.

The CMI recommends that Mr SHEK be admonished by a motion to that effect in accordance with Rules 73(1)(c) and 85 of the RoP. In this connection, I will move a motion on behalf of the CMI to that effect at the meeting of the Legislative Council on 13 July 2011.

In respect of the complaints against Mr Abraham SHEK and Mr Jeffrey LAM for failing to disclose their interests in the XRL Project by virtue of their being INEDs of the Hsin Chong Construction Group Limited (HCCG), coupled with Mr Abraham SHEK being an INED of the NWS Holdings Limited (NWSH), the CMI is of the view that Mr SHEK and Mr LAM had breached Rule 83A of the RoP on the following grounds:

First, construction is the core activity of the HCCG, which is mainly carried out through its wholly-owned subsidiary, the Hsin Chong Construction Company Limited. At the material time, that is, from September to November 2009, the Hsin Chong Construction Company Limited had already bid for and was later awarded a contract under the XRL Project. Therefore, the HCCG should be regarded as having an indirect pecuniary interest in the relevant XRL Project. Under such circumstances, Mr SHEK and Mr LAM, both being the INEDs of the HCCG, should be regarded as having an indirect pecuniary interest in the relevant project.

Second, the NWSH is mainly engaged in infrastructural construction, while the principal activities of the Vibro (HK) Limited, a 99.8%-owned subsidiary of the NWSH, are piling, ground investigation and civil engineering. At the material time of the complaint, that is, from September to November 2009, the Vibro (HK) Limited had bid for and was later awarded a contract under the XRL Project. Therefore, the HCCG should be regarded as having an indirect pecuniary interest in the relevant XRL Project. Under such circumstances, Mr

SHEK, as the INED of the NWSH, should also be regarded as having an indirect pecuniary interest in the relevant project.

Nevertheless, the CMI also considers that it would not be fair to expect Mr SHEK and Mr LAM to know that they were required to disclose the nature of their relevant interests at the time when they spoke at the relevant meetings of the Railway Subcommittee, having regard to the fact that the interest arising from a subsidiary company had never been discussed or made known to Members and even the CMI had taken considerable time to come to its understanding on a Member's obligation in relation to subsidiaries of the company of which he is an INED. Therefore, no sanction against Mr SHEK and Mr LAM is recommended under Rule 85 of the RoP.

The complaint raises, for the first time, the issue of whether a Member's position as an NED of a company may give rise to a situation under which the Member is considered to have a pecuniary interest by virtue of that position under Rule 83A of the RoP. To begin with, let me state the issues examined by the CMI:

Firstly, the information provided to Members prior to December 2009 on disclosure of interests, including direct and indirect pecuniary interests;

Secondly, the meaning of direct and indirect pecuniary interests under Rule 83A of the RoP;

Thirdly, the role of an INED in a company and the circumstances under which a Member who is an INED of a company would be required to make disclosure of pecuniary interests under Rule 83A of the RoP; and

Fourthly, how Rule 83A of the RoP is interpreted and applied when speaking at meetings, including at which point in time should a pecuniary interest be disclosed and whether the same pecuniary interest should be disclosed each time when the Member speaks.

It is noted by the CMI that the information on disclosure of pecuniary interests available to Members as set out in paragraph 3.2 in Chapter 3 of this

Report does not expressly remind Members that they should disclose the nature of their pecuniary interests if a subsidiary of the company of which they are an INED had bid for or was awarded a contract in a project under consideration by a committee of the Council. Rule 83A of the RoP does not expressly provide for the requirement to disclose pecuniary interests of a Member which are derived from those subsidiary companies of a company of which he is a director.

Regarding the roles of executive directors and NEDs, the CMI notes that the two shall have the same fiduciary duties in law. Hence, the CMI is of the view that a Member who is an INED of a company should take reasonable steps to find out the nature of business of the company, including its subsidiary companies, and decide whether and in what manner he is to find out if he has to disclose any pecuniary interest which derives from the pecuniary interest of the parent company and its subsidiaries. Such a requirement should not cause undue hardship to the Member as he is only required to disclose the nature of the pecuniary interest. Nevertheless, Mr Paul CHAN and Mr WONG Yung-kan consider it impractical to expect a Member to find out the nature of business of each and every subsidiary of the company of which he is an INED. Both Members hold the view that a Member should only be expected to find out the primary nature of business of the major subsidiaries of the company of which he is an INED.

As regards the circumstances under which a Member who is an INED would be required to make disclosure of pecuniary interests under Rule 83A of the RoP by virtue of being an INED, it has taken the CMI almost a year to come to the understanding of several points as follows:

Firstly, a company is regarded as having a direct pecuniary interest in a project if the company has bid for a contract or has been awarded a contract under the project;

Secondly, if a company is regarded as having a direct pecuniary interest in a project by virtue of the circumstances mentioned above, a Member who is a director of the company is regarded as having an indirect pecuniary interest in the project;

Thirdly, there is no distinction between executive directors, non-executive directors and independent non-executive directors as far as disclosure of pecuniary interest under Rule 83A of the RoP is concerned;

Fourthly, a Member is expected to take reasonable steps to find out, for the purpose of making the required disclosures under Rule 83A of the RoP, whether the company of which he is a director has a pecuniary interest in the matter under consideration by a committee; and

Fifthly, generally speaking, if a subsidiary of a company (parent company) has bid for a contract or has been awarded a contract under a project, then the parent company is regarded as having an indirect pecuniary interest in the project and on this basis, a Member who is a director of that parent company is regarded as having an indirect pecuniary interest in the project.

Based on the abovementioned five principles, the CMI considers that where a subsidiary of a company has bid for a contract or has been awarded a contract under a project, the parent company should be regarded as having an indirect interest in the project. However, the CMI is aware that the circumstances of each individual case could vary and sometimes the indirect pecuniary interest could be too remote to be caught by Rule 83A of the RoP. I would like to mention in particular that the claim by a Member that he has no knowledge of any pecuniary interest of the company of which he is an INED and that he does not participate in the day-to-day management of the company are not relevant considerations when examining whether a non-disclosure of pecuniary interest constitute a breach of Rule 83A of the RoP.

However, both Mr WONG Yung-kan and I have reservations about the fifth principle, which reads "if a subsidiary of a company (parent company) has bid for a contract or has been awarded a contract under a project, then the parent company is regarded as having an indirect pecuniary interest in the project", as this principle has never been applied to any Members and has never been fully discussed among Members. We consider it not practicable at all for a Member to find out the business involvements of the subsidiaries of the company of which he is an INED for the purpose of complying with Rule 83A of the RoP. We also consider it too drastic to apply this principle to the cases of Mr SHEK and Mr LAM as the basis for concluding that they had breached Rule 83A of the RoP despite the fact that no sanction against them is recommended.

As the principles applicable to Rule 83A of the RoP, as set out above, involve all Members, I will make a request on behalf of the CMI at the House Committee meeting on 24 June 2011 for priority to be accorded to me for a time slot for conducting a debate, so that I, in my capacity as Chairman of the CMI, can move a motion debate at the Legislative Council meeting on 13 July 2011 to enable Members to express their views on issues in relation to procedural rules on pecuniary interests in respect of the Report.

To assist Members in complying with Rule 83A of the RoP, the CMI recommends that the principles applicable to Rule 83A of RoP, as set out above, should be set out in the form of guidelines to remind Members of their obligations as directors and to formalize arrangements for the disclosure of pecuniary interests at meetings of committees.

Lastly, the CMI calls upon all Members to stay alert and be vigilant in registering and disclosing their interests in accordance with the relevant rules of the Legislative Council to avoid bringing serious consequences to themselves and undermining the reputation of the Legislative Council.

President, I so submit.

QUESTIONS UNDER RULE 24(4) OF THE RULES OF PROCEDURE

PRESIDENT (in Cantonese): Questions. I permitted Dr Priscilla LEUNG and Ms Starry LEE to respectively ask an additional urgent question under Rule 24(4) of the Rules of Procedure.

First urgent question.

Measures to Improve Fire Safety Problem of Flat Units Divided into Separate Units

1. **DR PRISCILLA LEUNG** (in Cantonese): *President, in the early hours last Wednesday (15 June 2011), a fire broke out in a tenement building with many*

flat units divided into separate units (commonly known as "sub-divided units") at 111 Ma Tau Wai Road in To Kwa Wan, which resulted in a tragedy with four people killed and 19 injured, and aroused widespread public concern about the fire safety problem of sub-divided units. There are a large number of such kinds of old buildings with many sub-divided units in communities like To Kwa Wan, and so on, and the fire escape facilities in such buildings are generally poor. To avoid the recurrence of such tragedies, will the Government inform this Council, given that the Secretary for Development indicated in reply to a question at the meeting of this Council on 1 June this year that the removal of all sub-divided units was uncalled for as not all such units were illegal and they might meet the housing needs of the grassroots, whether it will consider, in view of the fire at Ma Tau Wai Road, immediately adopting the mode similar to that of the Operation Building Bright (OBB) to provide funding to owners in need to improve the fire safety facilities of sub-divided units in order to comply with the statutory requirements on fire safety, and immediately stepping up efforts in publicizing knowledge of fire prevention among owners and tenants of sub-divided units, so as to safeguard public safety; if not, of the reason for that?

SECRETARY FOR DEVELOPMENT (in Cantonese): President, last week a fire broke out in an old building in Ma Tau Wai Road and heavy casualties resulted. I would like to extend the greatest condolences on the part of the SAR Government to the families of the dead and the wounded.

President, although the issue of "sub-divided units" has been discussed by the Legislative Council for a number of times recently, I consider it necessary to start with a brief introduction, from the building control perspective, of the definition of "sub-divided units" and the potential problems that they may cause. "Sub-division of flat units", commonly known as "sub-divided units", in general refers to the sub-division of a flat unit into two or more individual units. The works usually involve knocking down of original non-structural partition walls, construction of new non-structural partition walls, installation of new toilets, alteration or addition of internal water pipes and drainage systems for the additional toilets, as well as raising of floor screeding to accommodate new/diverted pipes and drains, and so on. If such works are not properly conducted, building safety and health may be affected including irregularities of means of escape caused by additional opening for doors, water seepage due to

defective drainage works, and overloading due to excessive additional partition walls and thickening of floor screeding. Sub-divided units have been previously found in domestic units, but have recently also emerged in commercial/residential composite buildings and multi-storey industrial buildings. The situation has raised much concern.

As I pointed out in my reply to another oral question on 1 June 2011, "sub-divided units" have revealed a very complicated problem which involves issues such as fire and building safety, building management and housing demand. The Development Bureau consulted the Subcommittee on Building Safety and Related Issues established under the Panel on Development in July 2010 on the regulation of "sub-divided units". Members in general were of the view that totally banning "sub-divided units" was not a solution that could best meet the practical needs, but the Administration's primary objective must be to protect public safety, and it should tackle unauthorized "sub-divided units" and enhance the safety level of works concerned by a multi-pronged approach. We are proactively strengthening the inspection of and control over "sub-divided units" from the policy objective of building safety.

On legislation, we are gradually incorporating various types of works commonly involved in "sub-divided units" into an appropriate statutory control regime to require owners to carry out works through legal means so as to enhance the safety level of such works. The minor works control system (MWCS), fully implemented in the end of December 2010, has already designated internal drainage works within building units, commonly found in "sub-divided units", as minor works. Through a convenient and legal mechanism, members of public can carry out the works by engaging registered contractors. We have further proposed to include other works commonly found in "sub-divided units", such as erection of partition walls and addition of floor screeding, under the regulation of the MWCS. The Buildings Department (BD) is now consulting the industry on the technical details. We will expedite our work, and will endeavour to submit the amendment regulation to the Legislative Council for scrutiny in the first quarter of 2012.

As regards enforcement, the BD has been mounting a special operation against "sub-divided units" since 1 April this year to inspect suspected alteration works associated with "sub-divided units" to ascertain whether they comply with the planning, design and construction requirements in terms of fire safety (in particular the impact on means of escape) under the building regulations. The

BD will take enforcement actions against irregularities. It is estimated that over 1 300 sub-divided flat units will be inspected in the special operation each year.

Dr Priscilla LEUNG suggests us to adopt the mode similar to that of the OBB to improve safety of "sub-divided units" through the provision of grants to persons concerned. I have serious reservation on this proposal. The OBB is a one-off special scheme, the major purpose of which is to enhance safety of common areas of old buildings, including the repair works of building structure and fire safety installations, but is not to subsidize owners the cost of repair of their individual units. Considering from the perspective of effective utilization of public resources and fairness, it is not reasonable to subsidize the repair and alteration works for those owners who sub-divide individual units for lease or sale to make profit. Owners of "sub-divided units" bear the full responsibility to ensure that their own properties are not breaching the law. It is not appropriate to assist them to carry out repair works in a manner similar to the OBB.

Nevertheless, our partner organizations and the BD have other regular schemes in place to assist owners in need. For example, if an owner needs to demolish unauthorized building works (UBWs) in his flat unit, the one-stop Integrated Building Maintenance Assistance Scheme administered by the Hong Kong Housing Society (HKHS) and Urban Renewal Authority could provide technical advice and interest-free loans to eligible owners for removal or rectification of irregularities within individual flat units, including works associated with "sub-divided units". The maximum amount of loan for this could be up to \$50,000. Building owners could also apply to the BD for loans under the Building Safety Loan Scheme to enhance fire safety of buildings; to provide, upgrade and repair fire safety installations and facilities of buildings; and to remove UBWs. The amount of loan could be up to \$1 million. In addition, the Building Maintenance Grant Scheme for Elderly Owners, funded by the Government and administered by the HKHS, provides financial assistance up to \$40,000 to eligible elderly owner-occupiers for the aforementioned works.

A number of recent incidents involving UBWs and "sub-divided units" have revealed that public awareness on fire and building safety is still low. Therefore, I agree with the Dr Priscilla LEUNG's proposal to immediately enhance the promotion of fire prevention knowledge among owners and occupants of "sub-divided units". As a matter of fact, after the recent UBWs-related incidents, the BD has correspondingly adjusted the strategy of its large-scale publicity and public education campaign. It has strengthened the

dissemination of the message to tackle the problem of UBWs. With a view to promoting fire prevention knowledge particularly for owners and occupants of "sub-divided units", the Department is updating a series of frequently asked questions including building safety requirements and points to note, and the same will be uploaded to its homepage shortly. The content provided by the 1823 Hotline will also be updated simultaneously. The Department will also arrange relevant bus body banner displays, newspaper supplements and radio promotion messages in the immediate future. These measures are to more widely publicize safety precautions related to subdivision of flat units, educate building owners not carry out unauthorized works to sub-divide flat units, and to advise potential tenants of "sub-divided units" to check the building conditions (for example, whether approval has been obtained for the building works) before deciding whether to rent the units. The Fire Services Department (FSD) has also arranged to broadcast an announcement of public interests on ways of evacuation through televisions and radios shortly in order to enhance the ability to escape of members of the public in case of fire.

To lower fire risks in old buildings in a more effective and comprehensive manner, the FSD introduced a "four-pronged" approach in 2008 for old buildings with higher potential fire risks in densely populated areas, such as To Kwa Wan, Yau Tsim Mong and Wan Chai, and so on. The four prongs are:

- (i) the Special Enforcement Unit (SEU) would step up inspections of old buildings and take law-enforcement actions to eradicate potential fire hazards;
- (ii) after inspections and follow-up actions by the SEU, the fire stations in the districts concerned would inspect the old buildings regularly and take appropriate enforcement action;
- (iii) the "Building Fire Safety Envoy" of a building would also conduct inspections from time to time to ensure that there would no longer be such irregularities; and
- (iv) District Fire Safety Committees (DFSCs), Fire Safety Ambassadors and prominent district personalities would be invited to promote fire safety in those old buildings.

The Home Affairs Department and FSD will also make good use of district networks to enhance awareness on fire safety. At present, all 18 districts have established DFSCs to promote and publicize fire safety awareness, and educate people in the districts concerned on the importance of fire safety. DFSCs also from time to time carry out publicity and education programmes in collaboration with District Councils and other local organizations (such as owners' corporations, mutual aid committees and property management companies), so as to enhance the awareness of people in the districts concerned regarding fire safety and other relevant building safety matters.

DR PRISCILLA LEUNG (in Cantonese): *President, the Secretary has mentioned the SEU and Building Fire Safety Envoy in the main reply and she has also said that a "four-pronged" approach was introduced in end 2008. If Members still remember, a serious fire broke out in Mong Kok in 2008, causing the death of two firemen, and the problem of "sub-divided units" was exposed. The authorities subsequently introduced the OBB.*

The Secretary has said in the main reply that the major purpose of the OBB is to enhance safety of common areas of old buildings. Regarding the fire that broke out last Wednesday at Ma Tau Wai Road, the staircase of the building was very narrow. And according to an adult, a child was burned to death in the staircase, which is really tragic. I learnt that the authorities rely on residents to report the problems. People living in these "sub-divided units" are sometimes very scared, but even if they report the problems, the owners may not take any actions. So I wish to ask the Secretary if she would consider again actually some incentives have to be offered. Members agree that educational efforts must be made. So I wish to ask, with respect to the building in which the fire broke out, have the Building Fire Safety Envoys fulfilled their duties? Incidents always happen at Ma Tau Wai Road.

Furthermore, we may have to rely on residents to report the problems. If the authorities can provide some subsidies to residents who report the problems, it may be a great incentive, for owners will then be willing to co-operate to improve the fire safety facilities in the building. This is why I have made this suggestion. Since the OBB is in place to help owners, if residents are

encouraged to report problems, I think the problem of abuse would not occur. These residents are in fact very afraid and they do not know how to escape in case of a fire. They cannot pass through the stairs and other passageways. Can the Secretary explain in greater detail, because I note from the main reply

PRESIDENT (in Cantonese): Dr LEUNG, if you have finished with your question, let the Secretary reply.

SECRETARY FOR DEVELOPMENT (in Cantonese): President, I would first respond to the question raised by Dr LEUNG on the OBB. The Secretary for Security will then talk about the fire safety work in old buildings.

The purpose of implementing the OBB was not as cited by Dr LEUNG; it was a one-off measure adopted in the wake of the financial tsunami in 2008 to create employment. However, we have since then injected funds into the project a number of times. This Friday, I will ask the Finance Committee of this Council to make further injections in the hope of offering assistance to owners of some 3 000 old buildings which belong to this category. Of course, if the buildings are eligible under Category 1 or 2, the fire safety facilities therein will be improved, then the OBB will provide assistance in this respect.

What I have said in the main reply is that some owners have sub-divided a flat unit into a number of units for sale or lease and there are commercial and profit-making incentives involved. If these owners have not fulfilled their duty, I think it is unreasonable to ask taxpayers to pay for the repair and maintenance costs of these units. However, if the partitioning of the flat units will affect the safety of residents, then irrespective of whether an owners' corporation has been formed, the Urban Renewal Authority, the Housing Society or the regular loan scheme under the Buildings Department would be willing to offer assistance to owners upon their application.

DR PRISCILLA LEUNG (in Cantonese): *President*

PRESIDENT (in Cantonese): The Secretary for Security has something to add. Please let the Secretary for Security speak first.

DR PRISCILLA LEUNG (in Cantonese): *All right.*

SECRETARY FOR SECURITY (in Cantonese): President, on encouraging the residents to report problems, I think the greatest incentive is their own safety. I have some reservation about setting up a cash reward system to encourage residents to report problems.

Apart from receiving such reports, we will conduct inspections as well. As for the building concerned, both the staff from the Fire Services Department and the BD had inspected 111 to 113 Ma Tau Wai Road on 20 May 2010 and a preliminary inspection was conducted in the light of the Fire Safety (Buildings) Ordinance.

The building was a commercial/residential composite building built in 1957. According to the requirements at that time, no fire safety installation and facilities were required. When the staff of the Fire Services Department inspected that building, no irregularities have been identified. The BD did not find any obstruction of the front and rear staircases. President, this is the information I wish to add.

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

DR PRISCILLA LEUNG (in Cantonese): *Yes, actually*

PRESIDENT (in Cantonese): Please briefly repeat the part which you think that the Secretary has not replied.

DR PRISCILLA LEUNG (in Cantonese): *All right. I think the Secretary has not answered my question. In addition, I wish to clarify a point. Secretary Ambrose LEE described the reporting system as a cash reward system, but actually it is not*

PRESIDENT (in Cantonese): Dr LEUNG, we are not having a debate. Please briefly repeat the part which you think the Secretary has not answered.

DR PRISCILLA LEUNG (in Cantonese): *I think the Secretary has not replied to the points concerning the SEU and the Building Fire Safety Envoy mentioned in my question. A fire broke out as these measures are ineffective. If the Secretary thinks that they are effective, why did a fire break out? These Building Fire Safety Envoys are not enough in*

PRESIDENT (in Cantonese): Dr LEUNG, you are not repeating the part in your supplementary question which has not been answered. The Secretary has already answered your supplementary question.

MRS SOPHIE LEUNG (in Cantonese): *President, I wish to raise a question regarding public education. I am happy to see two Directors of Bureaux attending the meeting to answer this oral question.*

I wish to ask the Secretaries, is the major cause of "sub-divided units" related to our housing policy? I really wonder why the Secretary for Transport and Housing is not here today. If we look at history, in the past there were many people living in squatter huts on the hill side, but later on

PRESIDENT (in Cantonese): Mrs Sophie LEUNG, the reason why I approve this urgent question is because Dr Priscilla LEUNG has raised a special point and that is, would the Government provide funding to owners of buildings with "sub-divided units" to help them improve fire safety facilities and launch fire safety education? You must raise your supplementary question regarding such matters.

MRS SOPHIE LEUNG (in Cantonese): *All right, President. Thank you for reminding me.*

I think if we have to improve the system, we may have to put all factors into consideration. If we cannot improve the problem of "sub-divided units", does that mean we have to resettle the residents concerned? I would like to ask the Secretary if consideration will be made in this regard?

PRESIDENT (in Cantonese): Your supplementary question is not related to the urgent issue presently under consideration. You may raise your question when we handle other questions.

MR WONG KWOK-KIN (in Cantonese): *President, the issue of "sub-divided units" has really become a public concern. With respect to the reply given by the Secretary, we agree that we are not trying to remove these "sub-divided units" but we are urging the Government to enhance its regulation for safeguarding the safety of the residents concerned and for preventing causing nuisances, such as water seepage, to people not living in these "sub-divided units".*

If the authorities are to regulate these "sub-divided units", I think the first task is to get hold of the information related to these "sub-divided units", such as the number of buildings with "sub-divided units", and the current situation regarding "sub-divided units", and so on. I recall when I raised a supplementary question on this subject, the Secretary replied that there was no such database and no statistics are available in this area. So my supplementary question is

PRESIDENT (in Cantonese): I wish to remind Members once again that we are not having a debate on government policy in general regarding "sub-divided units". Mr WONG, please raise your supplementary question related to the theme of this urgent question.

MR WONG KWOK-KIN (in Cantonese): *Yes. I am about to raise my supplementary question.*

Regarding the safety of these "sub-divided units", will the Government build up a database and require all owners who have sub-divided their units to report? With such a database, the Government can join hands with the Home Affairs Department, the Housing Department and the Fire Services Department to inspect the safety of these "sub-divided units" according to the priorities accorded and the level of urgency.

PRESIDENT (in Cantonese): Which Secretary will answer this question? Secretary for Development, please reply.

SECRETARY FOR DEVELOPMENT (in Cantonese): President, Mr WONG's understanding is correct. At present we do not have any detailed information about these "sub-divided units", but a number of tasks are in progress which can help to build up a database and enable us to have a better grasp of the information.

First, as I have said in the main reply, from 1 April we have launched a special operation and that is, we will inspect more than 1 300 sub-divided flat units this year, with the objective of gathering more information to help us determine the next step to be taken.

Second, as Members have already heard me say a number of times, we will complete a project this year to count the illegal structures outside the 41 000 buildings in Hong Kong. Although the work is aimed at illegal structures outside the buildings, I believe the consultancy firm in charge of the inspection exercise will report to us if, in the course of inspection, problems such as the external structure of a building being affected by "sub-divided units" are identified.

Third, if the Buildings (Amendment) Bill 2010 which resumes its Second Reading at the end of this month is passed, we will introduce a compulsory scheme on building inspection and a compulsory scheme on widow inspection. Member may recall that in the course of deliberation, we have required those qualified persons who are hired to conduct compulsory building inspection to report to us should they found any works concerning the sub-division of flat units.

MR WONG KWOK-KIN (in Cantonese): *President, I think the Secretary has not answered the first part of my supplementary question, that is, will all owners of "sub-divided units" be required to declare? The Government should at least know where these "sub-divided units" are.*

PRESIDENT (in Cantonese): Please sit down. When Members raise a supplementary question, they can only ask one question and there cannot be a first and second question. Secretary, do you have anything to add?

SECRETARY FOR DEVELOPMENT (in Cantonese): There is at present no such system for registration and declaration. As I have explained time and again, these "sub-divided units" do not exist as a special category. They are works under the Buildings Ordinance.

Before the introduction of the minor works control system, most of the works are exempted. After the system has come into effect, drainage works have to be reported. With the amendment of the regulations, we hope that owners will report to us works concerning the sub-division of flat units.

MISS TANYA CHAN (in Cantonese): *From the last two sentences of the first paragraph of the main reply, it seems that "sub-divided units" is on an increasing trend as such units are not only found in residential buildings but also in industrial buildings.*

President, this situation is indeed worrying. I would like to ask which Policy Bureau is responsible for making the inspections and what methods can be used to prevent the emergence of "sub-divided units" in multi-storey industrial buildings?

PRESIDENT (in Cantonese): Which Secretary would like to answer this question? Secretary for Development, please reply.

SECRETARY FOR DEVELOPMENT (in Cantonese): From the perspective of building control, inspections are made by the BD. As regards whether the problems can be totally curbed, it is subject to the requirement and the statutory authority provided for in the legislation.

As I have said when I replied earlier, even if we have received reports and have conducted inspections on some 5 000 cases about "sub-divided units", there are very few cases in which we can initiate actions in accordance with the law, because these units may not have contravened the existing legal requirements.

PRESIDENT (in Cantonese): There are still five Members waiting for their turn to ask questions on this urgent question. We will come to the second urgent question which is raised in connection with the blaze at Ma Tau Wai Road. I will now ask Ms Starry LEE to raise the second urgent question.

Fire Safety Problems Caused by Flat Units Divided into Separate Units

2. **MS STARRY LEE** (in Cantonese): *President, on the 15th of this month, a No. 3 alarm fire broke out in a tenement building at Ma Tau Wai Road in To Kwa Wan, causing heavy casualties. Quite a number of surviving residents said that it was difficult to escape, and some of them even had to climb down water pipes, which was very dangerous. The tenement building involved is more than 50 years' old, which is an old "three nos" building (that is, no owners' corporation, no management and no maintenance), the staircases are piled up with objects, and division of some flat units into separate units (commonly known as "sub-divided units") is common in the building, which blocked escape routes and also substantially increased resident-flows to a level much higher than that of the original design, seriously jeopardizing the fire safety of the building. Furthermore, the situation of many old buildings throughout Hong Kong is similar to that of the building involved in this incident and in case a fire breaks out, the safety of residents' lives and properties will be seriously threatened. In this connection, will the Government inform this Council:*

- (a) *given that the Secretary for Development indicated in reply to a question raised at the meeting of this Council on 1 June this year that the Buildings Department (BD) had issued 73 removal orders on unauthorized sub-divided units pursuant to the Buildings Ordinance, and most of these cases involved breach of the safety requirements on means of fire escape, whether the aforesaid removal orders covered the building involved in this incident; whether the authorities will immediately deploy staff to inspect the conditions of the fire escapes of all the buildings on which removal orders had been issued, so as to ensure that similar tragedies will not recur; and*
- (b) *whether it will immediately conduct comprehensive inspections of all other old buildings throughout Hong Kong to enhance enforcement of the Fire Services Ordinance and the Buildings Ordinance, and consider mandatory intervention in buildings with serious management and safety problems, so as to ensure that fire escapes in buildings are unblocked; if it will, of the details; if not, the reasons for that?*

SECRETARY FOR DEVELOPMENT (in Cantonese): President, as the question raised by the Honourable Starry LEE and the one by the Honourable Priscilla LEUNG just now are both about the concern over "sub-divided units" caused by the fire at Ma Tau Wai Road, I will not repeat contents in my replies as far as possible, so as to allow more time for Members to raise follow-up questions. However, this question from the Honourable LEE has duly pinpointed the complexity of the problem of "sub-divided units", *vis-à-vis* the question from the Honourable LEUNG. Such problem straddles not only building structure and fire safety installations, but also building management and residents' knowledge and respect of building safety. That is to say, even if the "sub-divided units" works of a building are in compliance with the fire and building safety requirements, the dangers mentioned in the Honourable LEE's question could still prevail if there is a lack of proper building management or safety awareness of the residents: putting stuff to obstruct means of escape, keeping the smoke doors consistently open, or locking exit doors.

Various government departments have been according high priority towards improving safety of old buildings. The BD has been gradually

incorporating works associated with "sub-divided units" into an appropriate statutory control regime, the contents of which will not be repeated here. On inspections, the Fire Services Department (FSD) and the BD have been systematically inspecting old buildings in Hong Kong, including the means of escape therein.

On building management, there are many old single-storey buildings in old districts, the flat owners of which are mainly elderly or grass-root residents, who have limited financial resources and ability in organizing themselves for action. There are also owners not willing to pay for building management and maintenance. In addition, the ownership is unclear in many of these buildings, with some other owners leasing their flats to tenants and collecting the rent through agents. As it is difficult to maintain regular contact with these owners, forming owners' corporations (OCs) in these buildings are often very difficult. In April 2010, a pilot scheme was launched by the Home Affairs Department (HAD), in collaboration with the Hong Kong Housing Society and four property management professional bodies, to provide free professional property management advice and follow-up services to owners of around 1 000 units of target clusters of old buildings (the majority of which are "three nos" buildings, the greatest concern of the Honourable LEE) so as to enhance the management of these old buildings. The scheme was generally well received by owners. Having gained the valuable experience of the scheme, the HAD has further strengthened its support to owners of old buildings in 2011. The number of target buildings will increase to about 400 every year (that is 8 000 units) and the scheme is entitled the Building Management Professional Advisory Service Scheme to provide one-stop professional advisory services to owners and OCs of old and dilapidated private buildings.

Our goal is to improve the safety of old buildings in Hong Kong through the keen collaboration among the various departments mentioned above and with a multi-pronged approach including legislation, inspections, building management as well as education.

The Honourable LEE's question has mentioned the No. 3 alarm fire in a tenement building in Ma Tau Wai Road, To Kwa Wan that broke out on the 15th of this month. The fire has caused serious casualties. As the Administration is still investigating into the case, it is not yet possible to confirm whether the serious casualties were caused by the impact of "sub-divided units" works on

means of escape. Nevertheless, enhancing the safety of old buildings, in particular that of the "sub-divided units", has become an issue demanding the attention of the Government and the community.

My consolidated reply to the two-part question is as follows:

From 1 January, 2008 to 30 April, 2011, the BD issued 73 removal orders against "sub-divided units" cases involving unauthorized building works pursuant to the Buildings Ordinance. More than half of the cases involved a breach of safety requirements on means of escape, while a small portion involved problems such as water seepage and structural loading of buildings. As of end of April 2011, 36 of these orders have been complied with, while the remaining 37 have yet to be complied with by the owners. The BD will immediately inspect the buildings with outstanding removal orders and involving means of escape problems. The Department will also consider prosecuting persons who have not complied with the removal orders.

The tenement building in Ma Tau Wai Road, To Kwa Wan mentioned in the question is not included in the 73 removal order mentioned above.

As for inspections and enforcement, fire safety facilities and related construction of composite and domestic buildings built in or before 1987 are governed by the Fire Safety (Buildings) Ordinance. The FSD and the BD have been inspecting the target buildings in Hong Kong under a programmed approach. During inspections, the departments would take follow-up actions if obstructions to means of escape or potential fire hazards caused by structural problems are identified, or if there are problems associated with the fire service installations and equipment.

To reduce fire risks in old buildings in a more effective and comprehensive manner, the FSD has adopted a "four-pronged" approach starting end-2008, details of which have been included in my reply to Dr Priscilla LEUNG's question.

In addition, in the special operation against "sub-divided units" launched by the BD from 1 April this year, the Department will inspect suspected "sub-divided units" alteration works and ascertain whether such works are in compliance with the planning, design and construction requirements concerning

fire safety under the building regulations, in particular the impact on means of escape. The Department will take enforcement action against irregularities. The BD estimates that it will inspect more than 1 300 flat units under its special operation per year. If problems concerning fire service installations and equipment are found during the inspections, the cases will be referred to the FSD for follow-up. The list of target buildings of the special operation is compiled based on a focused principle. If a building exhibits a number of symptoms showing that its safety is being affected by the presence of "sub-divided units", such building will be prioritized for inclusion as a target building. The BD will also make reference to the complaint cases it received in the past when compiling the list.

Nevertheless, I have to reiterate that inspection is only one of the means to tackle building safety problems. We trust that to comprehensively deal with the question of building safety, a multi-pronged approach must be adopted.

After all, we really need to foster a building safety culture in Hong Kong, and owners themselves should take up the ultimate responsibility to repair and maintain buildings. The Second Reading debate of the Buildings (Amendment) Bill 2010 will be resumed next week. The Bill introduces the Mandatory Building and Window Inspection Schemes, which are important schemes tailored to require owners to take up their own responsibilities. Implementation of the Schemes will also help combat the problem of unauthorized "sub-divided units". We will require the registered inspectors to report suspected symptoms and cases of "sub-divided units" to the Building Authority during their carrying out of prescribed inspections to the common areas of buildings in order to facilitate follow-up actions by the authority.

For buildings with serious management and safety problems, the Home Affairs Bureau considers that any mandatory measures to require these buildings to engage property management companies are like "distant water which cannot put out a fire nearby", and not as effective as direct interventions by the enforcement departments. For those owners who feel they could do nothing about the issue, the Home Affairs Bureau considers that it is more effective to provide appropriate and specific support measures. As I have just mentioned, the HAD will strengthen the Building Management Professional Advisory Service Scheme this year to enhance the support to the owners of old buildings. Furthermore, District Offices under the HAD will continue to provide assistance

and support to OCs, assist owners in applying for various loan schemes on building safety administered by the Government and assist OCs in handling building management matters. This includes attending meetings upon invitation, handling enquiries on building management as well as giving advice on procedures of meetings convened under the Building Management Ordinance and those pertaining to procurement, repair and financial management for reference.

MS STARRY LEE (in Cantonese): *President, in the fifth paragraph of the Secretary's reply to my two-part question, it is pointed out that the BD estimates that it will inspect more than 1 300 flat units under its special operation per year. According to the estimates of the trade, there are presently over 100 000 "sub-divided units" over the territory. If only some 1 300 flat units are inspected per year, it may take 10 years to complete the inspection of all "sub-divided units". However, given the growth rate of "sub-divided units", the number of such units may exceed 10 000 in 10 years or just a few years; the number of units may increase to 20 000, 30 000 or even more. To ensure building safety and safety of residents of "sub-divided units", may I ask whether the Bureau will employ additional manpower to speed up the inspection, so that all "sub-divided units" in the whole territory can be inspected within a reasonable time frame and a database on "sub-divided units" can be set up?*

SECRETARY FOR DEVELOPMENT (in Cantonese): As I have just mentioned, inspection is only one of the various ways to deal with safety problems of old buildings and our strategy is to adopt a multi-pronged approach. Ms LEE considers that inspecting more than 1 300 flat units may be on the low side. In fact, we have also carried out other duties apart from inspection. As for employing additional staff, Members have in fact noted that in the 2011-2012 financial year, the BD ranked first or second among all departments in respect of increasing manpower. We focus on inspecting old buildings, as well as handling the inspection and enforcement actions of all buildings in Hong Kong. The original establishment of 477 professional and technical staff has been increased to 601, representing an increase of more than 120 staff. With such an increase in manpower, we can utilize the additional resources to address the various building safety problems in accordance with the order of priority.

MR FREDERICK FUNG (in Cantonese): *President, according to the replies to these two questions, the Bureau has mainly adopted a "four-pronged" approach to deal with the problem. Under the "four-pronged" approach, the first two measures are related to the monitoring by government departments, while the third and the fourth measures are related to education and publicity. Originally, I intend to describe such an approach as curing the symptoms, not the disease. However, after careful analysis, even the symptoms cannot be cured. Why do I say so? There are four major problems in the first two measures: firstly, it is not possible to cover all*

PRESIDENT (in Cantonese): Mr FUNG, please be concise and do not make long statement.

MR FREDERICK FUNG (in Cantonese): *If I do not point out where the problem lies, they cannot understand the supplementary question I am going to ask.*

PRESIDENT (in Cantonese): Please be as concise as possible.

MR FREDERICK FUNG (in Cantonese): *Yes. How many buildings can be covered by the inspection? It is impossible to inspect all flat units given the seriousness of the present problem. As Ms Starry LEE has just elaborated on this point and I will not repeat. Secondly, the question of timing. When will the flat unit be inspected again after it has been inspected? As it is impossible to inspect the flat units round the clock or in each of the 365 days in a year, the second inspection may be conducted five years later. Thirdly, it is hardly possible to deal with the problems inside the building. Given the complicated structure of an entire building, how can the authorities identify the problems of the entire building by merely assigning a team of staff to conduct the inspection? Fourthly, inspection is carried out by outsiders instead of by residents who live in a building round the clock*

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

MR FREDERICK FUNG (in Cantonese): *There are problems in monitoring. Secondly, the Government has been reluctant to admit that, first of all, owners who are over 65 years old*

PRESIDENT (in Cantonese): Mr FUNG, please be concise.

MR FREDERICK FUNG (in Cantonese): *cannot be educated easily*

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

MR FREDERICK FUNG (in Cantonese): *Yes, I know, I will soon come to my question. Secondly, many owners do not live in their building; thirdly, as most residents are tenants, even though education campaign is organized, owners will not get the message. Even the formation of OCs will have difficulties, how can the Secretary educate the owners or achieve the purpose by publicity?*

My supplementary question is about the last paragraph of the Secretary's main reply. We have always been talking about the issue. Eight years ago, we submitted a written proposal to the Secretary — you worked in the HAD at that time — we have also provided a submission to Secretary Carrie LAM of the Development Bureau, stating that small community management would be the most effective means of monitoring. But now she opines that distant water cannot put out a fire nearby. We put forth a proposal eight years ago. Even though it was distant water then, it should be water nearby now, right? I would like to ask the Secretary, how the measures presently proposed by you can deal with fire safety and management problems of buildings when these measures cannot even cure the symptoms? These measures do not work. May I ask the Secretary why measures which can solve the problem at root are regarded as "distant water" and being discarded?

PRESIDENT (in Cantonese): Which Secretary will answer the question? Secretary for Home Affairs, please reply.

SECRETARY FOR HOME AFFAIRS (in Cantonese): President, from a long-term and fundamental perspective, as the Secretary for Development has mentioned, we aim at developing a safe living culture so as to improve building management. The Home Affairs Bureau and the HAD have all along been promoting owners to take up the responsibilities, which include promoting the formation of OCs. Regarding the so-called "three nos" building (that is, no OC, no management companies and no other residents organization), we have also started to introduce the Building Management Professional Advisory Service Scheme, details of which have been explained by the Secretary for Development just now. We hope that through these measures, property owners, tenants and residents can be organized to work together to enhance a safe living environment.

MR FREDERICK FUNG (in Cantonese): *President, my supplementary question is very simple and it is related to the measure regarded as "distant water unable to put out a fire nearby", we in fact proposed the measure eight years ago*

PRESIDENT (in Cantonese): Mr FUNG, you have spent a lot of time to raise a supplementary question which is described by you as a very simple question. Compared with the urgent question right now, your supplementary question is more suitable to be the subject of a debate. As far as your supplementary question is concerned, the Secretary has already provided an answer.

MR LEE WING-TAT (in Cantonese): *President, in the first paragraph of the consolidated reply to the two-part question, the Secretary pointed out that from January 2008 to April 2011, 73 removal orders were issued. If the number is divided by the number of years, it means that only 25 removal orders are issued each year. President, this number is very small. Yesterday we met with a group of long-time residents of Sham Shui Po who were members of the Society for Community Organization, they told me that problems such as blocked rear*

doors or sub-divided units were found in almost every old building in every street in Sham Shui Po, To Kwa Wan and Yau Tsim Mong. The problem would lead to potential fire hazards.

President, my supplementary question is: Apart from the Buildings Ordinance, section 9 of the Fire Services Ordinance (Cap. 95) also empowers the Director of Fire Services with extensive powers, so that if he is satisfied of the existence in any premises of any fire hazard, he may serve a notice on a person requiring the person to do a lot of things. Thus, action can be taken more easily compared with the powers vested to the BD by the relevant ordinance. May I ask the Secretary whether the authorities have, in view of old building problems, served any notice on these "three nos" buildings with neither OCs nor anything, requiring them to abate fire hazards and deal with problems such as alteration, blocking of rear doors and sub-divided units in the past few years?

PRESIDENT (in Cantonese): Which Secretary will answer the question? Secretary for Security, please reply.

SECRETARY FOR SECURITY (in Cantonese): President, there is indeed such a provision mentioned by Mr LEE just now. Under the Fire Services Ordinance, there is really a provision which has vested absolute power to the Director of Fire Services. However, the power cannot be invoked arbitrarily as it can be exercised without a court warrant. Hence, there must be sufficient evidence to the satisfaction of the Director of Fire Services that the messy conditions in a building or premises have led to immediate fire hazards, thereby allowing an entry into the building or premises without a warrant. Therefore, this provision cannot be invoked arbitrarily. I have reservation about invoking this provision upon receipt of a report from the public. However, if staff members of the BD have identified immediate fire hazards when they inspect the building, the Director of Fire Services will exercise the power without hesitation.

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

MR LEE WING-TAT (in Cantonese): *Let me put my question in a simple way. First, how many removal orders have been issued under Cap. 95? Second, I have just mentioned problems such as blocking of rear doors and narrow passageway making fire escape difficult. President, are these not immediate fire hazards?*

PRESIDENT (in Cantonese): Secretary, do you have any information in this regard?

SECRETARY FOR SECURITY (in Cantonese): President, as I said earlier, if we found that the rear door has been blocked, we need not enter into a building to take actions. At present, removal order can be issued immediately without the need of entering into a building if our staff found, when they inspect the rear staircase, that the rear door has been blocked. If the owner is reluctant to comply with the order, prosecution will be initiated. In my reply to Dr Priscilla LEUNG's question just now, I have also mentioned that inspection on the building was carried out in 2010. In the joint action by the FSD and the BD, no escape routes were found to have been blocked.

PRESIDENT (in Cantonese): Mr LEE asked the number of removal orders in his follow-up question.

MR LEE WING-TAT (in Cantonese): *Yes, I ask about the information and the number of removal orders.*

PRESIDENT (in Cantonese): Secretary, do you have any numbers in this regard?

SECRETARY FOR SECURITY (in Cantonese): According to my knowledge, the Director of Fire Service rarely exercise the powers vested under Cap. 95. I will provide the exact figures in writing after the meeting. (Appendix I)

MR CHAN KAM-LAM (in Cantonese): *President, in the last paragraph of the main reply, the Secretary has pointed out that mandatory measures to require buildings with safety problems to engage property management companies are like "distant water which cannot put out a fire nearby". However, we can see that management of old districts in recent years has been deteriorating. Such a phenomenon has not been ameliorated even though the Government has provided a lot of assistance and support, including the launch of the Building Management Professional Advisory Service Scheme. Over the past few years, the Government has introduced a number of support measures such as mandatory inspection of buildings and windows, so as to get things done. However, if the Government does not implement mandatory management, what kind of effective schemes can be introduced to help improve the management of these old buildings?*

PRESIDENT (in Cantonese): Which Secretary will answer the question? Secretary for Home Affairs, please reply.

SECRETARY FOR HOME AFFAIRS (in Cantonese): President, Mr CHAN mentioned about mandatory management. It should be related to section 40B and section 40C of the Buildings Management Ordinance. According to these two provisions, if the owners of a building have not formed an OC, the Secretary for Home Affairs may initiate a procedure by applying to the Lands Tribunal requiring that a person be assigned to form an OC. If the building has already formed an OC but it exists in name only, it may be required to hire a management consultant. However, such procedure will take a longer period of time. As the Secretary for Development and the Secretary for Security have said just now, the FSD and the BD will assign a team of staff to carry out inspections from time to time. If fire hazards are found during inspection, enforcement action will be taken immediately. If the authorities request the owners of a building to form an OC in accordance with the Buildings Management Ordinance and then demand the OC to hire a management company, it will take a longer period of time and a series of supporting measures are also needed.

We are now carrying out work in two fronts. Firstly, a comprehensive review of Buildings Management Ordinance will be conducted to perfect the

Buildings Management Ordinance in order to promote good building management culture. On the other hand, we are now considering whether there are any better ways to promote the formation of an OC, including various proactive support measures.

MR JAMES TO (in Cantonese): *President, my supplementary question is related to a very small scope of issue and I hope the Government can answer. We have strong reason to suspect that this incident or other incidents happened because some "sub-divided units" cannot access to the rear staircase (if it is a building of double-staircase design), and these "sub-divided units" will directly endanger the lives of residents.*

According to the fifth paragraph of the Secretary's consolidated reply, it is estimated that 1 300 flat units will be inspected. President, I have a request. I hope that when the FSD or the BD conduct the inspection, they will pay particular attention to check how many sub-divided units cannot access to the rear staircases. I will not pursue whether these staircases can lead to the roof or whether they are blocked, because these are other matters of concern. However, if the layout plan is designed in such a way that some "sub-divided units" are not provided with access to the rear staircase, there is already a serious hazard. Can the Secretary immediately — as the number of these "sub-divided units" is not that many, and many of such "sub-divided units" can be entered directly, if there is no access to the rear staircase for the first and the last "sub-divided units", it means that the units in between cannot access to the rear staircase, the authorities can gather information in this way — can the Secretary promise to identify all such problematic "sub-divided units" within a month, so that mandatory regulatory measures can be implemented?

PRESIDENT (in Cantonese): Which Secretary will answer the question? Secretary for Development, please reply.

SECRETARY FOR DEVELOPMENT (in Cantonese): President, Mr TO's understanding is correct and I have personally inspected some old buildings. There is indeed such a phenomenon. In fact, regarding the building at 45 Ma

Tau Wai Road which collapsed last year, it was originally a double-staircase tenement with two flats served by a staircase. However, after one of the flats has been partitioned into three sub-divided units, the other staircase has been blocked.

This is precisely what I have pointed out. Among the 73 removal orders issued in the past few years, most of them are concerned about fire escapes. If fire escapes are being blocked, we would certainly issue statutory order for compliance. However, we are afraid that we have to face a problem which was discussed at the meeting of another Legislative Council Panel earlier, and that is, the compliance of these statutory orders takes a long time. At present, there are 37 statutory orders which have yet to be complied with by the owners, of which 28 are also related to fire safety. In response to Mr LEE's request, the BD will immediately — I hope in less than a month's time — take immediate action regarding the 28 orders concerning fire safety. Immediate actions will be taken against buildings which have not complied with the removal orders.

I believe Mr TO hopes that a territory-wide inspection can be conducted to identify blocked rear doors. I am afraid I cannot promise that the work will be completed within a month because this phenomenon is quite common now. Can colleagues of the BD complete the inspection in such a short period of time as requested by Mr TO? I cannot make a promise in this regard. However, I would also like to appeal to the public. If residents living in these buildings have seen such a problem — as Mr TO said, the blockage of fire escapes can be seen with their eyes — I also hope that they will report to us immediately.

DR RAYMOND HO (in Cantonese): *President, the problem of "sub-divided units" mentioned by the Secretary for Development is very complicated and she has also pointed out that this is mainly a problem concerning fire safety and building structure. We also understand that it will need a lot of manpower to solve such a complicated problem. I know that the Secretary has also mentioned at the meeting of the Panel on Development the day before that a lot of law-enforcement duties will not be outsourced and the current practice is that consultants will be hired to conduct inspections. Certainly conflicts will arise. I am also concerned about the two existing grades of the department concerned, that is, surveyors and structural engineers, can the department concerned*

convince us that it will adhere to the principle of meritocracy? Because regarding the inspection work on buildings, including 45J Ma Tau Wai Road, and others, such as inspection of 4 000 buildings of 50 years old within a month after the building collapse incident, the department has not relied heavily on structural engineers, leading to their discontent

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

DR RAYMOND HO (in Cantonese): *In this regard, can the Secretary tell me whether she can ensure the best deployment of staff on these two grades in the Bureau so as to achieve higher efficiency?*

SECRETARY FOR DEVELOPMENT (in Cantonese): President, as Dr HO is well aware, many departments are comprised of professional and technical staff of different grades. In handling this complicated issue, we often need a team of multi-professional staff. The Director of Buildings is responsible for making the best use of talents in the department. I am confident that he will make the best use of his professional and technical staff in carrying out duties to ensure the safety of buildings in Hong Kong. I am also grateful to Dr HO for his frequent concern about the grades of my department.

MRS SOPHIE LEUNG (in Cantonese): *President, it is very important to educate all owners and tenants about their responsibilities because they will face serious liabilities if blockage of fire escapes has led to casualties. If we pursued, I believe we would do so can the Government launch publicity campaigns so that all people know and truly understand their responsibilities and will not forget that they also have the responsibility to report irregularities to the authorities despite their urgent need for housing?*

PRESIDENT (in Cantonese): Which Secretary will answer the question?

SECRETARY FOR SECURITY (in Cantonese): President, the FSD launches extensive publicity campaign on domestic fire safety every year. We are very much grateful to Mrs Sophie LEUNG for her views and we will examine whether this point can be added in our publicity campaign in the future.

PRESIDENT (in Cantonese): I think after Mrs Sophie LEUNG has raised a supplementary question, all Members who wish to ask questions have done so in one of the urgent questions. However, just now two Members have pressed the button. As we have altogether spent more than 50 minutes on these two urgent questions, though Members are very concerned about this issue, they can only follow up on other occasions. Urgent questions end here.

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): First question.

Development of Renminbi Offshore Business

1. **MR ANDREW LEUNG** (in Cantonese): *President, the "Outline of the Twelfth Five-Year Plan for the National Economic and Social Development of the People's Republic of China" was promulgated in March this year with an individual chapter dedicated to Hong Kong and Macao (the dedicated chapter), the contents of which put emphasis on the Central Authorities' support for Hong Kong to develop into an offshore Renminbi (RMB) business centre and an international asset management centre. In this connection, will the Government inform this Council:*

- (a) *regarding the development of offshore RMB business, of the specific measures the authorities have to respond to the contents of the dedicated chapter, in order to make use of the functions and positioning of Hong Kong in the overall national development strategy as an offshore RMB business centre and an international asset management centre, as well as the progress at present;*

- (b) *as it has been reported recently that Singapore has declared that it will strive to become an offshore RMB business centre, what measures the authorities have to maintain Hong Kong's competitive edge in offshore RMB business; and*
- (c) *as the Under Secretary for Financial Services and the Treasury has pointed out recently that, for the internationalization of RMB to be successful, the offshore RMB centre has to strengthen its functions of "inner circulation" (that is, the policy for overseas RMB to flow back into the Mainland) and "outer circulation" (that is, the construction of a financial platform to access overseas markets), of the Government's plans in these two aspects?*

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

- (a) The Government has been promoting the development of offshore RMB business since 2004. Along with the introduction of more measures and the deepening of existing measures to expand the use of RMB in cross-border transactions, the offshore RMB business in Hong Kong has grown rapidly in the past year with support from the Central Government and related Mainland authorities.

RMB trade settlement conducted through banks in Hong Kong in the first four months of 2011 amounted to RMB 445 billion yuan, as compared to RMB 369.2 billion yuan in 2010. In the first quarter of 2011, 86% of Mainland's RMB trade settlement was conducted through banks in Hong Kong, showing that Hong Kong is the prime platform for RMB trade settlement.

Driven by RMB trade settlement, RMB deposits in Hong Kong increased significantly and RMB financing activities became more active. In 2010, RMB deposits increased from RMB 60 billion yuan in January to RMB 310 billion yuan in December, and further to RMB 510 billion yuan as of end April this year.

Concurrently, Hong Kong has become the largest offshore RMB bond market. The total amount of RMB bond issuance in Hong Kong increased from RMB 16 billion yuan in 2009 to RMB 35.8 billion yuan in 2010. In the first five months of 2011, the amount of RMB bond issuance exceeded RMB 28 billion yuan. The issuers include multinational corporations like McDonald's and Caterpillar in United States, Unilever and Volkswagen in Europe, and also international financial institutions like the World Bank and Asian Development Bank.

As of end April 2011, there were a total of 173 banks participating in Hong Kong's RMB clearing platform. Among these participating banks, 151 were branches and subsidiaries of foreign banks and overseas presences of Chinese banks. They represent a global payment network capable of handling RMB transactions for different parts of the world, providing RMB clearing services between the Mainland and different parts of the world as well as among the various offshore markets.

We conduct roadshows to enhance the awareness of overseas companies and financial institutions on RMB cross-border settlement and bond issuance to support our country's policy of promoting the use of RMB in various parts of the world. We conducted a joint roadshow for the first time in Indonesia and Malaysia last month with the Shanghai Municipal Government Financial Services Office to encourage local financial institutions, chambers of commerce and multinational corporations of Indonesia and Malaysia to participate in related RMB business.

The Hong Kong Monetary Authority also conducted the first overseas roadshow in Australia in mid-March 2011, and visited Russia last week. We will visit more places to further promote RMB trade settlement and Hong Kong's role as an offshore RMB business centre.

The sustained development of offshore RMB business provides the market with a variety of RMB investment products, which also helps consolidate Hong Kong's advantage as an asset allocation platform

and promote the development of the asset management business. As of end 2009, the aggregate asset of Hong Kong's fund management business amounted to \$8,507 billion, of which over 60% were from non-Hong Kong investors.

- (b) Along with our country's policy of further promoting the cross-border use of RMB, more and more overseas companies which have trade and investment relations with the Mainland will use RMB to conduct transactions. To satisfy their demand for RMB financial services, it is a natural development that financial centres (including Singapore) all over the world will develop offshore RMB business.

Hong Kong is one of the major windows and platforms for Mainland's external trade and investment, with close links with the Mainland in the flows of people, goods, capital and information. Hong Kong has a first-mover advantage. We started RMB business as early as in 2004, with substantial growth in areas including deposits, trade settlement, bond issuance and financial products as well as experiences accumulated over the years. Hong Kong now has the largest offshore pool of RMB funds.

We will continue to strive to provide related services for banks and financial institutions in various parts of the world to attract more offshore RMB funds to congregate and circulate in Hong Kong to consolidate our existing edge. We will continue to enhance and optimize the existing RMB financial platform, so as to facilitate the launching of more RMB financial products in the Hong Kong market. We will also conduct more promotion to advance Hong Kong's role and status as an offshore RMB business centre serving global needs.

- (c) An important function of the Hong Kong offshore RMB business centre is to provide an efficient market and financial platform to allow the effective circulation of RMB funds. This includes "outer circulation", that is, the circulation of RMB funds between Hong Kong and the overseas market and "inner circulation", that is, the circulation of RMB funds between the Hong Kong offshore market and the Mainland onshore market.

As an offshore RMB business centre, we are building up in Hong Kong a financial platform for RMB outer circulation, by promoting the use of RMB in international markets under trade account and non-trade account. In terms of trade settlement, Hong Kong only handles 20% to 30% of Mainland's trade. However, Hong Kong conducted 86% of RMB trade settlement in the first quarter of 2011. This is evidence that many financial institutions in Hong Kong are providing RMB settlement service for overseas corporate clients. Hong Kong also has an edge in promoting the outer circulation of RMB under non-trade account. Currently, over 40% of Hong Kong's deposits are held by non-resident institutions or individuals. Among the RMB deposits held by institutions, 16% are held by overseas institutions. Therefore, RMB funds flowing to Hong Kong are in effect being circulated among international individuals and corporations. Taking bond issuance as an example, there were 16 RMB bond issuances in Hong Kong with an issuance size of RMB 35.8 billion yuan in 2010. The bonds were mainly subscribed by international institutional investors, showing that issuers are using the Hong Kong platform to promote circulation of RMB bonds in the international markets.

We will actively continue to promote the development of RMB business so as to attract more overseas financial institutions and corporations to use Hong Kong's RMB financial platform for the various kinds of RMB businesses. Through Hong Kong's clearing platform, there will be a wider use of RMB for trade and investment between the Mainland and other parts of the world.

In promoting the inner circulation of RMB, we will continue to communicate with relevant Mainland authorities to further promote the use of RMB in cross-border transactions, including the use of RMB in the settlement of foreign direct investment.

Currently, RMB is not freely convertible. Hong Kong will exercise caution in managing cross-border fund flows (particularly inflow of funds to the Mainland), and promote the internationalization of RMB with sufficient protection of our country's financial security.

MR ANDREW LEUNG (in Cantonese): *President, as the Secretary has mentioned in his main reply, RMB trade settlement conducted through banks in Hong Kong in the first four months of 2011 amounted to RMB 445 billion yuan and the rate of increase is quite high. Have the authorities assessed if the fluctuations in the RMB exchange rate will bring risks to our financial system? Do the authorities have any plans for the development of Hong Kong into a RMB risk management centre?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): I thank the Member for his question. The proportion of RMB deposits in the total deposits in Hong Kong will certainly increase with the increased use of RMB in Hong Kong. I am going to respond to this question from two aspects. First, the handling of trade settlement and financing arrangements by enterprises through the financial platforms in Hong Kong involves how these enterprises raise capital through our financial platforms. The second aspect is about risk management. The introduction of more financial instruments into the market will be conducive to the risk management of enterprises.

We have also noticed that, within a certain period in the past, RMB business has developed rapidly in Hong Kong, and banks had continuously introduced and enhanced the business. Moreover, regarding the impacts of RMB exchange rate fluctuations on the risk management of the local banking system, we deeply believe that local banks have always exercised prudent management. Under the supervision of the Hong Kong Monetary Authority (HKMA), banks in Hong Kong have prudently managed foreign currency or risks of exchange rate, and they have acted according to regulatory requirements.

MRS SOPHIE LEUNG (in Cantonese): *President, at the end of part (a) of his main reply, the Secretary has elaborated that the authorities will further consolidate the edges of Hong Kong in conducting asset management business. My supplementary question is: as stated in many recent reports, the wealth growth rate of the wealth management centres in the Asian-Pacific region (excluding Japan) will reach 12% five years later, twice faster than the growth rate of global wealth management centres. Some reports have also forecast that Singapore will become the best wealth management centre in the world in 2013.*

The Secretary has mentioned Hong Kong's advantage as an asset management platform. Given that the authorities have made a lot of promotional efforts, what strategies does Hong Kong have to challenge Singapore to become the best international asset management centre in the region (apart from Japan)? Do we really want to achieve this objective and how determined we are?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, I thank the Member for raising the supplementary question. First of all, I would like to say that, on the whole, the sizes of our financial and capital markets are much larger than our competitors in the region. Concerning financial services (including the financing platforms), apart from the stock market, our bond market is big in scale. In respect of asset management, the growth in Hong Kong has always been rather impressive as compared with our competitors in the region. I do not have the latest figures on the comparison between Hong Kong and other markets but the growth rates are more or less the same. As regards asset management, the amount of assets managed in Hong Kong is larger than our competitors in the region (apart from Japan).

Nevertheless, with the emergence of the Asian economies, we believe that the Asian asset management markets are generally promising. For this reason, the Government frequently promoted the edges of Hong Kong in overseas countries in the past year. With the continuous expansion of our capital market, the enhancement of our understanding of the Mainland, and the expansion of the Mainland market, I believe that our asset management sector would become stronger. I am confident that we can maintain an edge in this area.

MR JEFFREY LAM (in Cantonese): *President, the development of offshore RMB business has great impacts on our banking system and Hong Kong as a whole. As RMB deposits have increased quickly, there will possibly be a currency mismatch in Hong Kong banks if the increase is not matched by RMB offshore lending. Therefore, we must make preparations for the orderly flow of RMB back into the Mainland. Has the Secretary assessed the risks of the fluctuation of the RMB exchange rate on the financial and banking sectors in Hong Kong, as well as the economy as a whole? How can timely preparations be made to deal with "inner circulation" and "outer circulation"?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, I thank Mr LAM for his supplementary question. I strongly agree that the functions of "inner circulation" should be enhanced in connection with the development of RMB business. In fact, the functions of both "inner circulation" and "outer circulation" should be enhanced. If "outer circulation" refers to promoting the use of RMB overseas, "inner circulation" should refer to enhancing the functions of Hong Kong as an offshore market and a capital financing centre. We have done a lot in this area but Members should understand that "inner circulation" involves cross-boundary RMB circulation, which requires good management practices. In the course of the development of RMB business in Hong Kong, we must clearly and explicitly support the national requirements in respect of financial security.

Therefore, while we promote strengthening interaction with Mainland regulatory agencies, we also want to promote "inner circulation" such as how the capital raised by businessmen offshore can flow back into the Mainland. We will do a good job in this connection. Upon completion of the job, we will introduce RMB products in Hong Kong in a larger scale. Of course, there will also be additional capital outlets for banks. This is the approach currently adopted by the Government.

Regarding another issue raised by Members, if a large amount of RMB deposits will cause a problem of currency mismatch, I believe banks must deal with the currency mismatch problems in respect of risk management. The HKMA has detailed guidelines and banks have always been doing a good job in this area.

MR PAUL CHAN (in Cantonese): *President, it is generally considered that the RMB exchange rate will rise gradually, and comparatively speaking, the US dollar is generally expected to depreciate because of quantitative easing and economic reasons. This is the first point.*

The second point is that the trading between Hong Kong and the Mainland is frequent and the trading volume takes up a large proportion. President, my supplementary question is: how much of our foreign exchange reserves are RMB denominated? In other words, what is the proportion taken up by RMB? Furthermore, when the Government takes into consideration the two factors I

have just mentioned, will it increase the investment in RMB with our foreign exchange reserves so as to indirectly promote RMB products in the Hong Kong market?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, I thank Mr CHAN for his supplementary question. Presently, we have not invested in RMB with our foreign exchange reserves, but I certainly do not rule out the possibility that our foreign exchange reserves may be invested in RMB in the future. I believe the relevant progress will reflect the liquidity of RMB and our overall investment strategy for the foreign exchange reserves. Nevertheless, I do not rule out the possibility that something like that may occur.

MR PAUL CHAN (in Cantonese): *The Secretary should do not than ruling out this possibility, he should proactively make efforts in this connection.*

PRESIDENT (in Cantonese): Mr CHAN, the Secretary has already answered your question.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): I would like to thank Mr CHAN. At present, in respect of the development of RMB banking services, the most important task is to enhance the effectiveness of "outer circulation" and "inner circulation" as I have just said. This is the most important task for us at the moment.

MR CHIM PUI-CHUNG (in Cantonese): *President, according to the information released on the Mainland, the foreign exchange reserves of the Mainland amount to nearly RMB 20,000 billion yuan. We all think that RMB will appreciate and I would like to ask the Secretary of the highest and lowest levels of the RMB exchange rate against Hong Kong dollar in the past, based on the information that the Secretary has at hand? I hope that the Secretary could provide the information to enable people to understand whether the present RMB*

exchange rate is too high or much lower than before. Does the Secretary have such records?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, Mr CHIM Pui-chung is testing my memory. I cannot give him an answer right away for I am afraid I may give him some incorrect information. However, we certainly know that there have been considerable changes in the RMB exchange rate against Hong Kong dollar within a certain period in the past. Yet, taking the past changes into account will not tell us the future trend. Hence, I believe that our current expectation of the RMB exchange rate is related to the speculation on our economic outlook.

MR CHIM PUI-CHUNG (in Cantonese): *President, I hope that the Secretary would provide a written reply after the meeting.*

PRESIDENT (in Cantonese): Secretary, please provide the information after the meeting.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): No problem and I would like to thank the Member. (Appendix II)

MRS REGINA IP (in Cantonese): *President, as an economist has said, a Triffin Paradox will arise if a currency is to become an international hard currency. In other words, to realize the international circulation of the currency, there must be high liquidity overseas. Generally speaking, when a currency achieves high liquidity overseas, there will certainly be a trade deficit because a large purchase amounts will lead to the outflow of the currency. Just like the huge trade deficit in the United States, the currency will become weaker and it can hardly become an international hard currency. Does Hong Kong, as an offshore centre for RMB business, have any ways to help China solve this Triffin Paradox?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, I would like to thank the Member for her supplementary question. I believe that RMB may only become a hard currency after a fairly long time. China is now promoting the increased use of RMB within the region, and I think that this is an exploratory stage, and we are just exploring how RMB can be used offshore. With the increased use of RMB offshore, the exchange rate risks of Chinese enterprises would come under control. At this stage, Hong Kong is playing the role of providing an offshore platform as we can provide more RMB financing services and investment services when the capital account has not yet been liberalized, to facilitate the use of RMB by offshore investors and enterprises. The major function that Hong Kong is to promote the use of RMB in the international market.

As regards the way forward, I believe this is related, to a very large extent, to the overall national policy on capital account liberalization. I believe that Hong Kong as the most liberal financial centre in China can perform excellent functions in various aspects.

PRESIDENT (in Cantonese): We have spent more than 23 minutes on this question. Second question.

Management of Assets Accumulated Under MPF Schemes

2. **MR TAM YIU-CHUNG** (in Cantonese): *President, the Mandatory Provident Fund Schemes Authority (MPFA) has recently announced that the total net asset value of all Mandatory Provident Fund (MPF) Schemes in Hong Kong as at the end of December 2010 was \$365.4 billion, and since the MPF System came into effect in December 2000, the annualized internal rate of return was 5.5%; among the five types of investment products, the annualized rate of return for MPF Conservative Fund, Guaranteed Fund and Money Market Fund were only 1.2%, 1.6% and 0.8% respectively. Besides, according to the relevant disclosure code of the MPFA, an annual benefit statement (ABS) issued by a MPF trustee to scheme members in respect of a financial period ending after 1 September 2009 should clearly set out the amount of fees charged for each contribution, transfer of benefits and transaction (that is, bid/offer spread) of constituent funds during the year, but quite a number of members of the public*

have recently relayed to me that there is no such information in the ABS they received. In this connection, will the Administration inform this Council:

- (a) given that the annual return of the "investment portfolio" of the Government's Exchange Fund reached 7.1% on average in the past five years, whether the Government has any plan to set up a centrally operated MPF fund, and adopts the investment management approach of the Exchange Fund of a relatively low risk operation to yield higher investment returns for contributors; if it has, of the details; if not, the reasons for that;*
- (b) whether the Government will consider introducing legislation to stipulate ceilings for the fees and charges of different types of MPF investment funds, so that contributors' assets are less eroded by management fees; if it will, of the details; if not, the reasons for that; and*
- (c) whether it knows if the MPFA has scrutinized the compliance by MPF trustees with the requirements on fee disclosure; if it has, of the results and which trustees have been penalized for failing to disclose the fees and charges in accordance with the requirements; if not, the reasons for that?*

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

- (a) Based on the Hong Kong Monetary Authority Annual Report 2010, the average investment return of the Exchange Fund is 4.9%. The 7.1% referred to in the question may probably be related to the average interest on the placements by Fiscal Reserves in the Exchange Fund. In any case, the investment objectives of the Exchange Fund and the calculation of its return are different from those of the MPF. Thus, they are not quite comparable.

The assets of the Exchange Fund mainly include bonds and equity. Currently, under the MPF System, there are 41 MPF Schemes providing 422 constituent funds or an average of around 10

constituent funds per Scheme, which already include Equity Funds, Bond Funds, Mixed Assets Funds (mainly include equity and bond), Guaranteed Funds, MPF Conservative Funds and Money Market Funds. Scheme members may choose appropriate funds in accordance with their investment targets and risk appetite. Since 2007, the MPFA has provided the Fees Comparative Platform on its website to assist scheme members to make choices. I will set out in greater detail the relevant measures in part (b) of my reply.

In terms of return, the annual average return rate of the MPF System from December 2000 to March 2011 is, net of fees and charges, 5.4% calculated by way of the dollar-weighted return. The return rates of certain fund types are significantly higher than the overall average. In the past five years, net of fees and charges, the annualized return of Equity Funds was 7.4% and that of Bond Funds and Mixed Asset Funds was 4.5%. Since the implementation of the MPF System in 2000, the overall return of the MPF System has been higher than the annualized inflation rate of 0.8% and the average return of any single fund type has not been lower than the inflation rate.

Overall speaking, the MPF System has played considerable role in strengthening the retirement protection for the public since its implementation in 2000. The existing arrangement is consistent with the mandatory, privately managed retirement contribution scheme advocated by the World Bank. We will continue to work together with the MPFA to improve the existing MPF System.

- (b) At present, there are 19 approved MPF trustee companies in the MPF market. Through enhancement of market transparency and increase in market competition, the Government and the MPFA have been working to bringing about MPF fees adjustment by market forces. Since 2007, the MPFA has provided the Fees Comparative Platform on its website to provide major fees information of MPF funds for reference of scheme members. Through the Platform, scheme members can have access to information on the fees charged by the funds they have chosen and compare their Fund Expense Ratios with those of other funds, which will assist them in the

making of choices that suit their needs. The MPFA also issued a pamphlet entitled Summary of Fee Comparative Platform on MPF Funds in early 2011 to provide a summary of fees charged by various MPF funds. The pamphlet provides an easy reference for scheme members and reminds them the points they should be aware of when comparing Fund Expense Ratios. The MPFA will continue its work to promote transparency as well as on publicity and education.

On enhancing market competition, the Government and the MPFA are proactively following up the implementation of the Employee Choice Arrangement (ECA). Under the ECA, scheme members will be allowed to transfer accrued benefits derived from their mandatory contribution during current employment to a scheme of their own choice at least once a year. It is expected that the portable MPF assets will increase to 60%. Through issuing letters to employers, the MPFA has encouraged them to provide more than one MPF schemes for selection by their employees. The MPFA will also step up education and publicity work.

In addition, the MPFA will discuss with trustees measures to streamline procedures and improve the overall operation of the MPF System, with a view to reducing compliance cost and creating room for fees reduction.

The above measures have been instrumental to bring about fees reduction. The average Fund Expense Ratio for the period from July 2009 to June 2010 was 1.82%, which was more than 10% lower than the 2.1% for the period from April 2006 to March 2007. In the past three years, all MPF trustees have reduced fees or introduced new MPF funds of low fees. We also notice that some trustees have reduced the fees of existing funds/schemes or introduced new MPF funds/schemes with lower fees in recent months.

On the overall management fees of the MPF System, I believe there is still room for reduction. The industry and the MPFA are expected to continue to work for reduced fee levels, for instance, subject to that enforcement actions will not be affected, to lower compliance cost as much as practicable, and considering the

provision of appropriate index tracking funds with lower fees. The Government and the MPFA will continue to make use of market forces to encourage MPF trustees to adjust their fees levels.

- (c) According to the Code of Disclosure for MPF Investment Funds (the Code) issued by the MPFA in 2004, trustees are required to provide Offering Document to potential scheme members as well as existing scheme members. The Offering Document must contain a Fee Table, which lists out information on all fees and charges, and uses a standard format and easy-to-understand language to facilitate understanding and comparison on MPF fees.

Section 56 of the Mandatory Provident Fund Schemes (General) Regulation (the Regulation) also requires trustees to provide an ABS to scheme members within three months after the end of each financial period. Section 56 of the Regulation and the Code further require that ABSs issued in respect of financial periods ending after 1 September 2009 have to set out the detailed fees charged to scheme members accounts for each contribution, transfer of benefits, withdrawal and redemption of units, and so on. As to other fees (including investment management fees, custodian fees and administration fees), scheme members may refer to the Fund Fact Sheet. The Code requires trustees to issue at least two Fund Fact Sheets per financial period for the reference of scheme members, including the most recent Fund Expense Ratio for each class of units of each constituent fund.

Any amendments to the Offering Document, including amendments to the Fee Table for new funds and existing funds, can only be issued after MPFA's written approval to the trustees concerned. As to the Fund Fact Sheet which discloses the Fund Expense Ratio, trustees are required to provide a copy to the MPFA within five working days after their issue. The MPFA will also scrutinize these documents periodically. According to the MPFA, trustees' compliance record on fees disclosure have been satisfactory and no trustee has been penalized for failing to disclose the fees and charges in accordance with the requirements since the commencement of the above measures.

MR TAM YIU-CHUNG (in Cantonese): *Given that the MPF is vital in resolving the retirement problem of wage earners, it is therefore very important to increase the rate of return of MPF contributors, reduce the administrative fees of fund products and enhance the transparency of administrative formalities of the transactions throughout the year. However, as depicted in the main reply, it seems that there are no problems in these areas. Can the Government inform us whether it has compiled any statistics on the number of MPF Scheme participants whose return on asset is currently lower than the set target, and how many of them have even recorded negative return? Furthermore, some companies even charged an administrative fee as high as 2.49% for Conservative Fund products and 3.92% for Guarantee Fund products, whereas some charged 1% for Money Market Fund. The percentage is much higher than the rate of return. Is the Government aware of these situations?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, I thank the Member for his question. The rates of return just mentioned by me are net returns after the deduction of all fees and charges. That is why I said earlier that the return rate of the overall fund was 5.4% whereas that of individual equity fund was 7.4%. They are all net of fees and charges. Nonetheless, I do agree with the rationale behind the views expressed by the Member, which is also highlighted in my main reply. I think there is currently room for fees reduction. We will work with the MPFA and proactively explore how the fees and charges can be reduced and what should be done. The proposed direction is to approach the issue from the administrative perspective with a view to minimizing compliance costs, as administrative costs will certainly erode scheme members' overall return of fund. This is our priority task and we will explore how cost can be minimized from this perspective. Another approach is to pursue lower fee and more options through market competition and the provision of more feedback to fund managers. I agree with the thinking behind the Member's views and will work very hard towards this end.

DR PAN PEY-CHYOU (in Cantonese): *President, the MPF is one of the areas that wage earners are most discontented. Why did the proposed injection of \$6,000 into MPF accounts, as announced by the Financial Secretary in his Budget, arouse such widespread public resentment? The major reason is because many people consider that MPF contributors are being preyed on under*

the exorbitant management fee, which is beyond their control. The ECA mentioned by the Secretary in the main reply was actually proposed long ago. As regards the so-called "quasi-free choice scheme", although the scheme is not perfect, it has been shelved and failed to achieve the intended purpose. I wish to ask the Secretary about the latest progress of the scheme, and whether the Government will consider implementing the "totally unrestricted choices scheme" which genuinely enables wage earners to make their own choice?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): I thank Dr PAN Pey-chyou for his question. Regarding the ECA, we are working very hard on the relevant legislative proposal to regulate the requests of fund managers and management companies. We have briefed the Legislative Council Panel on Financial Affairs on the legislative proposals and framework in April. Assuming that everything goes smoothly, a bill will be tabled at the Legislative Council this year and the legislative procedures are expected to complete within the 2011-2012 Legislative Session to facilitate the expeditious implementation of the ECA.

Members just now mentioned the "quasi-free choice scheme". The reason for introducing this scheme is because we are aware that, under the existing arrangement, the contributions payable by employers can have free circulation. We therefore hope that, upon the completion of the work, we will probably move on to examine how employees can have more options. Yet, this is only our next move. I nonetheless wish to reiterate that we do see the room for fee reduction, either through streamlining the administrative procedures or market competition. It is therefore our target to make possible an overall reduction in fees and charges.

MR IP WAI-MING (in Cantonese): *President, we are indeed very concerned about the MPF Scheme. I notice that in part (c) of the main reply, the Secretary mentioned the transparency of the fees in response to Mr TAM's question, saying that fund managers have been requested to set out the fees in the published Fund Fact Sheet. In fact, we have also been requesting fund managers to clearly set out in the Member Benefit Statement the total management fees charged from employees in that financial year. Why does the Government not require fund managers to state the amount clearly for easy comparison by employees?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, most of the fees and charges relating to the MPF are deducted from the MPF funds. If a trustee is required to provide the actual amount of fee charged from a scheme member's account, this would significantly increase the administrative cost. In this connection, the MPFA will assess the relevant feasibility and efficiency. As to whether all fees and charges can be set out, we think further study is needed.

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

MR IP WAI-MING (in Cantonese): *I cannot hear clearly whether he will do so or not. At present, no one knows the amount of management fees that have been charged.*

PRESIDENT (in Cantonese): Mr IP, the Secretary has already answered. Secretary, since Mr IP said that he cannot get it, can you give a further elaboration?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): What I mean is that if every single fee has to be analysed and reported in great detail, this may incur considerable costs. Rather, we will consider how transparency can be further enhanced and how consideration will be made in this regard.

MS STARRY LEE (in Cantonese): *President, apart from having the shortcomings of low returns and high fees, the MPF offers limited choice, which is another reason why many people dislike the scheme. MPF contributors are still obliged to pay contributions even if they are seriously ill and cannot afford to pay for the medicine. They still have to contribute to the MPF, and cannot use the MPF savings to pay for the medical fees. There might be cases where members of the public are reluctant to pay the administrative fees and prefer to save the money in the bank. And yet, they are not given such an alternative. Since the Administration keeps saying that a review on the MPF arrangement is*

underway, may I ask whether the review will cover the two abovementioned scenarios, namely, first, contributors are allowed to suspend their contribution payment or withdraw some money for urgent use under special circumstances, and second, contributors are provided with more options, which include allowing them to opt for cash deposit? When will the review result be announced?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, regarding the question of whether a contributor is permitted to withdraw money from his MPF account when he suffers from catastrophic diseases, I learn that a review is being carried out by the MPFA on this issue and other possibilities. However, I wish to point out that the proposed change would incur considerable costs as the objective of the MPF Scheme is that members can save money until they retire. If members stop paying contribution or withdraw money from their accounts in advance, this would definitely have an adverse effect on their retirement protection. On the whole, the MPFA will review from this perspective. Another question is

MS STARRY LEE (in Cantonese): *President, the part of the supplementary question which he has not answered is, whether the review will cover the option of allowing contributors to opt for cash deposit but not investment portfolios.*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Sorry, I have forgotten this part just now. In fact, there is currently a large variety of funds, and some of them are very similar to the money market fund, which has low interest and is pretty stable. Whether these investment portfolios can meet the requirement of long-term retirement protection saving will depend on the risk borne by scheme members and their investment decisions. I wish to highlight one point. The fees under discussion do not only refer to management fees, they also include compliance costs relating to the MPF Scheme. As I have said in the main reply earlier, we hope to minimize the overall fees and charges by reducing the compliance costs.

PRESIDENT (in Cantonese): This Council has spent 23 minutes on this question. Third question.

Reduction of Coverage of Frontier Closed Area

3. **MR LAU KONG-WAH** (in Cantonese): *President, the Government announced in 2008 that the coverage of the Frontier Closed Area (FCA) would be reduced from its original 2 800 hectares to 400 hectares. In this connection, will the Government inform this Council:*

- (a) *of the current progress of the aforesaid plan, and which boundary areas will be opened up at the earliest;*
- (b) *whether the Government will enhance the associated transport facilities (including public transport such as buses, and so on, and providing an additional option of self-drive tour) so as to facilitate the development of the opened up areas; and whether it will allow various modes of public transport to access the opened up areas in the vicinity of Lo Wu Station so that the local community and transit passengers will have more commuting options; and*
- (c) *given the increasing demand for transport from cross-boundary students (CBSs), whether the Government will consider increasing the quotas for cross-boundary vehicles after opening up the boundary areas so as to allow local schools to have more point-to-point connections with the Shenzhen side, and facilitate CBSs to commute between the two areas to attend school?*

SECRETARY FOR SECURITY (in Cantonese): *President, the consolidated reply of the Security Bureau and the Transport and Housing Bureau to the question is as follows:*

- (a) *Following a review of the coverage of the FCA in 2006, the Administration announced in January 2008 that the coverage of the FCA would be substantially reduced from about 2 800 hectares to about 400 hectares. In order to implement the reduced coverage of the FCA while maintaining the integrity of the boundary, we will put in place a boundary patrol road along the new FCA boundary and will undertake works to construct a primary boundary fence and a secondary boundary fence along the length of the boundary patrol road, thereby ensuring that the boundary patrol road and primary*

boundary fence would be protected from deliberate or other interference.

The entire construction project is divided into four sections (as detailed in the Annex circulated to Members). The implementation programme for the construction works concerned is set out below:

<i>Section</i>	<i>Implementation Period for Construction Works</i>
(i) Mai Po to Lok Ma Chau Control Point	1st quarter 2010 to 3rd quarter 2011
(ii) Lok Ma Chau Control Point to Ng Tung River	1st quarter 2010 to 4th quarter 2012
(iii) Ng Tung River to Lin Ma Hang	1st quarter 2012 to 1st quarter 2015
(iv) Lin Ma Hang to Sha Tau Kok	4th quarter 2009 to 3rd quarter 2011

The current coverage of the FCA is specified in the Frontier Closed Area Order pursuant to section 36(1) of the Public Order Ordinance (Cap. 245). Following the completion of the abovementioned construction works, we will amend the Frontier Closed Area Order to stipulate the commencement of the new statutory FCA boundary in phases so that the FCA can be reduced formally. We expect that the "Mai Po to Lok Ma Chau Control Point Section" and "Lin Ma Hang to Sha Tau Kok Section" will be the first sections to be released from the FCA in early 2012.

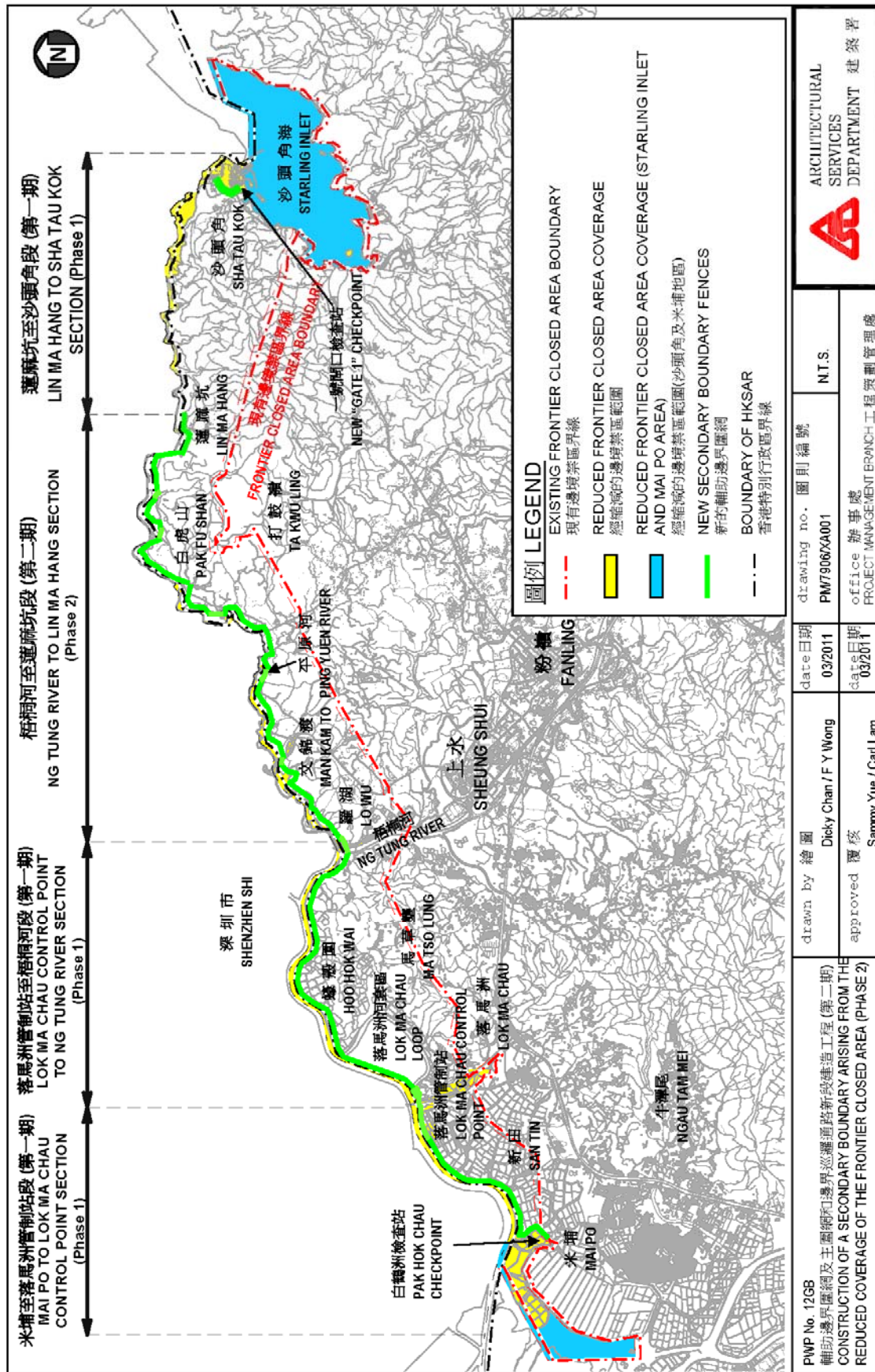
- (b) According to the Study on Land Use Planning for the Closed Area undertaken by the Planning Department, the development concept for the FCAs is to promote the protection and conservation of environmental and cultural heritage resources while making provision for appropriate and sustainable land uses or development. It is estimated that the existing road networks can basically support the future transport demand. Upon opening up of the FCAs, motorists will have free access to road sections that are no longer designated as closed roads. The Administration will, according to the actual timetable for the opening up of the FCAs, improve the connecting roads to facilitate vehicular access to the opened up areas. Regarding public transport services, the Government will

suitably enhance such services in the newly opened up areas to tie in with their development and planning arrangements by provision of the infrastructure and ancillary facilities (such as roads, footpaths and pick-up/drop-off points, and so on) as appropriate.

- (c) To cater for the schooling needs of CBSs, the Administration has, after seeking agreement of the Guangdong authorities, issued special quotas since the 2008-2009 school year to the operators concerned for the provision of cross-boundary school coach services. Each year, the Education Bureau reviews the demand of the CBSs for such services and determines the number of special quotas for the coming school year with reference to the actual handling capacities of various boundary control points. The subject will be discussed with the Guangdong authorities through the Transport and Housing Bureau. The number of special quota increases every year in accordance with the needs of CBSs. Since the 2009-2010 school year, 20 special north-bound trips have been introduced to meet the needs of CBSs participating in extra-curricular activities. In the 2010-2011 school year, the number of special quotas available for application by the operators was increased to 65 and that of additional north-bound trips to 30. Given that the number of applications received was smaller than the quota limit, the Government approved all applications. Currently, 48 regular trips and nine additional special north-bound trips are in operation. Therefore, as far as special quotas are concerned, there is still plenty of room for providing additional school coach services for CBSs. The Administration will closely monitor the needs of CBS and will discuss with relevant Mainland authorities on the required number of special quotas to be issued.

Following a review on the demand of CBSs for cross-boundary school coach services, the Education Bureau decided that the special quotas for the 2011-2012 school year should be maintained at the same level as in last year, that is, 65 special quotas and 30 additional north-bound trips, to meet the needs of CBSs in the new school year. All relevant bureaux and departments will keep a close watch on the demand of CBSs for cross-boundary school coach services and review the special quota arrangements in a timely manner.

附件 Annex



MR LAU KONG-WAH (in Cantonese): *President, in respect of the provision of associated transport facilities, if one intends to cross the border at Lo Wu, the fare charged by the MTR Corporation Limited (MTRCL) for one stop between Sheung Shui Station and Lo Wu Station is some \$20. This fare level is not only highly unreasonable, but also the most expensive in the world. Under the current planning, boundary areas including the vicinity of Lo Wu Station will be opened up. In part (b) of the main reply, the Secretary said that motorists would have free access to the road sections, and he also pointed out that infrastructure and ancillary facilities would be provided to support the provision of public transport services. I would like to ask the Secretary whether there is any plan to allow motorists or even franchised buses and public light buses to drive into the vicinity of Lo Wu Station, so as to break the monopoly of the MTRCL?*

PRESIDENT (in Cantonese): Which Secretary will give an answer? Secretary for Transport and Housing, please reply.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, first of all I would like to point out that given the current plan to reduce the coverage of the FCA, a series of ancillary facilities such as pick-up/drop-off points will certainly be provided. Some preliminary recommendations on the necessary facilities, such as pick-up/drop-off points, parking facilities for coaches and private cars, and so on, have been made in the Report on the Study on Land Use Planning for the Closed Area. We will follow up on these recommendations accordingly.

Regarding the situation at Lo Wu, there are practical difficulties. Perhaps the Secretary for Security will brief Members later about how the FCA policy would be maintained at the Lo Wu Control Point. At present, Lo Wu Station Road is primarily used to provide emergency access. Even with the completion of the planned widening works, it will only serve to enhance the safety factor. As there are the station and slopes on both sides of the road, there is little scope of further widening. Therefore, we still consider it necessary to impose the existing restrictions applicable to land boundary crossings, that is, by providing in the Frontier Closed Area (Permission to Enter) Notice that cross-boundary passengers must use designated modes of public transport specified in the Notice

to cross the border. Access to Lo Wu is still predominantly controlled through rail transportation. For example, I know many school coaches are making use of the said road, but certain problems have been created because the road is in fact an emergency access without much space for widening.

I wonder if the Secretary for Security has anything to add.

SECRETARY FOR SECURITY (in Cantonese): President, even after the reduction of the coverage of the FCA, all our existing boundary control points will remain inside the FCA. In other words, members of the public cannot enter the control points except when they are travelling on lawful means of transport for the purpose of crossing the border. Hence, regarding the question just raised by Mr LAU Kong-wah as to whether members of the public can access the Lo Wu Control Point on private cars, I think that is not feasible for the time being.

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

MR LAU KONG-WAH (in Cantonese): *President, the Secretary has not answered my question I was not talking about the Control Point; I mean the vast stretch of land in the vicinity of Lo Wu Station. Will infrastructure be provided by the Administration to facilitate the motorists? That is what I mean.*

PRESIDENT (in Cantonese): Which Secretary will reply? Secretary for Transport and Housing, please reply.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): If Mr LAU is not talking about members of the public driving to a nearby location and then walk to the Lo Wu Station, but access to the opened up areas, I have already pointed out in the beginning that a series of ancillary facilities would be provided. Perhaps, let me cite an example. For instance, in order to cater for the eco-lodges or the comprehensive development areas, parking facilities for coaches and private cars, as well as pick-up/drop-off points would have to be

provided at various locations. We will follow up on the relevant facilities according to the preliminary recommendations made in the Report on the Study on Land Use Planning for the Closed Area.

MRS REGINA IP (in Cantonese): *President, the Secretary for Security pointed out in the main reply just now that the "Mai Po to Lok Ma Chau Control Point Section" and "Lin Ma Hang to Sha Tau Kok Section" would be the first sections to be released from the FCA. I would like to ask the Secretary what about Chung Ying Street in Sha Tau Kok? First, can the said area be released from the FCA in 2012? Second, business operators in Chung Ying Street have all along hoped that more Mainland visitors can freely access the area for shopping so as to boost local tourism. Will the Secretary consider establishing a boundary control point there to facilitate the matter?*

PRESIDENT (in Cantonese): Secretary for Security, please reply.

SECRETARY FOR SECURITY (in Cantonese): President, after the reduction of the coverage of the FCA, Sha Tau Kok Town will remain inside the FCA. Hence, Chung Ying Street will also be located within the FCA. As regards whether a boundary control point will be established at Chung Ying Street, it involves problems left over by history because both traditionally and historically, it is a point where residents on both sides can cross the boundary freely. Problems may arise if a boundary control point is established there, and we must consult the local residents accordingly. We have no plan to establish a boundary control point there for the time being. We understand some people hope to see the development of tourism or eco-tourism in Sha Tau Kok, but Members should understand that Sha Tau Kok is a problem left over by history. Residents on both sides can access Chung Ying Street freely, and the concern for security should be taken into consideration. To date, Sha Tau Kok is still a black spot for smuggling activities and illegal immigration. Hence, if the place is opened up excessively for tourism, we think there might be risks in terms of maintaining the integrity of boundary security.

Therefore, we consider that for the time being, if Sha Tau Kok is to be opened up as a tourism spot A few years ago, we had also proposed to

develop eco-tourism there such that the area from Sha Tau Kok pier be opened up to allow eco-tourism by tourists. However, when Sha Tau Kok residents were consulted, this small proposal met with opposition from some local residents. They opposed to the idea of opening up Sha Tau Kok as they did not want to see tourists going there for eco-tourism. At present, there are still opposite views about lifting the restriction, with some residents hoping to do business and others unwilling to have Sha Tau Kok opened up. Therefore, in recent years, we have been working together with local members engaged in rural affairs, hoping that the residents of Sha Tau Kok can come to a consensus view so that we can clearly ascertain their wish for the opening up of Sha Tau Kok or otherwise, and the extent of opening up.

MR TAM YIU-CHUNG (in Cantonese): *The Democratic Alliance for the Betterment and Progress of Hong Kong has raised the issue with the Government about the problems and difficulties met by CBSs who travel across the boundary every day to attend school. Recently, we are aware that Chief Secretary Henry TANG may have visited the Lok Ma Chau/Huanggang boundary control point to gain an understanding of the difficulties faced by CBSs. Regarding the operation of point-to-point cross-boundary school coach services, he said that the Administration would study various ideas such as on-board clearance services. I would like to ask the Government which of these ideas of the Chief Secretary are feasible or when can these ideas be implemented?*

SECRETARY FOR SECURITY (in Cantonese): President, in recent years, we indeed note that the number of CBSs has registered double-digit growth by the year. In fact, we are gravely concerned about these CBSs who travel across the boundary every day to attend school; as a matter of fact, we do not even want to see the situation of cross-district students. From the Government's point of view, their personal safety is our primary concern. The phenomenon of CBSs has existed for a long time, initially on both sides of Sha Tau Kok. As the distance was not too far, the safety risk of CBSs attending school in Sha Tau Kok was not so serious.

Later on, owing to under-enrolment, some schools in the North District tried to recruit students from the Mainland. Thereafter, CBSs also crossed the boundary via the Lo Wu Control Point. To cater for their need, we had issued

some permits to allow school coaches to pick up these students at the Lo Wu Control Point. But such an arrangement was far from ideal from the perspective of CBSs. Subsequently, we considered that for the personal safety of CBSs in the long run, the consideration of safety should be the primary concern of schools or principals if it was really necessary for them to enrol students from Shenzhen. Therefore, our requirement then was that schools who enrolled CBSs should arrange point-to-point school coaches for transporting them to schools via the control point so as to avoid the possibility of any student getting lost.

Therefore, as I have mentioned in the main reply, discussion was held between the Transport and Housing Bureau and the Guangdong Provincial Public Security Bureau for issuing additional quotas to the operators concerned so that they could provide transport services to CBSs. Up to last year, the quota limit was sufficient and all applications had been approved. In order to facilitate these students, a trial on on-board clearance services is being conducted at two boundary control points. In other words, instead of requiring the students to get off the coaches to undergo the clearance formalities, immigration officers will go on board to conduct the checking. The trial is still ongoing; and if considered feasible, the arrangement will be extended to other control points.

MS MIRIAM LAU (in Cantonese): *In the main reply, the Secretary stated that upon opening up of the FCAs, motorists would have free access to road sections that were no longer designated as closed roads. As far as I know, the condition of roads inside the FCA is quite poor, with most of them being very narrow and some are only intended to provide emergency vehicular access. With the reduction of the coverage of the FCA, these roads will be opened up for public use. But so far, I have not noticed any proposed road improvement projects. Can the Government provide us with the relevant details? Moreover, at least two boundary control points will be commissioned in the third quarter of 2011, have the relevant roads been reconstructed or refurbished, or what? Please provide us with the details.*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, according to preliminary assessment, roads in the opened up areas can generally cater for the need in future as most of the visitors will probably engage in eco-tourism and other activities. According to preliminary recommendations

in the Study on Land Use Planning for the Closed Area undertaken by the Planning Department, it will be necessary to provide more shuttle service or construct pick-up/drop off points for public transport vehicles, as well as parking facilities for coaches or private cars within the tourism/recreation area. Hence, we have no intention to undertake any large-scale widening works at this stage. If the construction of ancillary facilities just mentioned is required, we will of course study whether the capacity of the connecting roads is adequate. Overall speaking, we have no plans to undertake any large-scale road widening works.

DR RAYMOND HO (in Cantonese): *President, some eight or nine years ago, I had already suggested in this Council that the FCA should be opened up and developed. I would like to ask the two Secretaries a question in relation to part (b) of the main reply. It is stated that the development concept of these areas is to "promote the protection and conservation of environmental and cultural heritage resources", and that "[u]pon opening up of the FCAs, motorists will have free access to road sections that are no longer designated as closed roads". I would like to know, given the hope of many people Given the scenic environment of the FCA, will the Government consider, in terms of transport services, encouraging the use of environmentally-friendly vehicles or electric vehicles so that the area is better protected and developed as a green area?*

PRESIDENT (in Cantonese): Which Secretary will reply? Secretary for Transport and Housing, please reply.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, I think this concept is good, but at this stage, we have yet to decide whether only a particular kind of environmentally-friendly vehicles should be allowed in the boundary area to provide, say, district-based circular transport services. I personally think that this is an excellent suggestion. However, for the major facilities we envisage so far, such as eco-lodges or country parks in the tourism/recreation area, is there a need to implement such a concept? We will continue to monitor the situation and keep the matter in view.

Nonetheless, as I just said when answering a supplementary question, if members of the public intend to visit the tourism area, regardless of whether they use public transport services or take a self-drive tour, we will make available the necessary supporting facilities, and we will continue to follow up on the preliminary recommendations in the planning study report mentioned above.

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

Non-civil Service Contract Staff

4. **DR PAN PEY-CHYOU** (in Cantonese): *President, since the Government began to implement the Non-Civil Service Contract (NCSC) Staff Scheme in 1999, various bureaux and government departments (B/Ds) have employed additional staff on contract terms to meet their service needs which are short term, time-limited, seasonal or subject to market fluctuations. At present, there are a total of about 16 000 full-time NCSC staff employed by various B/Ds. In this connection, will the Government inform this Council:*

- (a) *of the total number of NCSC posts converted to civil service posts by various B/Ds in the past five years, the number of NCSC staff employed to take up these posts and converted to permanent establishment, as well as the average length of service of these staff before such conversion;*
- (b) *given that quite a number of long-serving NCSC staff have been rejected when their posts were converted to civil service posts because they were not qualified to apply for such posts, whether the authorities can consider afresh establishing a flexible mechanism which allows NCSC staff to become civil servants through "internal recruitment" or enables NCSC staff with experience to remain in office, so as to avoid succession problems; if they will, of the details; if not, the reasons for that; and*
- (c) *whether the Civil Service Bureau will review the employment of NCSC staff by various B/Ds annually and cap the number of these*

staff in various B/Ds; if it will, when the relevant plan will be implemented; if not, of the reasons for that; given that various B/Ds have employed NCSC staff to carry out departmental administration and support duties with different remuneration packages, whether the Civil Service Bureau will consider setting up "a central administration and support unit" with the Civil Service Bureau conducting recruitment exercises centrally for the provision of temporary support services, such as administrative, clerical and information technology services, and so on, for various B/Ds?

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): President, the NCSC Staff Scheme, introduced in 1999, aims at providing B/Ds with a flexible means of employment to meet service needs which do not require or are not appropriate to be delivered by civil servants, for example, some service needs which are time-limited, seasonal, or subject to market fluctuations; or require staff to work less than conditioned hours of civil servants; or require tapping the latest expertise in a particular area; or where the mode of delivery of some public services is under review or likely to be changed. NCSC staff are not permanent staff, while civil servants are employed on permanent terms to meet service needs which are long term and should be delivered by civil servants. Therefore, the terms of employment and conditions of service of NCSC staff are entirely different from those of civil servants and it is inappropriate to compare the two. B/Ds may determine the employment package of their NCSC staff having regard to the job nature, the labour market and the administrative and operational considerations, provided that the terms offered are, overall speaking, no less favourable than those prescribed under the Employment Ordinance (Cap. 57) and no more favourable than those applicable to civil servants in comparable civil service ranks or with comparable levels of responsibilities.

After briefly explaining the NCSC Staff Scheme, I proceed to reply to different parts of the question.

With regard to the first part of the question, the Civil Service Bureau, jointly with B/Ds, conducted a special review on the employment situation of NCSC staff in 2006. The review had then identified 4 004 NCSC positions which involved work that should more appropriately be performed by civil servants and should be replaced by civil service posts gradually. As at end last year (that is, 31 December 2010), about 3 470 of such positions had been phased

out upon expiry of the employment contracts of the concerned NCSC staff and the recruitment of the replacement civil servants. For the remaining 530 NCSC positions, most of them will be gradually phased out upon expiry of the employment contracts of the concerned NCSC staff and the recruitment of the replacement civil servants within this year.

Moreover, after completion of the 2006 review, B/Ds have kept their employment of NCSC staff under review from time to time to determine whether there are any other NCSC positions that should be replaced by civil service posts. Since 2006, B/Ds had identified another 1 100 NCSC positions which involved work that should more appropriately be carried out by civil servants. About half of these positions had been replaced by civil service posts on or before 30 September 2010.

The Civil Service Bureau does not have complete information on the number of NCSC staff employed as civil servants in the past five years. Based on our available record in the past three and a half years, that is, from August 2007 to February 2011, applications were received from NCSC staff performing duties comparable to the civil service posts under recruitment in some recruitment exercises conducted. In these recruitment exercises, the number of successful candidates who accepted offers of appointment and reported duty totalled 9 774. Among them, 3 075 were former NCSC staff performing duties comparable to the civil service posts under recruitment. The Civil Service Bureau does not have information on the average length of NCSC service of these former NCSC staff prior to their employment as civil servants.

Regarding the second part of the question, to put it simply, the Government's recruitment policy is fair competition and meritocracy. Generally speaking, B/Ds will select the most suitable persons to fill civil service vacancies through open recruitment process. We welcome NCSC staff to apply for civil service jobs they are interested in through open recruitment. Nevertheless, they must meet the academic qualifications, experience and other basic entry requirements which are set according to operational needs of the civil service posts concerned. Since relevant working experience is one of the factors to be taken into account in B/Ds' assessment of job applicants, we consider that NCSC staff who meet the basic entry requirements of various civil service ranks should generally enjoy a competitive edge over other applicants because of their working experience in the Government.

B/Ds may conduct "in-service" recruitment where appropriate to select suitable persons from serving civil servants to fill a small number of civil service vacancies, for example, where the required skills and experience render some civil service posts more appropriately to be taken up by serving civil servants. As NCSC staff are not civil servants, and that their situation and nature of employment are different from that of civil servants, "in-service" recruitment is not applicable to them.

Besides, all along the Government has a mechanism in place for succession planning of the Civil Service. The Government has also provided systematic training and development opportunities for civil servants so that they may have wider exposure and acquire the necessary knowledge and skills for discharging their duties and getting prepared for greater responsibilities. All B/Ds will continue to provide training to new recruits and serving civil servants at various ranks.

With regard to the third part of the question, to ensure the proper operation of the NCSC Staff Scheme, we introduced improvement measures in November 2006 for the engagement and management of NCSC staff to ensure that employment of NCSC staff by B/Ds fully complies with the ambit of the Scheme. These measures included setting a ceiling for the number of NCSC staff for each B/D in the light of specific operational needs, and requiring a B/D to seek approval from the Civil Service Bureau for the employment of NCSC staff over and above the prescribed ceiling.

In the recruitment of NCSC staff, having regard to the job nature of NCSC positions, B/Ds will flexibly set entry requirements, employment period, working hours, and so on, to meet specific service needs. As such, the job contents and entry requirements for NCSC staff who provide temporary administrative, clerical or information technology services may vary. It will be more flexible and efficient and better cater for different situations and needs of various B/Ds if individual B/Ds employ their NCSC staff and determine the terms and conditions of employment for their staff according to the criteria I just mentioned in paragraph one above. In this connection, the proposal to set up a "central administration and support unit" and centralize the recruitment of NCSC staff whose employment is temporary in nature is not practical.

DR PAN PEY-CHYOU (in Cantonese): *President, according to the information provided by the Secretary in the main reply, it is noted that in the review in 2006, 3 470 NCSC positions were identified involving work more appropriate to be performed by civil servants, and after the review in 2006, 1 100 more NCSC positions were identified to involve work that should be carried out by civil servants. That means a total of 4 570 positions. In other words, 4 570 NCSC staff have lost their positions — it is stated clearly in the Secretary's reply. During the period, 3 075 of them have been re-employed as civil servants. By deducting the two figures, it is found that about 1 495 NCSC staff can no longer work in the Government.*

I recall the figures provided by the Government earlier that in general, the wastage rate and termination rate of staff during the three-year contract period was meagre, which was only about a few percentage points. I suppose that 10% of these contract staff are terminated because of poor performance, but the staff wastage for the period is up to around 1 000 NCSC staff.

The 1 000 staff concerned have experience working in the Government and their performance is satisfactory, why not give them the opportunity to return to the Government and continue to work there? Has the Government examine the reasons for that?

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): *President, I do not intend to spend time analysing the figures quoted by Dr PAN. The figures quoted by Dr PAN earlier failed to reflect the actual situation. However, I think Dr PAN is most concerned about the NCSC staff who have to leave the Government when their posts are converted to civil service posts, for they cannot continue to work as NCSC staff. Actually, the premise of the NCSC Staff Scheme is that every employee is employed on contract terms, where an expiry date of employment is set out clearly in each contract. Such employment is different from that of civil servants. Regarding the employment of civil servants, when a civil servant has passed his or her probation bar, he or she will be employed on permanent terms till retirement at the age of 60. Hence, civil servants are not employed on contract terms upon passing the probation period. However, NCSC staff are employed on contract terms and the expiry date of each contract is set out in the contract. Therefore, we will be very cautious in converting NCSC posts to civil service posts. We will cope with the expiry dates of the contracts of NCSC staff in converting the posts concerned.*

Hence, first, we will not terminate the contracts with NCSC staff before the expiry date of their contracts. Though the terms and conditions of the contract allow the Government to terminate the contract at an earlier time, we will not do so. Second, when the posts of NCSC staff are to be converted to civil service posts, the departmental head concerned will inform the serving NCSC staff in advance. That is to say, we will not wait till the contracts of NCSC staff expire and tell them about the conversion of their posts to civil service posts. We will not do so. When we know of such plan, we will inform the serving NCSC staff concerned immediately. Third, all departments concerned will immediately inform the serving NCSC staff of the coming civil servant recruitment exercises, so that NCSC staff intending to apply for the relevant posts may prepare themselves and then take part in the open recruitment exercises of civil servants.

Moreover, I know that certain departments will assist NCSC staff who have decided not to join the recruitment exercises to seek employment in the market as far as possible nearer the expiry of their contracts. The assistance rendered includes writing recommendation letters for individual employees. If job vacancies of similar nature of the NCSC posts are available in the market, certain departments may inform serving NCSC staff of the recruitment information in the market. Hence, we adopt various measures to assist NCSC staff to seek job opportunities before their contracts expire.

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

DR PAN PEY-CHYOU (in Cantonese): *No, it has not. My question is very simple. I asked the Secretary whether a review would be conducted on the wastage of some 1 000 staff. What is the cause of the wastage? The Secretary mentioned a lot about the system, yet I do not expect such an answer.*

PRESIDENT (in Cantonese): The Secretary has pointed out the cause of wastage from the point of view of the Bureau. Secretary, do you have anything to add?

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): President, the wastage is caused by two major reasons. The first reason is that some NCSC

staff applying for civil service posts fail in the open recruitment exercises of civil servants, and the NCSC posts they are serving have been replaced by civil service posts.

The second major reason is that certain serving NCSC staff have never submitted application in any open recruitment exercises of civil servants and have left the Government upon the completion of their contracts.

DR JOSEPH LEE (in Cantonese): *President, according to the Secretary, NCSC staff and civil servants are working in great harmony without any complaints. However, I would like to quote an example. According to a group of Radiographers working in the Department of Health on NCSC terms, their contracts have been renewed for two to three times, which means they have been working in the field for six to eight years. However, their experience is completely disregarded when they apply for civil servant post, and they are offered the minimum entry point. This gives rise to the problem of differentiated pay for identical job. Civil servants who have only worked for two to three years may receive a higher salary than the aforesaid radiographers who have just joined the Civil Service as they are only offered the minimum entry salary point even though they have been working in the department for six to eight years. May I ask the Secretary whether this problem of differentiated pay for identical job has in de facto led to the wastage of experienced NCSC staff, thereby resulting in the problem of succession? Under such circumstance, will there be disharmony within the department, aggravating the problem of differentiated pay for identical job?*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): President, all along, we consider civil servants belong to one system and NCSC staff belong to another. The two systems cannot be discussed together and should be handled separately. Dr LEE is concerned that the experience of NCSC staff gained during their service on NCSC terms is not being recognized when they join the Civil Service through open recruitment, hence they cannot get a higher entry salary point. This is the gravest concern of Dr LEE.

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

The conditions when a newly recruited civil servant will be granted "incremental credit for experience" have been stated clearly under the civil servant management policy. The two requirements laid down under the policy must be satisfied for granting the "incremental credit for experience". The first requirement is that the experience must be relevant to the experience required of the civil service rank concerned. The second requirement is that there are difficulties in the recruitment of the civil servants concerned. Only when both requirements are met can the department concerned consider offering additional increment for the relevant experience.

According to my understanding, the current civil servant recruitment has seldom encountered difficulties. As far as I can remember, there are two ranks having difficulties in recruitment, one is the Government Counsel and the other is Veterinary Surgeon. I will check the record later. I recall that there are no difficulties in recruiting Government Radiographers.

Why do we have to lay down the two requirements? Perhaps I may share with Dr LEE. Are the two requirements too harsh? We set the two requirements mainly because we know that we are using taxpayers' money. As such, we consider that each and every cent should only be spent when necessary. Hence, when there are no difficulties in recruitment, we cannot offer additional increment simply because the applicant possesses the relevant experience.

MS LI FUNG-YING (in Cantonese): *Deputy President, in part (c) of the main reply, the Secretary said that a ceiling for the number of NCSC staff for each bureau and department would be set in the light of specific operational needs. May I ask the Secretary how this ceiling is set and the percentage of the maximum number of NCSC staff in the establishment of Policy Bureaux or departments?*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Deputy President, the ceiling we set for the number of NCSC staff for each Policy Bureau and department is not linked with the civil service establishment of individual Policy Bureaux and departments. The two are unrelated. We will first understand the reasons why individual bureaux or department has to recruit NCSC staff. After knowing their reasons for recruiting this type of employees, we will examine whether the bureau or department concerned is employing NCSC at present for

the same reasons, the number of NCSC staff now employed, and whether there are any policy decisions involving the review or change of establishment in the next 12 months, or the next financial year. If such changes will take place, we will assess whether it would not be necessary to recruit additional NCSC staff or more staff have to be recruited in the light of the changes. Hence, we will set the ceiling for the number of NCSC staff according to the actual operation of individual bureaux and departments.

DEPUTY PRESIDENT (in Cantonese): This Council has spent nearly 24 minutes on this question. If colleagues still have questions, they have to follow up through other channels. Fifth question.

Debundling of Textbooks and Teaching and Learning Resources for Pricing

5. **MR ALBERT HO** (in Cantonese): *Deputy President, to address the issue of high prices of textbooks, the Education Bureau has requested publishers to debundle textbooks from learning and teaching materials for pricing within one year. Moreover, the Secretary for Education stated at the end of May this year that if publishers still refused to debundle teaching materials for pricing after one year, the Education Bureau would then tender out the publication of textbooks and teaching materials, or it would commission universities to develop and publish teaching materials. In this connection, will the Government inform this Council:*

- (a) *how the authorities ensure that an independent and impartial committee with credibility will be set up for vetting, approving and funding publishers, universities or educational institutes to publish a wide variety of textbooks and necessary teaching materials for schools to choose from, so as to lower the costs and alleviate the burden on parents; how the authorities guarantee that the condition of "the lowest bidder wins" will not be the only selection principle in the tendering process, with a view to preventing tenderers from "providing inferior products at lower prices", and ensuring that the quality of textbooks and relevant teaching materials will not be affected;*

- (b) *whether the authorities will consider assessing textbooks according to the principles of environmental protection and recycling so as to avoid frequent issue of new textbook editions; if they will, of the details; if not, the reasons for that; and*
- (c) *given that the purchase of textbooks is a major item of daily expenses for the grassroots, whether the authorities will consider afresh increasing the grant rates under the School Textbook Assistance Scheme (STAS), so as to alleviate the financial burden on parents?*

SECRETARY FOR EDUCATION (in Cantonese): Deputy President, my reply to Mr Albert HO's question is as follows:

- (a) As the distortion of the textbook market is becoming more serious, the Education Bureau has set up a task force to examine and review the issues arising from the policy of debundling textbooks and teaching/learning materials for pricing, in particular the operation of the Recommended Textbook List (RTL), as well as other measures concerning the supply of teaching and learning resources with a view to ensuring the provision of quality and value-for-money resources for schools.

Members of the task force comprise principals, teachers, parents and a representative of the Consumer Council, as well as academics and businessmen with professional knowledge in education and market operation. They will provide their professional views and recommendations on, among related issues, the appropriate tender procedures for the publication of textbooks and learning/teaching materials so as to enhance competition, assure the quality and reasonableness in pricing of textbooks and learning/teaching materials, as well as ways to select the best and most competitive tender.

- (b) The Education Bureau changed its "three-year rule of no revision" for textbooks to "five-year rule of no revision" in the 2010-2011 school year. According to the new rule, revision of a textbook on the RTL is not allowed within five years from the date of inclusion in the RTL. The Education Bureau, in its "Guidelines for Printing

of Textbooks", requires publishers to employ appropriate printing methods. For example, light-weight, thin, durable and matt paper should be used; text should be printed in single colour as far as possible; and the cover should be protected by gloss lamination for durability. In addition, under the current textbook review mechanism, the criteria that a textbook should meet include a reasonable and consistent layout, proper line spacing and margins, and minimal paper wastage.

- (c) Currently, the Government provides assistance to needy students attending Primary One to Secondary Seven in government, aided, caput or local schools under the Direct Subsidy Scheme through the STAS to alleviate parents' financial burden arising from the purchase of textbooks. The Student Financial Assistance Agency (SFAA) will adjust the grant rates annually for different levels of studies according to the results of the textbook expenditure survey conducted by the Consumer Council before the start of the school year on the actual costs of textbooks for various levels of studies as required by schools. The textbook grant rates will duly reflect the average actual expenditure on textbooks in the new school year for different level of studies. To put it simply, families with an average monthly income at or below the median monthly household income are eligible for assistance.

Starting from the 2011-2012 school year, to enhance financial support for needy students, the Government will relax the income threshold for full grant under the means test mechanism of the SFAA. Upon implementation of the proposed relaxation, the number of students eligible for full grant rates under the STAS will increase from about 80 000 at present to around 150 000, and the percentage in all beneficiaries under the STAS will substantially increase from around 30% at present to over 50%. Students who pass the means test but are not eligible for full assistance may still receive grant rates at half level under the STAS.

The above measure has been approved by the Finance Committee of the Legislative Council. We believe that they can help alleviate to a large extent the financial burden on low-income families in meeting the schooling expenses of their children.

MR ALBERT HO (in Cantonese): *The Secretary's main reply gives me the feeling that the Government has not made sufficient efforts to promote the reuse of textbooks, as well as facilitate the renting or buying and selling of second-hand textbooks, which can alleviate the burden on parents and achieve environmental protection.*

Some parents have relayed to us that many textbooks now come with an exercise book. These exercise books mostly contain fill-in-the-blank or colouring exercises and they often form an inseparable part to the textbooks. As a result, it is difficult to reuse these exercise books after the exercises have been completed by students. Will the Government consider separating these exercise books from the textbooks by using a loose-leaf or booklet format; and will the authorities issue guidelines requiring forbid publishers to debundle exercise books and textbooks? If not, textbooks can only be used once and cannot be used for a second or third time.

SECRETARY FOR EDUCATION (in Cantonese): Deputy President, in fact, publishers are not required to bundle these exercise books with the textbooks. This is purely a commercial decision of the publishers. As I have said in the main reply just now, a new task force has been appointed by the authorities and one of its tasks is to look into the problem that Member has just mentioned and examine whether the present practice adopted by publishers is appropriate. If the practice is found to be inappropriate, the authorities will lay down a guideline in respect of this problem and forbid publishers to do so.

DR JOSEPH LEE (in Cantonese): *Deputy President, textbooks have become the talk of the town recently. The Secretary stated in his main reply just now that a task force has been set up to specifically monitor the quality of textbooks, and that he hoped the relevant regulation could be applied on textbooks.*

My supplementary question is about a complaint reported in the newspaper involving the monopoly of the sales of textbooks. In other words, a certain textbook was chosen despite its poor quality, arousing the suspicion of secret dealings. Has the Government or the Secretary considered whether the task force can truly execute its monitoring function? For instance, how is the task

force going to tackle these textbooks? Will the authorities consider compiling a black list of unqualified textbook publishers so as to not using their textbooks? This will be an effective way to monitor the publishers.

Despite a task force is set up, as the authorities have explicitly said, I am concerned whether it is powerful enough to monitor the quality of textbooks and publishers, so as to produce suitable textbooks for use by Hong Kong people. The quality of textbooks is a particular concern of the students and their parents.

SECRETARY FOR EDUCATION (in Cantonese): Deputy President, the authorities have all along compiled a RTL for listing publishers who have submitted their textbooks to the authorities for vetting and approval. This process ensures that the authorities can act as the gatekeeper and thus the quality of textbooks can be assured. Textbooks which have gone through the vetting and approval process can be listed on the RTL, which is, in a way, a guarantee of their quality. Schools in general choose textbooks according to the RTL. At present, most of the textbooks used by schools are under the RTL and textbooks not on the list are seldom used.

MR CHEUNG MAN-KWONG (in Cantonese): *Deputy President, parents opt for debundling the textbooks with the main objective of lowering the prices of textbooks. However, publishers have been stalling on the textbook debundling proposal, not to mention a price reduction; they are not even willing to make any promise on a price reduction. As such, will the Government regard the textbook debundling policy a failure if publishers are only willing to debundle the textbooks for pricing but not willing to reduce the price of textbooks, or if they only nominally reduce the price and later gradually increase the price again? Does the Government have any measure to safeguard the interest of parents, so that they can actually be benefited from the textbook debundling proposal, that is, the prices of textbooks will truly be reduced as so to lower burden of textbook expenses on parents?*

SECRETARY FOR EDUCATION (in Cantonese): Deputy President, Hong Kong is a free business society and the prices of many commodities (including

textbooks) are determined by the market. According to our analysis, many publishers would substantially increase the costs of textbooks so as to expand the scope to cover the costs of producing free but unpopular teaching materials for schools and then include such costs into the price of textbooks. That is why two years ago the relevant stakeholders voiced their aspiration for having the two debundled and the teaching materials sold separately according to the "user pays" principle, so as to reduce the burden on parents. Nevertheless, it is difficult to determine the extent which the proposal will alleviate parents' burden now.

With respect to the introduction of more competition, one of the options which the task force has considered is to tender out the publication of textbooks. The task force is now examining how to conduct the tender, the number of textbooks to be tendered out each time and whether the present way of operation of the RTL should be maintained in future or other new operating methods should be introduced. The task force has to take all these issues into consideration. It is anticipated that the task force can come up with a comprehensive package by this year end for us to consider how to handle this issue.

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

MR CHEUNG MAN-KWONG (in Cantonese): *Deputy President, may I ask the Secretary whether the textbook debundling policy will be considered a failure if the prices of textbooks are not lowered after the debundling?*

SECRETARY FOR EDUCATION (in Cantonese): This depends on the outcome of the debundling. What matters is that teaching materials and teachers' textbooks should then be sold at concrete prices. As I have just said, the costs of students' textbooks should be lowered after the debundling; as for the extent which the costs will be lowered, it is hard to predict now.

MR ALBERT CHAN (in Cantonese): *Deputy President, in his reply just now, the Secretary said that the exercise books which go with the textbooks are not produced according to the government guidelines, but rather, the production is a market decision. His remark is worth noting. Precisely because this is a*

market decision, textbook publishers wish to turn these textbooks into a cash cow, making as much money as possible. This is precisely the crux of the problem.

The Secretary has already set up a task force to review and formulate relevant measures. In this regard, can the Secretary clearly and specifically tell us whether relevant targets and regulations have been laid down in response to complaints made by the public over the years regarding the frequently changing textbook editions and their high prices, with the latter generally costing \$2,000-odd to \$3,000 a year for primary and secondary textbooks or even \$4,000 a year for more expensive textbooks? For instance, can regulations be laid down to forbid textbook revisions to be made within three years or five years after publication, and can targets be set to limit the annual total expenses on textbooks to not exceeding \$1,500 or \$2,000? Can financial regulations be laid down to prevent publishers from turning textbooks into a cash cow and prevent trees from being cut for this purpose, thus contributing to an environmental disaster?

SECRETARY FOR EDUCATION (in Cantonese): Deputy President, I have specifically stated in the main reply that the new policy of "five-year rule of no revision" for textbooks has already been introduced, which should be able to tackle the situation just mentioned by Mr CHAN. With respect to other issues, we are not in a position to decide the prices of textbooks, but here I can say for sure that in future tendering exercises, one option that we can consider is to require bidding publishers to show us the quality of their textbooks and provide the prices for our reference. Thus, apart from considering whether the quality of the textbooks meets the teaching requirements, we will also take into account the prices in assessing the tender.

DEPUTY PRESIDENT (in Cantonese): Are you asking a follow-up question now?

MR ALBERT CHAN (in Cantonese): *Deputy President, what I asked the Secretary just now is whether a ceiling on the annual textbook expenses would be set, such as setting to it be no more than \$2,000.*

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

SECRETARY FOR EDUCATION (in Cantonese): Deputy President, we will not set a ceiling on this, but I can assure Members here that under the STAS introduced by the authorities, needy students can apply for full grant rates for their textbook expenses.

MR WONG KWOK-HING (in Cantonese): *I wish to ask the Secretary a question through the Deputy President. Regarding the textbook renting scheme discussed at the Panel on Education meeting yesterday, parents' groups indicated active support for the scheme, but the authorities said that a pilot scheme launched a few years ago had met with lukewarm response from parents. Given that parents have now actively responded to the proposal and parents' groups have indicated their support to the authorities for the scheme, will the Secretary reconsider launching the scheme? This can alleviate the burden on students and parents and conserve the environment as well.*

Of course, some exercise books or certain parts of the textbooks may be worn, but I do not think this should be a big problem. If the Government can take the lead to launch this scheme, it will be able to strengthen the environmental awareness of students, who will then take greater care of their textbooks. This will not only be conducive to the environment, but be able to strengthen students' awareness. Thus, may I ask the Secretary through the Deputy President whether active consideration will be given to relaunch the textbook renting scheme and provide a timetable in this regard?

SECRETARY FOR EDUCATION (in Cantonese): Deputy President, I learnt yesterday that some organizations had conducted a survey on their own. The result of the survey showed that parents are more supportive of the proposal than before. However, we have not received similar views at the school level. In any event, the launching of such schemes very much hinges on the schools which should make an active effort to assess their own situation and the needs of parents so as to decide the way forward. As I have said yesterday, we will consult

schools on this matter through the parent teacher associations in schools and, subject to the actual situation, come up with a guideline in this regard.

MRS REGINA IP (in Cantonese): *Deputy President, the Secretary is also aware that we have discussed this topic for a long time at the Panel on Education meeting yesterday. The Secretary should also know that some school subjects may have over 100 teaching materials, some of which are not used by teachers but some are very useful to teachers. As the Education Bureau has introduced many integrated subjects, such as Integrated Humanities, Liberal Studies, Integrated Science and the Accounting and Financial Studies which is for secondary students, teachers do need these teaching materials. Even if the authorities will have a scheme to provide subsidies for students in future, without these teaching materials it will be difficult for teachers to teach these subjects. How will the Government assist teachers?*

SECRETARY FOR EDUCATION (in Cantonese): Deputy President, let us not forget that teaching materials are now available. Publishers have produced many teaching materials, except that they are unwilling to debundle them for pricing and prefer giving the teaching materials to schools for free. This in fact clashes greatly with the prevention of corruption and that is why we expressly forbid this practice and would discuss with publishers how to debundle the teaching materials for schools to purchase on a "user pays" principle.

Hence, at the school level, even if teaching materials are not provided by publishers in future, colleagues of the Education Bureau will visit schools and provide assistance to teachers in preparing teaching materials. At present, this initiative is not taken forward on a large scale, but we can summarize the relevant experience and examine how the Education Bureau can guide schools and teachers to produce more teaching materials in case teaching materials are not provided by publishers in future.

DEPUTY PRESIDENT (in Cantonese): We have spent more than 22 minutes on this question. Last question seeking an oral reply.

"Coffin-sized Units" and Sub-divided Flat Units for Lease

6. **MS STARRY LEE** (in Cantonese): *Deputy President, it has been reported that in the old buildings in Sham Shui Po, there are "coffin-sized units", which are separate units of the size of a coffin converted from further dividing the original "sub-divided units" into six smaller units for leasing purpose. "Coffin-sized units" are stacks of three levels and the occupants of the uppermost level have to climb up and down ladders, the conditions are appalling, and the occupants can neither stand up nor sit inside the units, but have to crawl like animals when going into or out of the units. It has been reported that the monthly rental per square foot for each "coffin-sized unit" can reach as much as \$300, which is more expensive than that of the International Finance Centre in Central; and that while lease advertisements for "coffin-sized units" can be seen everywhere, the persons in charge of such units do not sign any formal tenancy agreements with tenants so as to evade monitoring and investigation by the Government. Moreover, I have learnt that some estate agents in the district are proactively providing one-stop services by paying fixed monthly rentals to flat owners and converting the flats into "sub-divided units" or "coffin-sized units" for lease, thereby reaping profits by charging hefty rentals. In this connection, will the Government inform this Council:*

- (a) *in each of the past three years, of the respective numbers of complaints, broken down by District Council district, involving the breaches of the Bedspace Apartments Ordinance and the Hotel and Guesthouse Accommodation Ordinance received by the Home Affairs Department (HAD), as well as the number of substantiated cases, the penalties imposed and what follow-up actions were taken, and among these complaints, the situation of those involving "coffin-sized units"; what other legislation is currently in place to regulate the mode of operation of "coffin-sized units"; whether the HAD has initiated investigations using "undercover" operations to ascertain if these "coffin-sized units" comply with the relevant legislation; if it has, of the investigation results; if not, the reasons for that;*
- (b) *whether the Buildings Department has investigated if the aforesaid persons in charge of "coffin-sized units" are involved in erecting*

unauthorized building works (UBWs) or making unauthorized alterations, or in breach of the Buildings Ordinance because of non-compliance with the relevant safety and sanitation requirements; if it has, of the investigation results; if not, the reasons for that; and

- (c) *regarding some estate agents proactively providing one-stop services, whether it knows if the Estate Agents Authority (EAA) has initiated investigations to ascertain if such practices are in breach of their professional codes; if it has, of the investigation results; if not, the reasons for that?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Deputy President, the Office of the Licensing Authority (OLA) under the HAD is responsible for the enforcement of the Hotel and Guesthouse Accommodation Ordinance (Cap. 349) and the Bedspace Apartments Ordinance (Cap. 447). It is tasked with the issue of licences and enforcement. Upon receipt of an application for licence, the OLA shall ascertain that the premises concerned comply with the standard of structural and fire safety as provided in the relevant ordinances before issuing a licence, so as to ensure the safety of occupants and other users of the building.

According to the existing legislation, the operation of hotels and guesthouses is under the regulation of the Hotel and Guesthouse Accommodation Ordinance, which stipulates that any premises providing sleeping accommodation at a fee with a tenancy term of less than 28 consecutive days shall obtain a licence before commencing operation. Any person who operates hotels or guesthouses illegally is liable on conviction to a fine of \$200,000 and to imprisonment for two years and to a fine of \$20,000 for each day during which the offence continues.

In addition, the Bedspace Apartments Ordinance provides that any flat in which there are 12 or more bedspaces used as sleeping accommodation for individuals under rental agreements must obtain a licence before commencing operation. Any person who is involved in operating bedspace apartments illegally commits an offence and is liable on conviction to a fine of \$100,000 and to imprisonment for two years and to a fine of \$20,000 for each day during which the offence continues.

In case of breaches of the above Ordinances in any premises, the OLA will conduct an investigation and institute prosecution actions. The OLA will re-inspect the premises which have been prosecuted and convicted to see if there are repeated offences and will follow up according to law.

- (a) In the past three years, the highest fine imposed by the Court for breach of the Hotel and Guesthouse Accommodation Ordinance was \$30,000. Among the 11 persons who had been sentenced to imprisonments of two weeks to four months, eight received suspension for one to two years.

Not all buildings and premises are covered by the Bedspace Apartments Ordinance and the Hotel and Guesthouse Accommodation Ordinance. As with other premises for self occupation or for lease, premises beyond the regulation of the two ordinances are regulated by and subject to other relevant legislation such as the Buildings Ordinance, Fire Services Ordinance, Fire Safety (Buildings) Ordinance, Electricity Ordinance and Gas Safety Ordinance. Government departments conduct law enforcement in accordance with the existing legislation concerned to ensure the safety of such premises.

The OLA has spared no efforts in combating illegal operation of guesthouses and bedspace apartments. Upon receipt of a complaint about illegal operation, it will conduct an inspection within eight working days, and, having regard to the circumstances of each case, will also collect evidence through various means, including conducting inspections during and outside office hours (for example, at nights and during holidays) and posing as clients (commonly known as "snaking") to collect evidence when necessary. Upon investigation, if it shows that there is sufficient evidence indicating illegal operation in the premises, prosecution shall be instituted. Moreover, the OLA will conduct inter-departmental operations with other departments concerned. The staff of the OLA also read newspapers and browse webpages on a regular basis and conduct proactive district inspections to collate information about illegal operation of guesthouses and bedspace apartments.

As regards the case in question in Sham Shui Po, the staff of the OLA had inspected and investigated the premises to see if there was any contravention of the Hotel and Guesthouse Accommodation Ordinance and the Bedspace Apartments Ordinance. But so far, there has not been sufficient evidence for unlicensed guesthouse or bedspace apartment operation in the premises. The OLA will continue to take proactive actions to follow up the matter and keep watch of the premises in question. Once sufficient evidence for suspected contravention of the above ordinances in the premises is available, appropriate actions for prosecution shall be taken.

The figures of complaints about suspected illegal operation of guesthouses and bedspace apartments received by the OLA, the figures of prosecutions and those of convictions in the past three years are set out in the table attached. The OLA has not instituted any prosecution under the Bedspace Apartments Ordinance.

Regarding the differences between the number of complaints and the number of prosecutions, one of the reasons is that there are some that involve the same premises. Besides, upon investigation, the OLA has found out that the premises in some complaint cases were beyond the purview of the Hotel and Guesthouse Accommodation Ordinance as they were let out on a monthly basis. In some other cases, the premises involved fell outside the purview of the Bedspace Apartments Ordinance. The OLA will also continue to follow up on some of the unsubstantiated cases. Upon investigation, if there is evidence for illegal operation in the premises, the OLA will institute prosecution actions.

- (b) The Buildings Department, upon noting the incident, has already commenced investigation but could not enter the premises concerned for inspection for the time being. If it is found after investigation that in the premises there are UBWs and such UBWs are posing obvious threat or imminent danger to life or property, or constituting a serious health hazard or a serious environmental nuisance, such as building partitions obstructing or affecting the means of escape or structures leading to overloading, the Buildings Department will take

enforcement action under the Buildings Ordinance (Cap. 123) requiring removal or rectification of the UBWs to ensure public safety.

- (c) The EAA has not received any complaints or enquiries related to the leasing of "sub-divided flat units" or "bed spaces" by estate agents. That said, having noted the media reports, the EAA took the initiative to conduct inspections at estate agency firms in Sham Shui Po. So far, no estate agency firm is found to be involved in the leasing of "sub-divided flat units" or "bed spaces". During the inspections, the EAA reminded the estate agents and salespersons not to engage in activities which may infringe the law. The EAA will continue to closely monitor the situation and will take appropriate actions when necessary.

Table

District	Hotel and Guesthouse Accommodation Ordinance									Bedspace Apartments Ordinance		
	Complaint			Prosecution@			Conviction@			Complaint		
	2009	2010	2011*	2009	2010	2011*	2009	2010	2011	2009	2010	2011*
Islands	25	15	23	0	4	0	1	4	0	0	0	0
North	15	4	1	0	0	0	1	0	0	0	0	0
Sai Kung	9	5	6	2	0	0	0	2	0	0	0	0
Sha Tin	1	0	2	0	0	0	0	0	0	0	0	0
Tai Po	0	3	0	0	0	0	0	0	0	0	0	0
Tsuen Wan	4	2	14	2	0	1	3	1	0	0	0	0
Tuen Mun	1	0	0	0	0	0	0	0	0	0	0	0
Yuen Long	10	4	2	2	4	1	0	6	1	0	0	0
Kwai Tsing	0	0	0	0	0	0	0	0	0	0	0	0
Central and Western	13	13	3	0	0	0	0	0	0	0	0	0
Wan Chai	84	82	48	2	3	3	2	3	2	2	1	0
Eastern	31	56	41	1	5	0	1	3	2	0	0	0
Southern	4	1	0	0	0	0	0	0	0	3	0	0
Kowloon City	3	5	9	0	0	0	0	0	0	2	1	0
Kwun Tong	3	8	3	0	0	0	0	0	0	0	0	0
Sham Shui Po	12	15	10	3	3	1	3	2	1	0	2	2
Wong Tai Sin	1	0	0	0	0	0	0	0	0	1	0	0

District	Hotel and Guesthouse Accommodation Ordinance									Bedspace Apartments Ordinance		
	Complaint			Prosecution@			Conviction@			Complaint		
	2009	2010	2011*	2009	2010	2011*	2009	2010	2011	2009	2010	2011*
Yau Tsim Mong	243	160	70	28	20	12	26	24	8	0	2	0
Total	459	373	232	40	39	18	37	45	14	8	6	2

Notes:

* 2011 (up to end of May)

@ the figures of prosecution and those of conviction in the same year were slightly different because trials of some prosecution cases were conducted in the following year.

MS STARRY LEE (in Cantonese): *Deputy President, these so-called "coffin-sized units" are created by further dividing a "sub-divided unit" into five or six bedspaces. After tenants have crawled into such bedspaces, it is not possible for them to sit up, still less stand up. If these "coffin-sized units" or "space capsules" akin to those in Japan become prevalent, this is really a disgrace and tragedy for this highly civilized and advanced society called Hong Kong.*

In fact, some operators actually operate these "sub-divided units", "coffin-sized units" or "pregnant women's hostels" by exploiting the loopholes in the Hotel and Guesthouse Accommodation Ordinance and the Bedspace Apartments Ordinance. They do not sign any tenancy agreements with their tenants or make any application to the authorities, and they do not inquire about the background of their tenants. I believe the Secretary has also read a detailed report written by a reporter after an undercover operation and the DAB also found the existence of "pregnant women's hostels" after an undercover operation.

If we look at the information provided to us by the Home Affairs Bureau, apart from Yau Tsim Mong, the number of prosecution for violating the Hotel and Guesthouse Accommodation Ordinance for Sham Shui Po stands at one and the number of conviction also stands at one. In respect of Kowloon City, in which a serious fire occurred and "sub-divided units" are prevalent — the numbers of prosecution and conviction both stand at zero. With regard to the Bedspace Apartments Ordinance, for Sham Shui Po, the number of complaints received in 2011 was two, whereas the number of complaints for Kowloon City was zero. Just now, the Secretary said in his reply that they would carry out "snaking", read newspapers as well as take proactive actions. Can the Secretary explain why

the numbers of prosecutions and convictions were so low despite so much effort has been made? Is the relevant legislation already outdated and a review is needed?

SECRETARY FOR HOME AFFAIRS (in Cantonese): Deputy President, the standard adopted by reporters in writing reports and the standard adopted by law-enforcement officers of the OLA in instituting prosecutions after the collection of evidence are different in terms of stringency. Therefore, even though we have a team of dedicated people to carry out inspections frequently in view of the complaints received and the information gathered by browsing webpages or advertisements, this is a different matter from gathering evidence sufficient for the institution of prosecutions.

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

MS STARRY LEE (in Cantonese): *Given that the relevant numbers were so low and the authorities fail to address the problems as expected by the public, does he agree that a review of the existing legislation is called for?*

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

SECRETARY FOR HOME AFFAIRS (in Cantonese): Deputy President, I have nothing to add.

PROF PATRICK LAU (in Cantonese): *Deputy President, just now, the Secretary said clearly in the main reply that the Bedspace Apartments Ordinance provided that a licence must be obtained for any flat in which there were 12 or more bedspaces used as sleeping accommodation for individuals under rental agreements before commencing operation, and the penalties in terms of fine and imprisonment were quite heavy.*

However, according to the reply of the Secretary to a supplementary question, in the past three years, the OLA did not institute any prosecution in

accordance with the Bedspace Apartments Ordinance. I find this very strange. Are these flats with 12 bedspaces or more — I believe the flats mentioned by Ms LEE just now surely have a larger number of bedspaces — not being prosecuted because they are licenced, or are there other reasons that no prosecution is taken against them for violating the law? I wish to know the reasons for not initiating prosecutions against these flats?

SECRETARY FOR HOME AFFAIRS (in Cantonese): Deputy President, let me give an example. Regarding the case of "coffin-sized units" as recently reported in the press, the flat is located in Fuk Wa Mansion at 82 Fuk Wah Street. After the press report, officers of the OLA carried out inspections on three occasions on 30 May, and 9 and 10 June respectively. According to the legislation, a licence must be obtained for any flat in which there are 12 or more bedspaces used as sleeping accommodation before commencing operation, and on one occasion, we succeeded in gaining access to that place. However, since a number of rooms were locked, the number of bedspaces that we could see was less than 12. Therefore, I said in reply just now that it was necessary to gather evidence and prosecutions could only be instituted after sufficient evidence has been gathered; the requirement in this regard is far more stringent.

MR ALBERT CHAN (in Cantonese): *Deputy President, the situation of "sub-divided units" has reached a dangerous point, that is, not only is the problem of "sub-divided units" in old buildings serious, there is also a rapid increase in the number of "sub-divided units" in industrial buildings. "Sub-divided units" are rented to Hong Kong people as well as to Mainland visitors, and the rental period may be more than 28 days, so as to evade the regulation imposed by the legislation. Basically, having "sub-divided units" in industrial buildings is in itself a violation of the law. However, every time, the Government will only become alert after the occurrence of some fatal or serious accidents; as evident from the prosecution figures cited just now. The Secretary should be well aware of this matter and the media have made frequent reports. I believe the special features or interviews reported in the press in the past few days have further exposed the problems in this regard.*

These illegal "sub-divided units" may lead to casualties and put the lives of the public at risk. In the face of such a serious problem, what special actions will be expeditiously taken by the Development Bureau or the Home Affairs

Bureau to rein in the situation and ensure that the lives and safety of the public will not be jeopardized?

SECRETARY FOR HOME AFFAIRS (in Cantonese): Deputy President, the two urgent questions raised this morning were both related to the incident that occurred at Ma Tau Wai Road in Kowloon City. As the government officials concerned have said in reply this morning, the authorities, including the Buildings Department and the Fire Services Department, would carry out inspections instantly, and if any imminent dangers were detected, it would be eradicated immediately.

MR ALBERT CHAN (in Cantonese): *What urgent measures will be taken by the departments concerned? I am not talking about regular inspections but extra efforts to ensure that the lives and safety of the public will not be jeopardized.*

SECRETARY FOR DEVELOPMENT (in Cantonese): Deputy President, as Secretary TSANG has said, I have already given an account of our roles and efforts in strengthening the regulation of "sub-divided units", in my reply to the two urgent questions raised this morning. First, in respect of immediate actions, we had issued a total of 73 statutory orders for removal in response to the complaints received against "sub-divided units", and at present, some 30 orders have not yet been complied with. Of these 30 or so orders, it is estimated that 28 of them are related to fire escapes, so there is greater imminent danger. I have requested the Buildings Department to carry out inspections with regard to these 28 cases immediately, so as to take appropriate prosecution or law-enforcement actions.

As regards other regulatory efforts, they include legislation and enhancement of law enforcement. On legislation, after the establishment of the minor works control system late last year, all drainage works involving "sub-divided units" now fall within the scope of the control system. We will later introduce an amended regulation to bring other works that may be involved in "sub-divided units", such as partitions and raised floors, within the scope of the minor works control system. We are now striving to introduce the amended regulation in the first quarter of 2012.

On law enforcement, "sub-divided units" are a target of our special operations from this year (2011-2012) onwards. Through the allocation of additional resources and special measures targeting "sub-divided units", it is expected that over 1 300 such "sub-divided units" can be inspected each year.

DR PRISCILLA LEUNG (in Cantonese): *Deputy President, in Ms LEE's main question, it is said that the reported monthly rental per square foot of each "coffin-sized unit" can be as high as \$300 and this is really outrageous. I wonder why the tenants did not lodge any complaint. Owing to house moving, I had to stay in a hotel, and the monthly rent for a room of some 100 sq ft commanding a panoramic sea view was only \$10,000. However, the rent of these "coffin-sized units" is really outrageous, are those tenants ignorant and being cheated? If we look at the table in the main reply, the numbers of complaints for several districts were particularly high but improvements were subsequently made. For example, the numbers of complaints in Wan Chai, Eastern and Yau Tsim Mong have been on the decrease in recent years. Is this related to people being educated? What kind of people live in the "coffin-sized units" and what measures should we take, so that these people will not be cheated?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): *Deputy President, concerning whether "coffin-sized units" are illegal, I have said earlier that we have not yet gathered any evidence that enables us to take any legal action.*

Judging from the average rent per square foot as reported in the press, of course, the rent is very high but at present, the monthly rent of a bedspace in absolute terms ranges from several hundred dollars to \$1,000, which is affordable to some poorer people.

MR IP KWOK-HIM (in Cantonese): *Deputy President, the Secretary pointed out in the main reply that at present, these premises in which "coffin-sized units"/bedspaces are found are already regulated by the Hotel and Guesthouse Accommodation Ordinance and the Bedspace Apartments Ordinance, as well as the Buildings Ordinance and other legislation.*

I am concerned that if there are "coffin-sized units"/bedspaces in some flats, the consequence will be serious should a fire break out. If one wants to

lodge a complaint in this regard, may I ask which department should the complainant turn to for the most effective result? This is because at present, there are many pieces of legislation regulating these bedspaces for rent. How would the Government follow up after a complaint has been lodged?

SECRETARY FOR HOME AFFAIRS (in Cantonese): Deputy President, it will be effective to lodge a complaint with the OLA under the HAD. The OLA has made a pledge to carry out an inspection and investigation of the premises concerned within eight working days upon the receipt of a complaint and it also has the statutory power to carry out investigations and gather evidence for the purpose of instituting prosecutions.

MS AUDREY EU (in Cantonese): *Deputy President, the Chief Executive said recently in an interview in Australia that there were no housing problems in Hong Kong, however, after reading the reports and hearing the reply of the Secretary today, may I ask the two Secretaries if they think that "coffin-sized units" or "coffin-sized bedspaces" reflect the fact that housing problems do exist in Hong Kong?*

Dr Priscilla LEUNG raised the issue of whether those people had been cheated; frankly speaking, if those people had money, why would they want to live in such places? If there are no housing problems in Hong Kong, why there are "coffin-sized units"? May I ask the Secretary if he agrees that there are housing problems in Hong Kong? If he does not agree, why not? If he agrees, how the problem of "coffin-sized units" can be solved?

SECRETARY FOR HOME AFFAIRS (in Cantonese): Deputy President, livelihood issues, such as clothing, food, accommodation and transportation, have always been the concerns of the SAR Government. As there are poorer people in our society, there are demands for bedspace apartments. Regarding people with less means, at present, both the Social Welfare Department and the Housing Department have established housing policies to provide support to them.

DEPUTY PRESIDENT (in Cantonese): We have spent more than 23 minutes on this question. Oral question time ends here.

WRITTEN ANSWERS TO QUESTIONS**Use of Information Technology in Schools**

7. **DR SAMSON TAM** (in Chinese): *President, regarding the promotion of the development of information technology (IT) in schools in Hong Kong, will the Government inform this Council:*

- (a) *whether it knows the respective numbers of school IT assistants employed by primary and secondary schools in Hong Kong last year, with a breakdown by salary group; as well as the respective average numbers of school IT assistant vacancies and their percentages in the total numbers of such posts; and*
- (b) *given that the Government plans to implement debundling of textbooks and teaching/learning materials for pricing in the new school year commencing in September this year, schools can choose to produce their own teaching materials to meet their teaching needs, whether the authorities will thus allocate additional resources for schools to recruit additional IT staff or purchase additional IT equipment, so as to step up promotion of the development of e-Learning; if they will, of the details; if not, the reasons for that?*

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

- (a) The Education Bureau has been disbursing a Composite Information Technology Grant to all public sector schools at an annual rate ranging from \$155,000 to \$484,000, depending on the school type and number of approved classes. The grant can be used in the following areas:
 - (i) Internet connectivity and Internet security services;
 - (ii) Employment of technical support personnel or hire of technical support services from service providers;

- (iii) Purchase of IT-related consumables;
- (iv) Extension of opening hours for school's IT facilities;
- (v) Upgrading and replacement of school's IT facilities;
- (vi) Arrangement of maintenance services for school's IT facilities procured by government funds; and
- (vii) Purchase of digital resource materials for learning and teaching, including annual subscription or renewal fees for licences and software, and other charges for online learning resources.

Under the principle of school-based management, schools can flexibly deploy their resources in any of the above areas to meet their operational needs. As far as technical support services are concerned, schools may engage one or more IT technicians either through direct recruitment or service procurement. Since schools do not have a fixed establishment of IT technicians, we cannot provide their vacancy statistics.

- (b) We always emphasize that textbooks produced by publishers are not the only sources of teaching materials. Over the years, the Education Bureau has produced a lot of online teaching resources. Besides, there is a vast collection of teaching resources on the Hong Kong Education City website. In the coming year, we will integrate these teaching resources into a one-stop online platform to facilitate teachers' use. We will also enhance our production of teaching materials to meet the needs of teachers. Our ultimate target is to facilitate teachers' preparation of teaching materials appropriate to the schools' circumstances and students' needs. Current development does not suggest that the process would involve additional resource implications in terms of IT equipment or personnel.

With regard to the promotion of e-Learning in schools, the Education Bureau has started implementing a three-year pilot scheme since this school year on e-Learning aiming to explore and develop various e-Learning solutions. We will formulate long-term strategy on the

implementation of e-Learning in schools based on the outcomes of this pilot scheme.

Apprenticeship Scheme

8. **MR IP WAI-MING** (in Chinese): *President, regarding the implementation of the Apprenticeship Ordinance (Cap. 47) (the Ordinance), will the Government inform this Council:*

- (a) *of the number of apprentices who had registered under the Apprenticeship Scheme and engaged in the 45 designated trades under the Ordinance in the past three years, with a breakdown by the designated trade;*
- (b) *of the number of persons aged over 18 or persons engaging in non-designated trades who had voluntarily applied to join the Apprenticeship Scheme, entered into contracts of apprenticeship with their employers and requested the Director of Apprentice to register the contracts under the Apprenticeship Scheme in the past three years; among them, the number of cases approved and rejected, as well as the respective percentages, with a breakdown by trade;*
- (c) *whether the authorities had proactively promoted the Apprenticeship Scheme to enterprises in the past three years, and encouraged employers to support and participate in the Apprenticeship Scheme after the Minimum Wage Ordinance (Cap. 608) came into effect; if they had, of the details; if not, the reasons for that;*
- (d) *of the number of on-site inspections conducted by inspectors of apprentices (IAs) in the past three years; among them, the number of cases identified and ruled by the courts to be in contravention of the Ordinance, as well as what acts of contravention were involved; whether the authorities have any plan to step up regulation and increase the penalties concerned upon the implementation of the Minimum Wage Ordinance, so as to prevent some employers from exploiting cheap labour on the pretext of recruiting apprentices not bound by the Ordinance; and*

- (e) *whether the authorities have any plan to conduct a comprehensive review on the implementation of the Ordinance, which includes examining the applicability of the 45 designated trades, enhancing the transparency of the Apprenticeship Scheme, and increasing the number of visits to apprentices and on-site inspections, and so on; if they have such a plan, of the details; if not, the reasons for that; given that the authorities have indicated in reply to a question raised by a Member of this Council on the Estimates of Expenditure 2011-2012 that the Vocational Training Council (VTC) will draw up a new publicity plan to further enhance its promotional efforts on the Apprenticeship Scheme, whether they know the details of such publicity and promotional efforts?*

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

- (a) The number of apprentices registered under the 45 designated trades in accordance with the Ordinance in the past three years is as follows:

<i>"Designated Trades"</i>	<i>Number of Registered Apprentices⁽¹⁾ (as at end March in each financial year)</i>		
	<i>2008-2009</i>	<i>2009-2010</i>	<i>2010-2011</i>
1 Audio-Visual and Radio-Frequency Mechanic	11	12	8
2 Bamboo Scaffolder	1	0	0
3 Bookbinder	2	4	5
4 Bricklayer/Plasterer/Tiler	1	1	1
5 Building Services Mechanic	94	80	84
6 Cable Jointer (Power)	17	18	15
7 Carpenter/Joiner	0	1	2
8 Clothing Machine Mechanic	0	0	0
9 Compositor	0	0	0
10 Construction Plant Mechanic	49	42	65
11 Electrical Appliances Service Mechanic	6	3	5
12 Electrical Fitter	54	54	34

<i>"Designated Trades"</i>	<i>Number of Registered Apprentices⁽¹⁾ (as at end March in each financial year)</i>		
	<i>2008-2009</i>	<i>2009-2010</i>	<i>2010-2011</i>
13 Electrician	404	398	380
14 Fitter	69	79	48
15 Gas Utilization Fitter	32	25	34
16 Goldsmith (Fine-gold)	0	0	0
17 Goldsmith (K-gold)	18	15	8
18 Hotel Cook (Western Style)	0	0	0
19 Instrument Mechanic	0	0	0
20 Knitting Machine Mechanic	0	0	0
21 Lift Electrician	97	118	132
22 Lift Mechanic	29	20	14
23 Machinist	0	0	0
24 Metal Furniture Maker	13	15	17
25 Mould and Die Maker and Repairer	1	0	0
26 Offset Litho Plate-Maker	0	0	0
27 Overhead Linesman	17	15	15
28 Painter/Decorator (Furniture)	5	4	7
29 Painter/Decorator/Sign Writer	0	0	0
30 Plumber	21	13	9
31 Precious Stone Setter	3	3	0
32 Printing Machine Operator (Letterpress)	1	2	3
33 Printing Machine Operator (Offset Litho)	8	9	8
34 Process Camera Operator	0	0	0
35 Radio/TV Mechanic	0	0	0
36 Refrigeration/Air-Conditioning Mechanic	392	374	353
37 Repairman (Electronics Manufacturing)	0	0	0
38 Textile Mechanic	2	1	0
39 Tool and Die Maker	1	0	0
40 Vehicle Body Repairer/Builder	49	56	52
41 Vehicle Electrician	81	85	76

<i>"Designated Trades"</i>	<i>Number of Registered Apprentices⁽¹⁾ (as at end March in each financial year)</i>		
	<i>2008-2009</i>	<i>2009-2010</i>	<i>2010-2011</i>
42 Vehicle Mechanic	239	254	297
43 Vehicle Painter	18	12	11
44 Vehicle Panel Beater/Body Builder	0	0	0
45 Wood Furniture Maker	0	0	0
Total	1 735	1 713	1 683

Note:

- (1) Under the Ordinance, an employer is required to enter into a contract of apprenticeship with a person aged between 14 and 18 employed in a designated trade but who has not completed any apprentice training. The contract has to be registered with the Director of Apprenticeship. Voluntary registration under the Ordinance is also open to apprentices aged 19 or above employed in designated trades. The number of apprentices listed in the table includes both types of apprentices described above.
- (b) Before participating in the "Apprenticeship Scheme", employers are required to demonstrate to the authorities their eligibility, including the capability to meet the requirements of the Ordinance in relation to engaging apprentices, such as having adequate training facilities for providing structured on-the-job training to apprentices, indicate their willingness to sponsor and let apprentices attend specified courses, as well as accept monitoring of apprentice training by the Office of the Director of Apprenticeship.

In the past three years, all contracts of apprenticeship submitted by eligible employers were successfully registered. The number of apprentices (including those above the age of 18 in designated trades and those in non-designated trades) registered voluntarily is as follows:

<i>Trades</i>	<i>Number of New Apprentices Registered Voluntarily in each Financial Year</i>		
	<i>2008-2009</i>	<i>2009-2010</i>	<i>2010-2011</i>
Designated Trades (Apprentices over the Age of 18)			
1 Audio-Visual and Radio-Frequency Mechanic	0	4	0
2 Bookbinder	2	3	1
3 Bricklayer/Plasterer	1	0	1

Trades	<i>Number of New Apprentices Registered Voluntarily in each Financial Year</i>		
	<i>2008-2009</i>	<i>2009-2010</i>	<i>2010-2011</i>
4 Building Services Mechanic	23	30	27
5 Cable Joiner (Power)	9	3	1
6 Carpenter/Joiner	0	1	1
7 Construction Plant Mechanic	27	10	29
8 Electrical Appliances Service Mechanic	1	1	2
9 Electrical Fitter	16	12	6
10 Electrician	146	148	156
11 Gas Utilization Fitter	16	14	21
12 Goldsmith (K-gold)	8	2	3
13 Lift Electrician	23	48	35
14 Lift Mechanic	2	3	3
15 Machinist	1	5	3
16 Overhead Linesman	5	3	2
17 Painter	6	4	5
18 Plumber	13	1	6
19 Precious Stone Setter	0	1	0
20 Printing Machine Operator (Letterpress)	1	1	2
21 Printing Machine Operator (Offset Litho)	3	5	2
22 Refrigeration/Air-conditioning Mechanic	115	122	99
23 Textile Mechanic	0	1	0
24 Vehicle Body Repairer	13	17	7
25 Vehicle Electrician	29	24	20
26 Vehicle Mechanic	91	100	115
27 Vehicle Painter	3	4	5
Non-Designated Trades			
28 Air-conditioning Technician	5	12	11
29 Assistant Electrician	1	4	0
30 Assistant Jewellery Designer	6	1	2
31 Building Partition and Ceiling Products Installer	1	1	1
32 Building Services Craftsman	0	4	0
33 Building Services Assistant	1	0	0

<i>Trades</i>	<i>Number of New Apprentices Registered Voluntarily in each Financial Year</i>		
	<i>2008-2009</i>	<i>2009-2010</i>	<i>2010-2011</i>
34 Building Services Technician	51	63	72
35 Construction Assistant	7	0	0
36 Construction Technician	115	173	220
37 Construction Works Joiner	2	0	1
38 Construction Works Carpenter	0	1	0
39 Construction Works Painter	2	2	1
40 Cook (Western Style)	1	0	1
41 Cost Estimator Assistant (Printing)	4	2	0
42 Craft Apprentice (Air-conditioning)	1	9	11
43 Craft Apprentice (Electrical)	10	14	10
44 Craft Apprentice (Mechanical)	16	19	17
45 Craft Apprentice (Vehicle)	3	2	6
46 Customer Services Assistant (Printing)	0	0	3
47 Decoration Carpenter	0	0	3
48 Designer (Printing)	0	5	2
49 Designer Assistant (Printing)	2	8	1
50 Desktop Publishing (DTP) System Operator	18	22	16
51 Digital Printing Machine Operator	0	1	4
52 Domestic Gas Fitter Classes 1 and 4	21	17	17
53 Electrical Appliances Service Technician	0	3	0
54 Electrical Engineering Technician	38	64	57
55 Electronics Craftsman	9	6	5
56 Electronics Technician	6	21	20
57 Engineering Assistant	17	3	3
58 Engineering Assistant (Plastic Production)	0	2	0
59 Engineering Assistant (Building Services)	29	16	7

<i>Trades</i>		<i>Number of New Apprentices Registered Voluntarily in each Financial Year</i>		
		<i>2008-2009</i>	<i>2009-2010</i>	<i>2010-2011</i>
60	Engineering Assistant (Construction Plant)	0	0	1
61	Engineering Assistant (Electrical)	13	16	13
62	Engineering Assistant (Mechanical)	2	2	0
63	Engineering Assistant (Pipe Rehabilitation)	0	1	0
64	Engineering Assistant (Underground Utilities Detection)	0	4	0
65	Fire Services Mechanic	23	14	15
66	Fire Services Technician	2	0	0
67	Fire-rated Plasterer/Painter	0	0	1
68	Flooring Products Installer and Repairer	0	0	1
69	Graphic Designer	0	0	9
70	Graphic Designer Assistant (Printing)	0	0	7
71	Industrial Vehicle Mechanic	1	1	1
72	Jewellery Order Processor	14	4	2
73	Junior Construction Technician	4	3	1
74	Kitchen Cabinet Installer and Repairer	0	0	1
75	Junior Quantity Surveying Technician	2	2	0
76	Lens Fitter	1	3	1
77	Lift Technician	0	0	2
78	Leveller	3	1	0
79	Mechanical Fitter	16	24	40
80	Machine Setter	4	1	2
81	Machinist (CNC)	0	0	1
82	Maintenance Mechanic	0	4	2
83	Marble Worker	1	1	0
84	Marine Safety Equipment Mechanic	1	0	0

<i>Trades</i>	<i>Number of New Apprentices Registered Voluntarily in each Financial Year</i>		
	<i>2008-2009</i>	<i>2009-2010</i>	<i>2010-2011</i>
85 Marketing Assistant (Printing)	3	2	1
86 Mechanical Engineering Technician	13	10	13
87 Metal Worker	9	8	3
88 Motorcycle Mechanic	0	0	1
89 Office Equipment Service Mechanic	2	3	0
90 Permanent Way Mechanic	1	7	7
91 Pipe Fitter	2	4	2
92 Prepress Co-ordinator (Printing)	5	7	4
93 Production Assistant (Printing)	1	1	0
94 Product Designer	0	0	1
95 Production Assistant (Watch)	1	0	1
96 Production Controller Assistant (Printing)	0	2	26
97 Production Engineering Assistant	1	0	0
98 Production Engineering Technician	1	0	0
99 Production Planner (Printing)	0	4	6
100 Production Planner Assistant (Printing)	34	25	2
101 Quality Controller Assistant (Print Finishing)	1	0	0
102 Quality Control Assistant (Electrical Product)	0	0	1
103 Quality Controller Assistant (Printing)	7	3	0
104 Quantity Surveying Technician	24	38	41
105 Refrigeration/Air-conditioning Technician	1	0	9
106 Sales Executives Assistant (Printing)	0	3	0
107 Senior Designer Assistant (Printing)	4	1	0

<i>Trades</i>	<i>Number of New Apprentices Registered Voluntarily in each Financial Year</i>		
	<i>2008-2009</i>	<i>2009-2010</i>	<i>2010-2011</i>
108 Senior Machine Operator (Offset Litho)	2	1	0
109 Screen Process Printer	0	0	1
110 Senior Production Planner Assistant (Printing)	0	1	0
111 Sheet Metal Fabricator	0	2	0
112 Site Co-ordinator	2	0	0
113 Steel Fabricator	5	13	10
114 System Operator Computer To Plate	0	1	2
115 Technical Assistant (Air Conditioning)	0	1	1
116 Technical Assistant (Electrical)	2	3	8
117 Technical Assistant (Electronics)	18	8	1
118 Technical Assistant (Security Systems)	1	0	1
119 Technician Apprentice (Air Conditioning)	2	3	5
120 Technician Apprentice (Electrical)	12	11	18
121 Technician Apprentice (Electronics)	3	0	7
122 Technician Apprentice (Information Technology)	0	4	0
123 Technician Apprentice (Mechanical)	4	10	8
124 Technician Apprentice (Vehicle)	9	2	2
125 Vehicle Technician	18	5	15
126 Welder	2	1	1
Total	1 197	1 307	1 341

- (c) The VTC is responsible for administering the "Apprenticeship Scheme" in accordance with the Ordinance. The VTC organizes publicity activities regularly to promote the Scheme through

different channels including various publicity campaigns, visits to employers to solicit their support and participation, setting up structured on-the-job training programmes for interested companies. Upon the enactment of the Minimum Wage Ordinance, the VTC has continued to conduct various publicity activities in accordance with the established publicity strategies.

- (d) The IAs undertake enforcement inspections in accordance with the Ordinance to regulate the employment of apprentices aged between 14 and 18 in designated trades. In addition, IAs also ensure that all registered apprentices (including those mandated to register under the Ordinance and those registered voluntarily) receive appropriate training through different types of visits. In the past three years, the numbers of enforcement inspections and non-compliant cases are as follows:

	<i>Year</i> <i>2008-2009</i>	<i>Year</i> <i>2009-2010</i>	<i>Year</i> <i>2010-2011</i>
Number of Enforcement Inspections	1 865	1 569	2 914
Number of Non-compliant Cases in Employing People Aged Between 14 and 18 in Designated Trades	18	15	2

As the employers concerned had rectified their practices in compliance with the Ordinance after receiving the VTC's advice, no prosecution action was considered necessary. Since the enactment of the Minimum Wage Ordinance, the VTC has continued to ensure that the employers participating in the Scheme meet the eligibility requirements as set out in part (b). It will also conduct enforcement inspections. While there is no need to further tighten the relevant regulatory arrangements, the VTC will closely monitor the situation.

- (e) Currently, the "Apprenticeship Scheme" covers about 140 designated trades and non-designated trades in an array of sectors including automobile, mechanical and electrical engineering, construction, jewellery as well as printing, with relevant posts such as craftsmen,

technicians, engineering assistants and designers. The Administration will keep the "Apprenticeship Scheme" under review, consider adjustments to the trades covered by the Scheme and improve the training contents and arrangements to meet the needs of the market. Furthermore, the VTC has streamlined the administration of the Scheme, re-planned and re-prioritized the scope of work, strengthened the monitoring of the training progress of apprentices as well as the related counselling and support. The VTC has also drawn up a new promotional plan that aims to introduce the "Apprenticeship Scheme" through the mass media, seminars and visits, with a view to attracting young people seeking to build their career to enrol and soliciting employers' support.

Hong Kong School of Motoring

9. **MR RONNY TONG** (in Chinese): *President, I have received requests for assistance from ex-driving instructors of the Hong Kong School of Motoring (HKSM), indicating that in 2003 when the number of learner drivers at HKSM dropped significantly which resulted in a surplus of driving instructors, more than 50 driving instructors with 10 to 20 years' instructing experience were made redundant by HKSM. They pointed out that as their driving instructors' licences only entitled them to give driving training within HKSM, their licences became invalid after they were made redundant, and thus they could not give driving training in the private market; moreover, given that there are not many driving schools in Hong Kong and the Transport Department (TD) had not issued new private driving instructors' (PDI) licences in the past three years, these instructors were forced to switch to other trades in their middle-age, and the livelihood of their families was also affected. In this connection, will the Government inform this Council:*

- (a) *whether the Government has considered further opening up the market for driving training services; if it has, when and how this will be implemented; if not, of the reasons for that; how the Government at present monitors the operation of HKSM and ensures that HKSM will not monopolize the market;*

- (b) *as I have learnt that at a joint meeting held in March 2003 with the Labour Department, the HKSM management echelon had met with the aforesaid more than 50 driving instructors who were made redundant and undertaken that when there was an increase in the number of learner drivers at HKSM or a shortage of its driving instructors, it would give priority to employing these driving instructors who were made redundant, whether the Government knows if HKSM has fulfilled that undertaking; if so, of the number of driving instructors re-employed by HKSM in each of the past eight years; if not, the reasons for that;*
- (c) *whether it knows the number of driving instructors newly recruited by HKSM since 2003 and their respective years of instructing experience; and among them, the number of those possessing PDI licences at the same time; and*
- (d) *whether at present, the TD gives preferential treatment to HKSM (for example, shortening the waiting time for learner drivers attending HKSM to make appointments for road tests and the duration of on-the-road driving practices, and offering preferential treatment for road test venues) to strengthen its advantageous position?*

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

- (a) The Administration has all along adopted a "two-pronged" approach in respect of driver training. On one hand, we promote off-street driver training through the establishment of driving schools; on the other hand, we maintain a sufficient supply of PDIs for on-street driver training.

To ensure that the "two-pronged approach" driver training policy is sustainable, the TD has reviewed biennially the need to issue new PDI licences since 1999, with a view to stabilizing the supply of PDIs. Factors as stipulated in Road Traffic (Driving Licences) Regulations (Cap. 374B) have to be taken into account:

- (a) prevailing traffic conditions;
- (b) policy adopted for driver training for the time being; and
- (c) demand for learner drivers to receive driving instruction from PDIs in respect of that group of motor vehicles.

We also agreed with the PDI trade in 1999 that the number of valid PDI licences prevailing at the time for the three groups of PDIs⁽¹⁾ would be used as benchmarks. The TD may consider issuing new PDI licences for a particular group when the number of valid licences falls below the benchmark by 10%.

The TD conducted reviews in 2002, 2004, 2006 and 2008, which concluded to issue a total of 633 new PDI licences to maintain the stable supply of on-street driver training.

On the other hand, designated driving schools are established in accordance with section 88K of the Road Traffic Ordinance (Cap. 374) (the Ordinance) to provide off-street driver training. The existing designated driving schools are:

- (a) Siu Lek Yuen Driving School;
- (b) Kwun Tong Driving School;
- (c) Ap Lei Chau Driving School; and
- (d) Yuen Long Driving School.

To monitor the operation of designated driving schools, the TD has issued Code of Practice in accordance with the Ordinance to specify the different requirements in relation to driver training courses, such as their contents, procedures, standards, and so on. The TD has also assigned officers to conduct inspections to monitor the relevant courses. Designated driving school may recruit holders of PDI

(1) The three groups concerned are: group 1 — private cars and light goods vehicles; group 2 — public light buses, private light buses, public buses and private buses, and group 3 — medium goods vehicles, heavy goods vehicles and articulated vehicles.

licences or restricted driving instructor (RDI) licences as driving instructors. There is no restriction in respect of the number of RDI licences, but their holders are only permitted to provide driver training services at the designated driving schools by which they are employed, and the relevant licences will cease to be valid once they leave the schools. This arrangement strikes a balance between PDIs and designated driving school in respect of provision of driver training services.

The present market of driver training is open. Learner drivers are free to choose between receiving driver training either at designated driving schools or from a PDI. In fact, in the past three years, around 60% of candidates taking the TD's driving tests received their training from PDIs, which suggests that there is no monopoly of the driver training market.

(b) and (c)

The undertaking made by the HKSM as mentioned in the relevant question is a negotiation between HKSM and its driving instructors. The TD was not involved in the relevant discussion at that time. The TD was informed by HKSM that it had not recruited any new driving instructors since 2003 after having laid off some of the driving instructors under its designated driving schools. As such, the circumstances of whether priority should be given to the driving instructors concerned do not exist. In fact, the HKSM also experiences a declining trend in respect of the number of students in recent years. The number of persons applying for driving tests at the TD through HKSM has dropped by over 20% since 2003, similar to the trend of the total number of persons applying for driving tests over the same period.

(d) The TD has all along handled requirements in relation to the facilities and equipment of designated driving schools in accordance with established practice and guidelines, with a view to ensuring that the schools are suitably equipped. No preferential treatment has been given to any designated driving school. On the arrangement of driving tests, the TD has been assigning driving examiners to different driving test centres (including designated driving schools)

for conducting driving tests in a fair manner, in accordance with the objective analysis on, and in proportion to, the numbers of test forms sold for designated driving schools and PDIs. Learner drivers of designated driving schools are not given any priority for taking driving tests. Separately, with regard to driver training, learner drivers who receive training from PDIs are free to decide on the number of training hours; whereas learner drivers of private cars/light goods vehicles of designated driving schools are required to receive at least 30 hours of indoor and practical training before they are allowed to take driving tests conducted by the TD, as stipulated in the Code of Practice issued by the TD.

Non-Compliant Employer and Officer Records Set up by Mandatory Provident Fund Schemes Authority

10. **MR CHAN KIN-POR** (in Chinese): *President, recently, the Mandatory Provident Fund Schemes Authority (MPFA) has launched an online searching platform, the "Non-Compliant Employer and Officer Records" (NCEOR), which sets out more than 3 700 criminal and civil records including those on failure to make Mandatory Provident Fund contributions, involving more than 2 300 employers. The purpose of setting up NCEOR is to further enhance the deterrent effect on non-compliant employers and officers as well as increase the transparency of the MPFA's enforcement actions. In this connection, will the Government inform this Council:*

- (a) *given that under the current arrangement, if an employer or an officer whose name has been disclosed has no further non-compliance within five years, all non-compliance record(s) of the employer or officer posted in the past will be removed from NCEOR at the end of the relevant month, yet in fact, even the information disclosed online is subsequently deleted from the original website, the same information which has already been circulated may still be found by search engines, that is to say, it is possible that the names disclosed can be found on the Internet forever, whether the MPFA has considered the related problem before implementing this initiative, and whether it has any solution; and*

- (b) *given that the information disclosed only includes the names of the employers or officers, company names and business registration numbers, it is therefore not easy to distinguish the employers involved from persons with the same names, how the MPFA solves the problem that innocent persons with the same names may as a result be subjected to unjustified suspicions?*

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

- (a) The MPFA launched the NCEOR in May 2011 to provide records of both criminal convictions and civil awards/judgments for contravention of the Mandatory Provident Fund Schemes Ordinance by employers and their officers. As with other court judgments, the abovementioned information is already in the public domain. The purpose of the new measure is to enhance the transparency of the MPFA's enforcement work. It should help enhance the deterrent effect against non-compliant employers and officers which in turn will strengthen the protection of employees' interests.

Before implementing the measure, the MPFA has conducted a comprehensive review and made reference to the practices of other enforcement agencies/government departments as well as the advice of the Privacy Commissioner for Personal Data.

- (b) The NCEOR set up by the MPFA contains the names of non-compliant employers and officers and their company names and business registration numbers. As set out in part (a) of the reply, before implementing the measure, the MPFA has made reference to the practices of other enforcement agencies/government departments as well as the advice of the Privacy Commissioner for Personal Data.

Voter Registration Campaigns

11. **MR ALAN LEONG** (in Chinese): *President, regarding voter registration campaigns, will the Government inform this Council:*

- (a) *of the respective amounts of expenditure incurred in implementing voter registration campaigns in each of the past four years;*
- (b) *of the respective numbers of voters registered through different channels in each of the past four years (list in the table below);*

<i>Year</i>	<i>Number of voters registered online via GovHK</i>	<i>Number of voters registered by filling in voter registration forms</i>
<i>2007</i>		
<i>2008</i>		
<i>2009</i>		
<i>2010</i>		

- (c) *of the respective numbers of voter registration forms received during the period from the deadline for voter registration to the polling day in the election years concerned in the past four years (list in the table below);*

	<i>Deadline for voter registration (A)</i>	<i>Polling day (B)</i>	<i>Number of voter registration forms received during the period from the deadline for voter registration (A) to the polling day (B)</i>
<i>2007 District Council Election</i>			
<i>2008 Legislative Council Election</i>			
<i>2010 Legislative Council By-election</i>			

- (d) *given that tenants of private rental housing are generally not keen to update their voter registration particulars, what measures the Government will adopt to encourage them to update their residential addresses and exercise their right as voters; and*

- (e) *whether the Government will consider repealing the voter registration system, so that all eligible members of the public can exercise their right as voters directly without going through administrative formalities; if it will, of the details; if not, the reasons for that?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Chinese): President,

- (a) The actual expenditure (including publicity and other operational expenses) in implementing voter registration campaigns in each of the past four years is set out below:

<i>Year</i>	<i>Actual expenditure (\$ million)</i>
2007	16
2008	25.4
2009	5.8
2010	4.8

As there were major elections in 2007 and 2008, the actual expenditure in these years is higher than that in the other two years.

- (b) The numbers of voters registered through GovHK website and filling in voter registration forms in each of the past four years are set out below:

<i>Year</i>	<i>Number of voters registered online via GovHK</i>	<i>Number of voters registered by filling in voter registration forms</i>
2007	124	142 192
2008	72	166 380
2009	31	63 536
2010	19	85 860

- (c) The numbers of voter registration forms received during the period from the deadline for voter registration to the polling day in the election years concerned in the past four years are set out below:

	<i>Deadline for voter registration⁽¹⁾ (A)</i>	<i>Polling day⁽¹⁾ (B)</i>	<i>Number of voter registration forms received during the period from the deadline for voter registration (A) to the polling day (B)</i>
2007 District Council Election	147 559	176 221	28 662
2008 Legislative Council Election	166 859	183 716	16 857
2010 Legislative Council By-election	86 949	85 005	Not applicable ⁽²⁾

Notes:

- (1) Figures counting from the first day of the voter registration cycle in the previous year.
 - (2) The polling date for the 2010 Legislative Council By-election was 16 May 2010. The deadline for voter registration for the same year was 17 May 2010.
- (d) In order to protect the voting rights of registered voters, the Registration and Electoral Office (REO) encourages tenants who have moved to update their residential addresses with the REO through the following measures:
- (i) during the voter registration campaigns, the REO will remind registered voters who have moved to report their new addresses to the REO in writing before the statutory deadline for change of registration particulars, through public media (for example, newspaper, television and radio channels);
 - (ii) during the voter registration campaigns, the REO will write to households which have moved into new private developments to remind them to report changes in address to the REO;

- (iii) with the consent of the Privacy Commissioner for Personal Data, the REO will conduct data matching of the records of relevant government departments such as the Housing Department with those of the REO. For voters whose registered addresses do not match with those provided by the relevant government departments, the REO will send notification letters on change of address to these voters to update their registered addresses; and
 - (iv) if a person has given consent for data transfer, the Immigration Department will provide the REO with information on change of address it receives through the application for smart identity card, so as to facilitate the updating of the voters' registered addresses in the electoral register.
- (e) According to existing electoral legislation, eligible persons need to submit applications to the REO before the statutory deadline for voter registration in a year, so that their names can be included in the register compiled in that year. The persons so registered can exercise their voting rights after the publication of the register. This arrangement can ensure that eligible persons have the rights to choose whether to be registered as voters. Based on the residential address provided by the applicants, the REO will also allocate an applicant to the relevant Legislative Council geographical constituency and District Council constituency.

As this mechanism of voter registration has been effective, we consider that the existing system should continue. In recent years, the number of registered voters has been on an increasing trend. According to the Final Register published in 2010, there are more than 3.43 million registered geographical constituency electors, accounting for 73% of the eligible persons. This is a record-high number.

Regulation of Breast-milk Substitutes

12. **DR JOSEPH LEE** (in Chinese): *President, according to available information, the percentage of babies exclusively breastfed for four to six months*

in Hong Kong is only 12.7%; in other words, breastmilk substitutes (for example, milk powder and rice cereal) have become the staple food for most babies, and their ingredients, quality and safety directly affect babies' health and growth; at present, there are quite a number of milk powder products which are commonly known as "parallel-imported" products or not imported through dealers in Hong Kong and from unknown sources for sale in the market, and some advertisements are suspected to be exaggerating the components of milk powder and there is no assurance of their quality. In this connection, will the Government inform this Council:

- (a) whether it will formulate regulations on breastmilk substitutes for babies of zero to six months to comprehensively regulate the manufacturing process, amount of supply, marketing practices and promotional tactics of all breastmilk substitutes for sale in Hong Kong; if it will, of the details; if not, the reasons for that;*
- (b) given that the Government has indicated that it is drawing up a Code of Marketing of Breastmilk Substitutes applicable to Hong Kong (the Code) to regulate the marketing practices of manufacturers and distributors of breastmilk substitutes, of the detailed scope of the Code; whether all breastmilk substitutes for sale in Hong Kong are covered; if not, the reasons for that;*
- (c) apart from the Code, whether the Government has any measure in place to ensure that members of the public have sufficient information in choosing suitable breastmilk substitutes;*
- (d) whether the nature of the Code is only for voluntary compliance by the trade; if so, what measures the Government has to ensure that all manufacturers and distributors of breastmilk substitutes comply with the Code, and when formulating the measures, whether it has assessed their effectiveness; if so, of the details; if not, the reasons for that; and*
- (e) given that the Code involves stakeholders of different sectors, whether the Government has conducted thorough consultation on it, and has held discussions with various stakeholders, including manufacturers and distributors of breastmilk substitutes; if it has, of the details including the timetable; if not, the reasons for that?*

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

- (a) Currently, the manufacturing process of breastmilk substitutes, like that of other food, is subject to regulation under existing legislation. If breastmilk substitutes such as infant formula are manufactured in Hong Kong, their manufacturing process must be carried out under a food factory licence in accordance with section 31 of the Food Business Regulation (Cap. 132X). As for the manufacture of milk products (including liquid breastmilk substitutes) in Hong Kong, a milk factory licence is required under the Milk Regulation (Cap. 132AQ).

We have been proactively liaising closely with milk powder suppliers, the Hong Kong General Chamber of Pharmacy and major retailers, and given assurance by the suppliers that they have sufficient stock, and that they would increase supply to cope with the growing market demand.

The major milk powder suppliers have all agreed that meeting the needs of local babies and infants is their prime responsibility, and they have been closely monitoring the market situation. If necessary, arrangements will be made for increasing supply in Hong Kong to ensure a stable supply of milk powder in the local market. The major brands have already set up hotlines or purchase and delivery services to ensure that the needs of local babies and infants are met. Individual suppliers have also pointed out that there has been an upward trend in requests for purchase and delivery services from their members, which shows that the public has got used to purchasing milk powder under the membership system. In addition, some retail outlets have set sale quota according to their actual need for certain brands of milk powder in order to cater for the demand of local citizens.

We consider that the existing measures have helped stabilize the supply of milk powder. We will continue to keep close liaison with the Consumer Council, and major suppliers, importers and retailers of milk powder to jointly ensure the stable supply of milk powder in the local market.

On advertising and marketing practices, basic requirements have been set out under the International Code of Marketing of Breastmilk Substitutes promulgated by the World Health Organization (WHO) in 1981. The WHO also updated these requirements and enhanced the relevant regulation by way of resolution at its subsequent World Health Assembly (WHA) held once every one to two years in light of scientific and market developments. At the 63rd WHA held in 2010, the WHO urged its member states to end all forms of inappropriate promotion of foods for infants and young children (that is, those who are zero to three years old). At present, we mainly rely on milk powder manufacturers and distributors in Hong Kong to exercise self-discipline in compliance with the WHO Code and requirements in the relevant WHA resolutions in monitoring their marketing practices. Where non-compliance of the WHO Code was noted, the Department of Health (DH) would issue warning letters to the manufacturers involved.

- (b) To further regulate the advertising and marketing of breastmilk substitutes, the DH has set up a Taskforce on Hong Kong Code of Marketing of Breastmilk Substitutes at the end of June 2010, which is tasked to develop a Code of Marketing of Breastmilk Substitutes applicable to Hong Kong (the Hong Kong Code). The objective of the Hong Kong Code is to regulate manufacturers and distributors of breastmilk substitutes and related products to prohibit them from advertising and marketing their breastmilk substitutes and related products by way of malpractice. The Administration will work out the details and coverage of the Hong Kong Code having regard to the details and scope of regulation recommended in the WHO Code and the WHA resolutions.
- (c) At present, the DH has been making use of different channels including meetings between healthcare professionals and parents as well as workshops to provide parents with correct information about diets and nutrition for infants and young children, and to give advice to parents on choosing the appropriate breastmilk substitutes and related products. To enhance parents' understanding on diet for infants and young children, the DH plans to produce a parenting

education kit on healthy diet for infants and young children, which will include a handbook, education VCDs and recipes, and so on.

- (d) At present, many countries like Australia, New Zealand, Singapore, Malaysia, and so on, have formulated voluntary guidelines applicable in their own countries for compliance by the trade with reference to the WHO Code. In light of the experience of other countries, it would be more effective in the control of undesirable marketing practices if appropriate monitoring and sanction mechanisms are put in place in tandem with implementation of the Code. After the Hong Kong Code has been put into implementation, the DH will monitor the situation and canvass the views of various parties to consider if there is a need to step up enforcement and regulation through the local Code.
- (e) The Taskforce on Hong Kong Code of Marketing of Breastmilk Substitutes responsible for developing the Hong Kong Code is comprised of members from different sectors of the community, including representatives from the Hospital Authority, Consumer Council, specialist groups, academia, non-governmental organizations, and other major local partners. The DH has earlier met major local milk powder suppliers to listen to their views on the Hong Kong Code. It is expected that the drafting of the Hong Kong Code will be completed by the end of 2011. Upon completion of the drafting of the Hong Kong Code, the DH will consult the trade and collect the views of various parties. It is expected that the Hong Kong Code will be put into implementation within 2012.

Children Born in Hong Kong to Non-Hong Kong Residents

13. **MR CHEUNG MAN-KWONG** (in Chinese): *President, under Article 24 of the Basic Law, all Chinese citizens born in Hong Kong have the right of abode (ROA) in Hong Kong regardless of whether their parents have settled in Hong Kong. Given that among the new-born population of Hong Kong, the number and percentage of babies of Chinese nationality born to non-Hong Kong residents have continued to increase in recent years, while the authorities set the*

quota for Mainland residents giving birth in Hong Kong mainly according to the capacity of the local healthcare system. In this connection, will the Government inform this Council:

- (a) given that the ageing of Hong Kong's population will become more serious in the next 30 years, and the ratio of the number of persons aged under 15 and those aged 65 and over per 1 000 persons aged between 15 and 64 (hereinafter mentioned as "overall dependency ratio") will increase, whether the authorities know how the population of babies of Chinese nationality born in Hong Kong to non-Hong Kong residents will affect Hong Kong's overall dependency ratios for the next 30 years; if they know, of the overall dependency ratios for the next 30 years calculated respectively by including and excluding the number of such babies (set out the figures at an interval of every five years), and whether inclusion of the number of such babies will lead to a relative increase or decrease in Hong Kong's overall dependency ratios, as well as the corresponding rates of increase/decrease; if the authorities do not know how such baby population will affect the demographic structure of Hong Kong, how they will formulate the population policy and other related policies;*
- (b) given that babies of Chinese nationality born in Hong Kong to non-Hong Kong residents have ROA and are thus entitled to all public benefits and services in Hong Kong, whereas some children of Hong Kong citizens and their Mainland spouses are born on the Mainland as their parents cannot afford the charges for delivery in Hong Kong at \$39,000 or more, and such children need to apply for a Permit for Proceeding to Hong Kong and Macao (commonly known as "One-way Permit") to reside in Hong Kong, and until the approval of the Permit they are not entitled to the public benefits and services of Hong Kong, whether the authorities have reviewed if this arrangement is appropriate, and whether they know if there is any other country which adopts the same arrangement;*
- (c) given that Mainlanders applying in the capacity of investors or professionals for residing in Hong Kong together with their children must fulfil a number of requirements in respect of capital assets or*

competencies, whereas Mainlanders giving birth in Hong Kong only need to be able to pay for obstetric services in Hong Kong and their children of Chinese nationality born in Hong Kong can obtain ROA, on what governance principles the Government has based in determining the number of and arrangements for these Mainlanders migrating to Hong Kong; and

- (d) *whether the Steering Committee on Population Policy (Steering Committee) chaired by the Chief Secretary for Administration has discussed the aforesaid issues; if it has, of the outcome of its discussions; if not, the reasons for that?*

CHIEF SECRETARY FOR ADMINISTRATION (in Chinese): President,

- (a) In order to assess the impact of babies born in Hong Kong to Mainland women (including those of Chinese nationality born to parents who are both non-Hong Kong permanent residents, known as "Type II babies" below) on Hong Kong population, the Census and Statistics Department (C&SD) conducted rounds of "Survey on babies born in Hong Kong to Mainland women" at the birth registries between late January and March 2007, between January and February 2009 and between October and December 2009 to gather information about the parents' intention to have their babies returning to live in Hong Kong. With reference to the results of the above three rounds of survey and the preliminary analytical results based on cross-boundary movement data, the C&SD has made a projection assumption that only about 5% of Type II babies will stay in Hong Kong after birth. The remaining 95% will leave Hong Kong before reaching the age of one and among them, 50% will return to live in Hong Kong before reaching the age of 21. In other words, about 52% of Type II babies will eventually settle in Hong Kong.

In projecting the future population of Hong Kong, the C&SD has included the above projection assumption in the calculation. The details of which are set out in Hong Kong Population Projections 2010-2039 published by the C&SD in July 2010. It is indicated in

the projection results that ageing of the Hong Kong population will continue. Based on the actual figures for 2009, the figures of future child dependency ratio, elderly dependency ratio and overall dependency ratio⁽¹⁾ projected by the C&SD are tabulated below:

<i>Year</i>	<i>2010*</i>	<i>2014</i>	<i>2019</i>	<i>2024</i>	<i>2029</i>	<i>2034</i>	<i>2039</i>
Child dependency ratio	162	154	173	188	189	181	171
Elderly dependency ratio	172	196	247	317	391	432	454
Overall dependency ratio	334	350	420	505	580	612	625

Note:

* Actual figures

Based on the above population projection, the current Type II babies will, at least by the year 2039, contribute an important part in the growth of the working population (that is, aged 15 to 64) in Hong Kong if they choose to settle in Hong Kong in the future. This will have a positive effect on mitigating the ageing problem of the Hong Kong population.

It should be noted that the intention expressed by the parents of Type II babies during the surveys may change over time and will be subject to a number of factors, for example, the financial situation of these families, whether they have close relatives in Hong Kong, whether their places of origin are close to Hong Kong, the social and economic developments of Hong Kong in comparison with those of the Mainland or other areas. In this connection, at present one of the important issues of the Steering Committee is to examine ways to

(1) Child dependency ratio refers to the number of persons aged under 15 per 1 000 persons aged between 15 and 64. Elderly dependency ratio refers to the number of persons aged 65 and over per 1 000 persons aged between 15 and 64. Overall dependency ratio refers to the number of persons aged under 15 and those aged 65 and over per 1 000 persons aged between 15 and 64.

better ascertain the intention of the parents of Type II babies in order to make better projections and assessments.

- (b) According to Article 24 of the Basic Law, persons of Chinese nationality born outside Hong Kong to Hong Kong permanent residents who are Chinese citizens shall be permanent residents of Hong Kong and shall have the ROA. In this connection, a child of Chinese nationality born in the Mainland, whose father or mother is a Hong Kong permanent resident at the time of their birth, may apply for a Certificate of Entitlement from the Immigration Department through the exit-entry administration of public security authority in the Mainland to establish his/her status as a Hong Kong permanent resident. On the other hand, Article 22 of the Basic Law provides that for entry into the Hong Kong Special Administrative Region, people from other parts of China must apply for approval. It is therefore necessary for such babies to apply to the office of exit-entry administration of public security authority in the Mainland for a One-way Permit in order to settle in Hong Kong. In general, the formalities for such babies settling in Hong Kong may be completed within a year.

Public services such as public medical and education services are heavily subsidized by public money. It is hence appropriate that they should only be available to residents of Hong Kong, or that such people should have priority in using public resources. This way of allocating public resources is widely adopted in many places of the world.

- (c) Admission schemes for professionals and talents to work and settle in Hong Kong are initiatives to optimize our workforce. The objective is to attract talents (including Mainland residents) to Hong Kong to cater for our economic developments and contribute to our future sustainable growth. As for Chinese citizens born in Hong Kong, they acquire the ROA in Hong Kong according to the law.
- (d) The Steering Committee has discussed the impacts of Type II babies on the demographic structure of Hong Kong. Owing to the persistently low fertility rate of local women and longer life

expectancy, it is undeniable that our population is on an ageing trend. Once arrived and settled in Hong Kong, Type II babies may, to a certain extent, supplement our workforce and mitigate the problem of an ageing population. The C&SD has taken into account the projection assumption of Type II babies returning to Hong Kong in its projection of Hong Kong's future population. The issue to be addressed under the population policy is to assess and project whether these babies will return to Hong Kong and, if yes, when, and what the ramifications are, so as to make better preparation in the relevant public service areas. Regarding Mainland women who are not Hong Kong residents giving births in Hong Kong, our policy is to ensure that local pregnant women are given proper obstetric services and priority to use such services; to limit the number of non-local pregnant women coming to Hong Kong to give births to a level that can be supported by our healthcare system; and to deter dangerous behaviour of non-local pregnant women in seeking emergency hospital admissions through the Accident and Emergency Departments shortly before labour.

Filing of Tax Returns and Payment of Taxes

14. **MR JEFFREY LAM** (in Chinese): *President, regarding the filing of tax returns and payment of taxes by taxpayers, will the Government inform this Council:*

- (a) *what mechanism the Inland Revenue Department (IRD) has to ensure that it maintains effective means of contact with taxpayers, so as to prevent some taxpayers from claiming that they have not received letters from IRD;*
- (b) *what mechanism IRD has to ensure that taxpayers have duly received its letters, so as to prevent some taxpayers from claiming that they are not able to complete and file tax returns and pay taxes on time because they have not received letters from IRD;*
- (c) *given that at present, IRD does not issue any written acknowledgement to taxpayers upon receipt of the tax returns they completed in writing and their tax payments, what mechanism is in*

place at present to assure taxpayers that IRD has duly received their tax returns and tax payments, so as to prevent their being accused of omitting to file tax returns and pay taxes; and

- (d) *given that at present, when taxpayers file their tax returns, they are not required to provide documents to support their application for deduction of expenses, for example, expenses of self-education and approved charitable donations, and so on, how IRD, in making assessments, review the taxpayers' tax returns to ensure that there is no misrepresentation or tax evasion by deception; of the number of cases reviewed by IRD in each of the past five years, and, among them, the number of cases in which prosecution was instituted, as well as the penalties imposed?*

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

- (a) and (b)

Section 51(8) of the Inland Revenue Ordinance (IRO) stipulates that a taxpayer who changes his/her address shall within one month inform the IRD in writing of the particulars of the change. Taxpayers may notify IRD of their updated correspondence addresses through various means, such as tax return, notification of change of correspondence address, letter or online service provided by "eTax" on the "GovHK" platform. Any person who without reasonable excuse fails to comply with the relevant requirement commits an offence under section 80(1) of the IRO and is liable on conviction to a fine of \$10,000.

According to section 58(2) of the IRO, every notice given by virtue of the IRO may be served on a person either personally or by being delivered at, or sent by post to, his/her last known postal address, place of abode, business or employment or any place at which he/she is, or was during the year to which the notice relates, employed or carrying on business or the address of the property in respect of which he/she is chargeable to property tax.

According to section 58(3) of the IRO, any notice sent by post shall be deemed, unless the contrary is shown, to have been served on the day succeeding the day on which it would have been received in the ordinary course by post. If taxpayers have opted to receive tax returns and/or notices of assessment through the online service provided by "eTax", they are deemed to have received the above documents once the relevant electronic records are accepted by their accounts maintained at the "GovHK" system.

In fact, many notifications issued pursuant to the IRO, including tax returns, demand notes and other correspondences, require taxpayers to take certain actions within the stipulated periods. To avoid delay, taxpayers should take the initiative to notify the IRD of their latest correspondence addresses as soon as possible. In this regard, the IRD reminds taxpayers at appropriate time every year the importance of updating their correspondence addresses, submitting tax returns and paying tax in time by publishing notices on the newspapers or through the Information Services Department and holding press conferences. The above reminders are conducive to encouraging taxpayers to submit tax returns and pay tax in a timely manner in compliance with the requirements of the IRO. At the same time, they help remind taxpayers to approach the IRD for appropriate assistance where necessary.

- (c) Since 1 January 2009, the IRD has terminated the issuance of paper receipts for tax payments made through cheque sent in by post or through electronic means (except for profits tax paid by corporations and partnerships and property tax paid in respect of jointly owned properties). The above arrangement has taken into consideration circumstances that taxpayers sending in cheque by post or using electronic means for tax payments could ascertain the payment status through various means, including the transaction records generated by the automatic teller machines, the payment reference numbers and payment confirmation records issued by the institutions offering the payment service as well as the bank statements. Should there be special needs, taxpayers may still apply for "certificates of payment" from the IRD. If taxpayers pay tax at a post office in person by cash, cheque or the Easy Pay System, the amount paid will be printed on their tax demand notes as proof of payment.

Taxpayers using the online service provided by "eTax" will receive in the message box of their "eTax" accounts electronic receipts issued by the IRD for their tax payments. They can also check the status of their tax returns through the "tax position" in their "eTax" accounts.

Irrespective of the means adopted in submitting tax returns and paying tax, taxpayers can make enquiries to the IRD either by phone, letter or email on matters relating to their submission of tax returns or tax payments.

- (d) In making tax assessments, the IRD would first examine the information furnished by taxpayers in their tax returns. The IRD would conduct tax assessments based on the information furnished in the tax returns after confirming the *prima facie* accuracy of the information. There is also a computer monitoring system to detect any anomalies in the information such as the self-education expenses and approved charitable donations filed by the taxpayers in their tax returns. For dubious cases, the IRD would double check the information furnished in the tax returns or request further information before issuing notices of assessment.

After issuing notices of assessment, the assessors would screen out cases for review based on the IRD's guidelines. In addition, the IRD would conduct special reviews on certain number of cases which have claimed deduction for individual items such as self-education expenses and approved charitable donations and request the taxpayers concerned to provide the required supporting documents. The IRD does not keep statistics on the number of cases reviewed.

Although taxpayers are not required to furnish documentary evidence for their deduction claims together with their tax returns, according to section 60 of the IRO, the IRD can raise additional assessment for that year and six previous years if the tax charged is lower than the appropriate amount. If the IRD discovers from post-assessment audits that a taxpayer has submitted incorrect information in his/her tax return, the IRD would raise additional assessment on the taxpayer concerned within the statutory time limit,

demand for the tax undercharged, and consider instituting prosecution having regard to the relevant circumstances of individual cases. Taxpayers should therefore retain the relevant receipts and records for at least seven years for examination by the IRD in future inspections.

According to section 80(2) of the IRO, a taxpayer who without reasonable excuse makes an incorrect statement in connection with a claim for any deduction or allowance under the IRO commits an offence and is liable on conviction to a fine of \$10,000 and a further fine of treble the amount of tax undercharged. According to section 82 of the IRO, any person who wilfully with intent to evade tax omits from a tax return any sum which should be included, or makes any false statement in connection with a claim for any deduction or allowance, commits an offence. The maximum penalty on conviction is three years' imprisonment and a fine of \$50,000, plus a further fine of treble the amount of tax undercharged.

In the past five years, the numbers of convicted cases before the court pursuant to sections 80 and 82 of the IRO are as follows:

<i>Year</i>	<i>Number of cases</i>	
	<i>Prosecution under section 80 of the IRO</i>	<i>Prosecution under section 82 of the IRO</i>
2006-2007	1	3
2007-2008	2	8
2008-2009	1	1
2009-2010	0	3
2010-2011	0	4

For the above four convicted cases pursuant to section 80 of the IRO, the fines imposed range from \$10,000 to \$54,650. Among the above convicted cases pursuant to section 82 of the IRO, one taxpayer concerned was sentenced to perform 240 hours of community service and the other taxpayers concerned were fined for an amount ranging from \$23,000 to about \$1.3 million and/or sentenced for imprisonment from six weeks to 24 months.

Works Projects Affected by Court Judgment Regarding Environmental Impact Assessment Reports for Hong Kong-Zhuhai-Macao Bridge

15. **MS AUDREY EU** (in Chinese): *President, the Chief Executive, the Chief Secretary for Administration, the Secretary for Transport and Housing and the Secretary for the Environment earlier pointed out respectively on different occasions that more than 70 works projects would be affected by the judgment delivered by the High Court in April this year regarding the Environmental Impact Assessment (EIA) reports for the Hong Kong-Zhuhai-Macao Bridge Hong Kong Link Road and the Hong Kong Boundary Crossing Facilities projects. In this connection, will the Government set out in the tables below:*

- (a) *relevant information on the aforesaid works projects being affected; and*

<i>Works project</i>	<i>Applicant of environmental permit</i>	<i>Filing date of EIA reports</i>	<i>Approval date of EIA reports (if approved)</i>	<i>Anticipated approval date of EIA reports (if applicable)</i>	<i>Commencement date of works (if already started)</i>	<i>Anticipated commencement date of works (if not yet started)</i>	<i>Anticipated completion date</i>	<i>Progress of works</i>	<i>Funding progress (if applicable)</i>

- (b) *relevant information on the works projects which will not be affected by the aforesaid court judgment?*

<i>Works project</i>	<i>Applicant of environmental permit</i>	<i>Filing date of EIA reports</i>	<i>Approval date of EIA reports (if approved)</i>	<i>Anticipated approval date of EIA reports (if applicable)</i>	<i>Commencement date of works (if already started)</i>	<i>Anticipated commencement date of works (if not yet started)</i>	<i>Anticipated completion date</i>	<i>Progress of works</i>	<i>Funding progress (if applicable)</i>

SECRETARY FOR THE ENVIRONMENT (in Chinese): President, on 22 January 2010, a citizen of Hong Kong made an application for judicial review regarding the air quality impact assessment in respect of Hong Kong section of the Hong Kong-Zhuhai-Macao Bridge project. On 18 April 2011, the Court of

First Instance (CFI) handed down the Judgment which rejected six of the seven issues contended by the Applicant. But after considering the purpose of the Environmental Impact Assessment Ordinance (EIA Ordinance), the CFI ruled that apart from assessing the cumulative environmental impact caused by the designated project, the EIA report should include a "stand alone" analysis of the project and put forward relevant mitigation measures, so as to allow the Environmental Protection Department (EPD) to consider whether the relevant impacts have been kept to the minimum. The Judgment gives rise to significant legal issues relating to the EIA Ordinance and to its implementation. After seeking legal advice and considering relevant factors thoroughly, the EPD lodged an appeal against the Judgment on 13 May 2011.

During the appeal process, the EPD shall follow the Judgment when deciding on applications for EIA report approval or granting of environmental permits submitted under the EIA Ordinance.

The EIA process is open and transparent. Respective information on different stages of a project which undergoes EIA process under the EIA Ordinance can be located on the EPD's website. The latest information of individual project will be updated periodically. The concerned website address is as follows: <<http://www.epd.gov.hk/eia/cindex.html>>. Regarding information on the project outside the EIA process, such as budget, progress, and so on, and their ensuing changes as a result of the present CFI Judgment, it will need to be independently assessed by the project proponent having regard to the specific conditions of individual project.

Disposal of Waste Car Batteries

16. **MR CHAN HAK-KAN** (in Chinese): *President, it is understood that the car batteries widely used in cars at present contain high concentrations of lead and acid liquids and, if handled improperly, will seriously pollute water and soil. However, some trade representatives have reflected that there is currently no suitable treatment facility in Hong Kong, and they worry that law-breakers will disassemble waste car batteries improperly to extract useful substances from these waste batteries, causing pollution problems. In this connection, will the Government inform this Council:*

- (a) *whether it knows, in each of the past three years, the respective number of car batteries replaced and the number of car batteries collected by the 23 licensed chemical waste collectors (LCWCs);*
- (b) *in accordance with existing requirements, how LCWCs should handle the car batteries they collected; and whether it knows, in the past three years, if there is any difference between the number of waste car batteries handled in accordance with the procedures required at present and the actual number of car batteries replaced; if so, of the details;*
- (c) *of the number of prosecutions instituted by the Government against improper handling of waste car batteries in the past three years; and*
- (d) *whether it has plans to set up suitable treatment facilities for waste car batteries; if it has, of the details; if not, the reasons for that?*

SECRETARY FOR THE ENVIRONMENT (in Chinese): President, generally speaking, abandoned waste car batteries fall within the category of chemical waste and are regulated under the Waste Disposal Ordinance and the Waste Disposal (Chemical Waste) (General) Regulation (hereinafter called "the Regulation"). According to the Regulation, waste car battery producers such as auto repair shops, must register with the Environmental Protection Department. The packaging, labelling and storage of waste batteries must follow the Code of Practice published under the Regulation. There are currently about 1 700 registered producers of waste car batteries in Hong Kong. The Waste Disposal Ordinance provides for the licensing of collection and disposal of waste car batteries. Waste car battery collectors and disposal facilities must be licensed and are required to manage waste car batteries in accordance with the licence conditions. There are currently 23 licensed collectors and two licensed recycling or disposal facilities. The Waste Disposal Ordinance also controls import and export of waste car batteries. A permit must be obtained from the Environmental Protection Department for each import or export case and the operation must comply with the permit conditions. In addition, a "Trip Ticket" system is currently in force to track the generation, collection and disposal of waste batteries. Waste producers, licensed collectors and disposal facilities have to report on and keep copy of each Trip Ticket as a documentary proof of proper

handling of chemical waste. From time to time, the Environmental Protection Department conduct inspections to waste car battery collection points, storage sites and disposal facilities to ensure that chemical waste is properly handled from the point of generation to its final disposal, and in accordance with the Regulation. Under the Waste Disposal Ordinance and the Regulation, offences related to waste car batteries would be subject to a maximum fine of \$200,000 and imprisonment for six months upon conviction.

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

- (a) The life expectancy and replacement time of car batteries are affected by various factors, mainly including vehicle mileages, vehicle repair and maintenance conditions, battery qualities and driving habits of vehicle owners. Some drivers may replace their car batteries before they are totally flat out. Such batteries are still reusable and may be recovered for resale. Given the increasing traffic volume between Hong Kong and the Mainland, some Hong Kong drivers choose to replace their car batteries in the Mainland. In view of the above factors, we are unable to reliably estimate the number of car batteries being replaced annually in Hong Kong. However, according to the Trip Ticket records of chemical waste, licensed waste collectors collected on average about 1 200 tonnes of waste batteries (mainly lead acid batteries for vehicles) each year in Hong Kong over the past three years, which was roughly equivalent to some 50 000 waste car batteries.
- (b) Under the Waste Disposal Ordinance, licensed collectors of waste car batteries must deliver the waste to licensed reception facilities. The liquid electrolyte in the batteries must be separately collected and delivered to the Chemical Waste Treatment Centre for treatment and disposal. Over the past three years, about 1 070 tonnes of waste batteries and battery electrolyte were delivered to the landfill and the Chemical Waste Treatment Centre for treatment and disposal annually. The remaining 130 tonnes of waste batteries were exported to overseas facilities for recycling. For the reasons as stated in part (a) above, we are unable to make comparison with the number of car batteries replaced in Hong Kong.

- (c) The table below shows the number of prosecutions involving waste batteries (including production, storage, collection, import and export) under the Waste Disposal Ordinance and the Regulation for the past three years:

Year	Number of Prosecutions		
	Import and Export	Production, Storage Collection, and so on	Total
2008	55	0	55
2009	34	0	34
2010	29	4	33

- (d) The production, collection and disposal of waste batteries are subject to regulatory control in Hong Kong. At present, licensed collectors and disposal facilities have adequate capability and capacity to properly manage local waste arisings. Nevertheless, waste car batteries can be recycled. According to records kept by the Environmental Protection Department, a factory at the Yuen Long Industrial Estate is licensed to recycle waste car batteries. One of the sites at Phase one of the EcoPark at Tuen Mun has been leased for recycling of waste batteries. The Environmental Protection Department will continue to encourage recycling of waste car batteries with a view to reducing the quantities of waste required for disposal.

Transfer Schemes for Overcrowded Public Rental Housing Households

17. **MR WONG KWOK-HING** (in Chinese): *President, the Hong Kong Housing Authority (HA) launches the Territory-wide Overcrowding Relief (TWOR) transfer exercises and Living Space Improvement Transfer Scheme (LSITS) every year to enable public rental housing (PRH) tenants living below 5.5 square metres (sq m) and 7 sq m internal floor area (IFA) per person respectively to apply for transfer to larger flats. Yet, some PRH tenants have relayed to me that when they inquired about such exercises and scheme, the HA staff said that they could only be allocated larger flats in remote areas such as Tin Shui Wai and Tung Chung, and so on, instead of being transferred to larger*

flats in the same area where they are living (same area) or in the same district for PRH allocation (same district). In this connection, will the Government inform this Council:

- (a) of the numbers of PRH tenants living below 5.5 sq m and 7 sq m IFA per person respectively at present, with a breakdown by the four districts of urban, extended urban, the New Territories and the islands;*
- (b) in the past three years, of the respective numbers of "TWOR" and "LSITS" applications received by the HA, the tenants successfully transferred, and among such tenants, those who were transferred to flats in the same area or the same district;*
- (c) of the numbers of PRH flats set aside every year by the authorities for transfer under the aforesaid exercises and scheme; whether such flats are set aside in every district; if so, of the number of flats available for transferring overcrowded households every year, with a breakdown by district; if not, the reasons for that;*
- (d) whether the Housing Department (HD) has guidelines to instruct its staff to restrict applicants of the aforesaid exercises or scheme to be transferred to PRH flats in remote areas only when the flats available for transferring overcrowded households in the applicants' districts are occupied or insufficient; if it has, of the reasons for that; if not, whether applicants can still wait for transfer under such exercises and scheme to larger flats in the same area or the same district, and of the average waiting time; and*
- (e) whether HA will proactively issue letters in the future to PRH tenants living below 5.5 sq m and 7 sq m IFA per person to invite them to participate in the aforesaid exercises and scheme, so as to resolve the problem of overcrowdedness of PRH households; whether the authorities will enhance training for front-line staff and step up publicity among tenants, so that they will understand the details of the transfer schemes for overcrowded households and will not be misled?*

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): President, in general, eligible PRH households can apply for transfer to the reserved flats with larger size in their present Waiting List district or other districts⁽¹⁾, through the Territory-wide Overcrowding Relief Exercise (TWOR) and the LSITS to improve their living conditions. In 2005, the HA relaxed the locality restriction under the two schemes. All eligible PRH households with over 10 years of residence in PRH can apply for transfer to reserved flats with larger size in any geographical districts. In other words, eligible PRH households with over 10 years of residence in PRH can select any vacant flat in the New Territories, Islands, Extended Urban or even Urban district under the schemes according to the actual circumstances and their own needs, irrespective of the districts they resided.

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

- (a) As at end March 2011, there were about 3 230 PRH households with a living area below 5.5 sq m per person, of which about 1 490, 1 000, 10 and 730 households resided in PRH flats located in the Urban, Extended Urban, Islands and New Territories districts respectively. The number of PRH households with a living area below 7 sq m per person was about 25 060, of which about 11 030, 8 160, 130 and 5 740 households resided in PRH flats located in the Urban, Extended Urban, Islands and New Territories districts respectively.
- (b) In the past three years (that is, 2008-2009 to 2010-2011), under the TWOR and LSITS, the HD received a total number of about 5 330, 5 140 and 5 460 eligible applications respectively, of which about 2 620, 1 810 and 1 850 households accepted the flats offered. Of these, about 2 070, 1 490 and 1 520 households respectively were allocated flats in the same Waiting List district they resided in.
- (c) The Subsidized Housing Committee of the HA will earmark flats for the purpose of the TWOR and LSITS when endorsing the Annual Public Rental Housing Allocation Plan. In the past year (that is,

(1) Other districts mean: (i) households residing in PRH flats located in the Extended Urban/Islands district can apply for transfer to the Extended Urban/Islands/New Territories district; (ii) households residing in PRH flats located in the New Territories district can apply for transfer within the New Territories district; and (iii) households residing in PRH flats located in the Urban district can apply for transfer to the Urban/Extended Urban/Islands/New Territories district.

2010-2011), 1 500 flats were earmarked for the two schemes. The number of flats set aside for the two schemes is not a restrictive provision and can be flexibly redeployed in conjunction with the flats earmarked for other types of transfers with a view to better utilization of the public housing resources.

Before applications are invited under these schemes, the HA will earmark flats in respective Waiting List districts for applicants, subject to the availability of public housing resources at that time. In the past year, over three-quarters of the flats earmarked for the schemes were situated in the Urban and Extended Urban districts, while the rest were situated in the Islands and New Territories districts.

- (d) Under the principle of rational allocation of public housing resources, public housing resources will first be allocated to the most needy people. As such, living density is set as the foremost criterion in determining the flat selection priority under the two schemes. Households with a smaller living area per person will be accorded a higher priority in flat selection. Applicants can select their own flats under the schemes in accordance with the authorized household size in their tenancies, the prevailing allocation standards and locality restrictions. Also, as mentioned above, households with over 10 years of residence in PRH can select any vacant flats in the New Territories, Islands, Extended Urban or even Urban district irrespective of the districts they resided under the schemes according to the actual circumstances and their own needs, without any locality restriction.

The TWOR and LSITS are not conducted in the form of waiting lists. As such, there is no waiting time for applicants under the two schemes.

- (e) Under the principle of rational allocation of public housing resources, priority is given to PRH households with a living area below 5.5 sq m per person to relieve their congested living condition. We will issue invitation letters to these households when the TWOR is launched. For the LSITS, we will inform PRH residents of the scheme through notices, posters, Estate Management Advisory

Committees, estate newsletters, newspapers and the HD website, and eligible households who are interested in the scheme can apply.

When launching the schemes, we will continue to issue guidelines with details on the arrangements and application criteria, and so on, to front-line staff to facilitate them to answer enquiries from applicants.

Safety of Computer Networks

18. **MR LEE WING-TAT** (in Chinese): *President, according to the information of the Privacy Commissioner for Personal Data (Privacy Commissioner), given that the PlayStation® Network (PSN) system was intruded by hackers in April this year, resulting in the leak of user account information, the Privacy Commissioner met with the Deputy Managing Director of Sony Computer Entertainment Hong Kong Limited (SCEH) after the incident to understand the situation; SCEH pointed out that between 17 and 19 April this year, information of some PSN user accounts, including 400 000 Hong Kong accounts, was leaked during an illegal and unauthorized intrusion into its network; and the account information leaked included name, address, country, email address, date of birth, PSN password and login, and PSN online ID, but SCEH could not ascertain whether the credit card data in those accounts were leaked. In this connection, will the Government inform this Council:*

- (a) *whether it knows if among the 400 000 Hong Kong accounts, the number of those with information being leaked has at present been ascertained; if so, the total number of users involved, as well as the details of information being leaked, and whether credit card data are included; if not, the reasons for that;*
- (b) *whether it knows if the Privacy Commissioner has approached SCEH to find out if it had taken all practicable steps to protect the information of its customers against intrusion by hackers; if so, the details of the steps taken by SCEH, or if it has been found out that SCEH had not taken the relevant steps, the reasons for that; if the Privacy Commissioner has not approached SCEH to find out such information, the reasons for that; and*

- (c) *given that PSN services across the globe were temporarily suspended after the aforesaid incident, and subsequently when the services were gradually resumed in other countries and regions, the services in Hong Kong still have not been resumed, whether it knows if it is because the Privacy Commissioner had required SCEH to upgrade the security protection of the PSN to a satisfactory level before resumption of the PSN services; if so, the details; if not, the reasons for that?*

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

- (a) According to information provided by SCEH to the Privacy Commissioner, the data leakage incident involved about 400 000 Hong Kong accounts and the account information compromised included name, address, country, email address, birthdate, PSN password and login, and PSN online identity. SCEH was not certain about the number of users involved or whether credit card information had been compromised. SCEH confirmed to the Privacy Commissioner that, since the data leakage incident, they had so far received no reports of misuse of their customers' personal information as a result of the data leakage. Similarly, the Office of the Privacy Commissioner for Personal Data (PCPD) has not received any such complaints.
- (b) The Privacy Commissioner met with the Deputy Managing Director of SCEH many times to find out the detailed accounts of the incident and the remedial measures taken. At the meeting on 8 June with the President and CEO of Sony Global Solutions Inc. (SGS), who is also the newly appointed Chief Information Security Officer of Sony Network Entertainment International LLC, the Privacy Commissioner was assured that SGS had identified the cause of the intrusion and taken adequate and appropriate remedial measures to prevent further exploitation of the same vulnerability (details of the remedial measures could not be disclosed here for confidential and security reasons). The PCPD was given to understand that SGS is

an independent subsidiary of Sony Corporation, which provides security and IT services to other entities within the Sony Group worldwide and is called to investigate into this hacking incident.

- (c) In the course of enquiries with SCEH, the Privacy Commissioner had told SCEH that the PSN services should only be resumed after adequate and appropriate remedial measures had been taken, but it was up to SCEH to decide whether or when they should resume the services. Shortly after the Privacy Commissioner had received SGS's assurance as stated in part (b) of the reply above, SCEH announced on 14 June this year the immediate resumption of PSN services in Hong Kong.

Regulation of Debt Collection Agencies

19. **MR ALBERT CHAN** (in Chinese): *President, in reply to my question at the Council meeting of 23 June 2010, the Government said that the police had attached great importance to combating illegal debt collection activities conducted by debt collection agencies (DCAs). Yet, I have learnt that recently the situation of debtors being harassed by DCAs in recovering debts is deteriorating, and it is still common for banks, finance companies, telecommunication service companies, beauty service companies and tutorial teachers to hire DCAs to collect money owed by their customers. In this connection, will the Government inform this Council:*

- (a) *of the number of cases about harassment by DCAs reported by the public to the police since 23 June of last year;*
- (b) *whether it will, in view of the aforesaid situation, reconsider accepting the recommendations in the report of the Law Reform Commission (the LRC) of Hong Kong on "The Regulation of Debt Collection Practices" published in 2002 concerning the creation of a criminal offence of harassment of debtors and other people as well as the establishment of a statutory licensing system for monitoring DCAs; if it will, of the details; if not, the reasons for that; and*

- (c) *whether it will consider introducing new enforcement measures to curb DCAs using harassing practices to recover debts; if it will, of the details; if not, the reasons for that?*

SECRETARY FOR SECURITY (in Chinese): President, the Government is concerned about the nuisance of improper debt collection practices caused to the public and has adopted a multi-pronged approach to prevent and combat such practices through measures including strengthening enforcement and close monitoring the debt collection practices of relevant sectors by regulatory authorities. The number of such reports made to the police decreased from 16 953 in 2006 to 13 690 in 2010. The reply to the three parts of question is as follows:

- (a) In 2010, the police received a total of 1 896 debt collection-related crime reports and 11 794 harassment reports unrelated to crime. The total number of reports decreased by 25% when compared with 2009. In the first five months of this year, that is, January to May 2011, the police received a total of 819 debt collection-related crime reports and 4 038 harassment reports unrelated to crime. The total number of reports also decreased by 20% as compared to the same period in 2010.
- (b) As regards the LRC's report on "The Regulation of Debt Collection Practices", the Administration, after thorough consideration, made a detailed response to the report in September 2005. On the whole, a number of legislative provisions are already in place to combat various illegal debt collection practices. We are of the view that there is no need to introduce new criminal offence provisions or a separate licensing scheme in respect of operation of DCAs. The police will enforce the law rigorously, and conduct investigations and prosecute any crime-related debt collection practices. For other improper debt collection cases that are non-criminal, the police will continue to coordinate with related government departments and regulatory authorities in handling these cases.

In addition, regarding the handling of harassing and stalking activities, the Constitutional and Mainland Affairs Bureau is following up on the recommendations of the LRC report on Stalking.

The Constitutional and Mainland Affairs Bureau will take into account stalking in relation to debt collection activities when considering the need and feasibility of introducing legislative proposals. A public consultation exercise on the LRC's recommendations will be launched.

- (c) The police attach great importance to combating illegal debt collection activities, and have adopted pro-active measures to enhance the effectiveness of enforcement actions. Apart from setting up a dedicated team to closely monitor the trend of improper debt collection practices in various districts of the territory, and to formulate comprehensive preventive and operational strategies having regard to specific circumstances, the police will continue to, through stepping up patrol and co-operating with property management companies in their respective districts, prevent illegal or improper debt collection activities in housing estates and buildings as well as publicity activities of loansharking syndicates in these properties.

In handling individual cases, the police will continue to implement internal guidelines formulated for handling of reports of improper debt collection practices. Debt collection cases involving criminal offences, such as those involving criminal damage or intimidation, will be referred to the dedicated criminal investigation teams for investigation. The objective is to enable the teams to carry out investigations and gather evidences by pooling together experiences and expertise, and institute criminal prosecution in accordance with the law.

For reports that may not involve criminal offences at the moment, the police will assess each case on the possibility of debt collection practices turning into criminal offences, and then categorize it as "high threat" or "low threat" case. "High threat" cases will be referred to the criminal investigation teams for follow up. As regards "low threat" cases, the police will continue to monitor their developments. Once there are signs that the seriousness of the case has heightened, the criminal investigation teams will take over the investigation.

If a DCA employed by any licensed money lender, bank or financial institution is suspected to be collecting debts by improper or illegal means, the police will coordinate with the regulatory authority concerned which will look into the matter and take follow up action on the debt collection agency employed. In addition, the Companies Registry will consult the police in handling every application for money lenders licences (including application for renewal). The police will consider all relevant factors, including complaint records of the money lenders, when deciding whether to support the above applications. Recently, the Licensing Court has accepted the police's suggestion to include new licensing conditions when considering applications for money lenders licences. These conditions include requiring money lenders and their DCAs not to harass any persons when locating their debtors and not to adopt illegal or improper debt collection practices. This is to further regulate debt collection practices related to licensed money lenders. The police believe that these new measures would contribute to combating improper debt collection activities.

In addition to enforcement, the police also publicize successful enforcement operations and prosecutions to deter improper debt collectors or DCAs from engaging in illegal debt collection practices. Furthermore, the police urge the public to choose licensed money lenders or institutions and consider their repayment ability prudently when applying for a loan so as to reduce the chance of being harassed by improper debt collection practices in future.

Relocation of Tsim Sha Tsui Star Ferry Pier and Development of a Piazza

20. **MR FREDERICK FUNG** (in Chinese): *President, early this year I raised a question about the relocation of the bus terminus facing the Tsim Sha Tsui (TST) Star Ferry Pier with a view to releasing the site for development into a piazza. It has recently been reported that there are changes to the aforesaid relocation and development plan, and that the "Star" Ferry Company, Limited is planning to construct an additional floor above the TST Star Ferry Pier to provide dining services. In this connection, will the Government inform this Council of the latest progress of the whole revitalization scheme for the TST Star*

Ferry Pier (including the pier itself and the piazza, and so on); whether the authorities have given up the relocation of the TST Star Ferry Pier bus terminus and shelved the proposal of developing the piazza; and how the authorities ensure that the proposal of the "Star" Ferry Company, Limited to construct an additional floor can balance public concerns such as conservation, openness and accessibility, and so on?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in the absence of Secretary for Commerce and Economic Development) (in Chinese): President, concerning the project on the relocation of the TST Star Ferry bus terminus for development of a piazza, in our response to an earlier question from Mr Frederick FUNG on the subject on 23 February 2011, we already elaborated on the objectives, scope and progress of the project. The piazza project comprises three parts. The first part includes the construction of a public transport interchange in Mody Road, TST East, which was already completed and commissioned in August 2007. The construction of a new turnaround outside the Hong Kong Cultural Centre (HKCC) at Salisbury Road forms the second phase of the development. The new turnaround will enable the majority of bus routes currently using the TST pier bus terminus to continue to call at the TST Star Ferry Pier when the relocation of bus routes to TST East is completed. The third phase of the development involves the construction of a piazza.

My reply to Mr Frederick FUNG's present question is as follows:

Upon the gazettal of works for construction of the new turnaround under the second part of the project in June 2009, the Administration received over 5 000 representations. Concerns over the traffic and transport arrangements focused mainly on the future arrangements for bus service, and possible impact of the piazza project on the traffic flow. Some also considered that the TST pier bus terminus should be conserved so as to preserve the collective memory of the Hong Kong community.

Having regard to the public views collected during the gazettal period, the Administration had amended the design of the turnaround scheme, and presented the revised scheme to the Traffic and Transport Committee (TTC) of the Yau Tsim Mong District Council (YTMDCC) in September 2010. TTC members

were very concerned about the possible impact of the turnaround and piazza project on the traffic flow in the vicinity of TST, and suggested that the Transport Department should, under the principle of maintaining smooth traffic flow, actively consider allowing all bus routes currently terminating or calling at the TST Star Ferry to return to the new turnaround in future. The revised turnaround scheme was gazetted in October 2010. Subsequently, over 13 000 representations were received. The views expressed were largely similar to those received under the previous round of gazettal.

Taking into account YTMDC TTC's views and the public views received, we decided to revisit the way forward for the piazza project. We propose to adopt a new design concept which will integrate the piazza with the revitalization of the TST pier, with an aim to developing the vicinity into a tourism node and creating a new landmark there. Specifically, in response to YTMDC TTC's suggestion, we propose to expand the turnaround being planned to become a new public transport interchange, so that all 15 bus routes currently using the TST pier bus terminus could continue to call at the Star Ferry Pier in future (including retaining the 11 bus routes now terminating at the Star Ferry Pier). This arrangement would facilitate passengers in using bus service and interchanging with Star Ferry. The new transport interchange would occupy an area of about 3 700 sq m, and would provide necessary bus stops and terminus for the original 15 bus routes, a taxi stand which could accommodate 16 queuing taxis and a taxi unloading bay. The existing pedestrian crossing facility running from Star House to HKCC would be retained, but its location would be slightly adjusted to cater for the design of the new turnaround. The proposal would not only preserve the function of the area as a public transport interchange, but also improve the pedestrian environment outside the pier.

Since there is a need to expand the area of the new transport interchange, the area of the piazza has to be reduced accordingly by 40%. To cope with this change, in planning the development of the future tourism node, we would showcase the area's history as a public transport interchange so that both the public and visitors can reminisce about the history of this vicinity. We are actively exploring displaying a decommissioned train compartment and an antique bus, as well as other artifacts related to the history of Star Ferry Pier at the future tourism node.

We learn that The "Star" Ferry Company Limited (Star Ferry Co. Ltd.) also hoped that the Government could revitalize and expand the TST pier. Their preliminary proposal includes upgrading the existing facilities and extending the pier's boundary, so as to provide more area for retail shops, restaurants and public open space, hence allowing members of the public to enjoy the scenery of the Victoria Harbour. The proposal is also based on the principle of conserving the original architectural characteristics of the pier as far as possible. The Harbourfront Commission's Task Force on Harbourfront Developments in Kowloon, Tsuen Wan and Kwai Tsing had a preliminary discussion on Star Ferry Co. Ltd.'s proposal on 31 May 2011. The Task Force welcomed the suggestion, and considered that if the proposal was to be taken forth, its design should go in harmony with that of the TST piazza being planned by the Government. Since the Star Ferry Pier is a government property, the revitalization works has to be implemented by the Government in future. We plan to carry out the design work of the tourism node in this direction.

We would consult the YTMDC on the new conceptual scheme of the tourism node and the related traffic and transport arrangements on 23 June 2011. If the proposal receives the support of the YTMDC, the Administration would arrange gazettal of the newly revised turnaround scheme in the second half of September 2011, and further consult the TTCs of other affected District Councils. We would also consult the Harbourfront Commission, and conduct a technical feasibility assessment on the revitalization of Star Ferry Pier, and commence work for the design of the tourism node including the pier. We would further consult the YTMDC when a more concrete design proposal for the tourism node is available.

BILLS

Second Reading of Bills

Resumption of Second Reading Debate on Bills

DEPUTY PRESIDENT (in Cantonese): We now resume the Second Reading debate on the Legislation Publication Bill.

LEGISLATION PUBLICATION BILL**Resumption of debate on Second Reading which was moved on 20 October 2010**

DEPUTY PRESIDENT (in Cantonese): Dr Margaret NG, Chairman of the Bills Committee on the above Bill, will address the Council on the Committee's Report.

DR MARGARET NG (in Cantonese): Deputy President, in my capacity as Chairman of the Bills Committee on the Legislation Publication Bill (the Bills Committee), I now report on the major deliberations of the Bills Committee.

The main purposes of the Legislation Publication Bill (the Bill) are to establish an electronic database of the legislation applying in Hong Kong with legal status (the Database), provide for the retirement of the Loose-leaf Edition after the launch of the Database, and empower the Secretary for Justice to make editorial amendments and revisions to Ordinances.

At present, all the Ordinances in force are published in a consolidated form in the Loose-Leaf Edition of the Laws of Hong Kong. The Loose-leaf Edition has legal status and it is currently updated only twice a year. The trade found the work of updating the Ordinance in Loose-leaf Edition time-consuming and trifling. The Department of Justice also maintains an electronic database of Hong Kong legislation known as the Bilingual Laws Information System (BLIS). While BLIS is updated more frequently than the Loose-leaf Edition, it has no legal status and is for reference only, and there are errors and omissions from time to time. For this reason, the Bills Committee supports the establishment of the Database to facilitate public access to the Laws of Hong Kong. Yet, Members have expressed a lot of concerns and worries about the Bill in the course of deliberations.

First of all, Members have generally expressed worry that the Database may be forced to shut down owing to hacking, and that the users of the Database may be misled by false information published in the Database or a fake legislation website. The Administration has undertaken that the security requirements for the Database will be in compliance with the security standards

adopted by the Government. Members note that any unauthorized alterations to the Ordinances published in the Database will not have any legal effect. According to the Administration, it has not been aware of any such websites in other common law jurisdictions. It will notify the public as soon as possible if it has been aware of the appearance of fake legislation websites modeled on the Database.

Members have expressed concern about the contents of the Database. Clause 4 of the Bill provides for the contents of the Database. Under clause 4(1), the Database is to contain the consolidated versions of Ordinances, national laws applying in Hong Kong, and the record of editorial amendments compiled under the Bill. Clause 4(2) provides the material to be contained in the Database, which includes other legislation, materials and information that the Secretary for Justice considers useful to users of the Database. Some members are of the view that the Basic Law should be placed under clause 4(1) rather than clause 4(2) to accord them their constitutional status. Some members consider that the Basic Law should not be included in clause 4(1) because they do not have to undergo the legislative procedures in Hong Kong.

According to the Administration's explanation, no matter which clause in the Bill the constitutional documents applying in Hong Kong will be placed under, their importance and constitutional status will not be affected. Nevertheless, to address members' concern, the Administration has proposed to expressly put the Basic Law under clause 4(1). The Administration has also assured members that the contents to be provided in the Database will not be less than all the existing information in the Loose-leaf Edition and BLIS.

Under clause 4(2)(c), the Secretary for Justice may include "other legislation, materials and information" in the Database. As the Database mainly contains legislation applying in Hong Kong, members are concerned that the inclusion of "other legislation" in the Database may mislead users into believing that such legislation is applicable to Hong Kong. Therefore, the Administration has agreed to delete "legislation" in clause 4(2)(c).

Another major concern of Members is about clause 5 which is related to the authority of the legislation in the Database. Members are generally of the view that it seems that clause 5 only requires a copy of an Ordinance to be an authenticated copy certified by Law Draftsman before it is published in the

Database. It is not specified that the copy of an Ordinance must be published in the Gazette by virtue of section 98(1) of the Interpretation and General Clauses Ordinance. Under clause 5, it seems that the commencement of an Ordinance at a particular time on a particular date will depend on Law Draftsman's certification instead of what is stated on the face of the as-made Ordinance. Also, it appears that Law Draftsman's certification of a copy of an Ordinance as an authenticated copy as at a particular time on a particular date will only be valid as at that time on that date. To address members' worries, the Administration agrees to move Committee stage amendments (CSAs) to delete clause 5 and the relevant provisions, and replace them with new provisions.

Deputy President, in the course of deliberations, members are especially concerned that clause 12 empowers the Secretary for Justice to make editorial amendments to an Ordinance. It is because many provisions have ambiguous meanings and as the editorial powers of the Secretary for Justice are not clearly defined, it may easily give rise to dispute. Moreover, as such editorial amendments are not subject to the Legislative Council's scrutiny, members are also worried about the possible abuse of the editorial powers.

The Administration has undertaken that the editorial amendments allowed under clause 12 will be minor, straightforward and uncontroversial in nature. While the Secretary for Justice's editorial amendments under clause 12 are not subject to the Legislative Council's scrutiny, they are bound by the overriding principle under clause 13 that they cannot change the legal effect of any Ordinance. Members also note that the Secretary for Justice must also compile a record of editorial amendments under clause 15, which has to be made available in the Database for public inspection under clause 4(1)(c). Clause 16 further provides that an editorial amendment will not have effect unless information relating to it is contained in the record. The Administration has also undertaken not to exercise the editorial powers under clause 12 if a risk of dispute is foreseen. To allay members' concerns, the Administration has proposed to transfer the Secretary for Justice's editorial powers under clause 12 to clause 17 under which any changes made by the Secretary for Justice to Ordinances must be effected by subsidiary legislation which is subject to the Legislative Council's scrutiny by way of negative vetting.

In light of the enactment of clause 12 and the procedural safeguards under clauses 13, 15 and 16, the Administration proposes the abolition of the

Legislative Council's powers under sections 98A, 98B and 98C of the Ordinance to scrutinize the Secretary for Justice's certain editorial amendments to Ordinances. By virtue of section 98A, the Secretary for Justice's rectification of any clerical or printing error appearing in any Ordinance has to be made by order published in the Gazette, and every order so made has to be laid before the Legislative Council and can be annulled by a resolution passed by the Legislative Council when necessary. Members have expressed concern about the repeal of section 98A, which will dispense with the Legislative Council's powers to scrutinize any order made by the Secretary for Justice to amend any grammatical, clerical or typesetting error in the Ordinance under clause 12(1)(a). The Administration has undertaken that clause 12 will be applied in a very cautious and meticulous manner, and any editorial amendments will be subject to the procedural safeguards under clauses 13, 15 and 16.

Deputy President, members are particularly concerned about the point that the Secretary for Justice may make revisions to Ordinances under clause 17 of the Bill. Certain provisions under clause 17 do not clearly delineate the limit of revision powers to be given to the Secretary for Justice and this may easily arouse controversy. Besides, such revisions may go beyond technical amendments and affect the contents of Ordinances or lead to unpredictable problems. To allay members' concerns, the Administration will move CSAs to clause 17 and has assured members that the Secretary for Justice's revision powers will be exercised prudently.

Members note that with the passage of the Bill, the Loose-leaf Edition will be migrated to and replaced by the Database gradually. Members have expressed concern about a shutdown of the Database owing to hacking or failure, to facilitate public access to the consolidated version of the Ordinance when necessary, the authorities should consider the feasibility of the coexistence of the Database and the Loose-leaf Edition.

The Administration stressed that after the launch of the Database and the gradual retirement of the Loose-leaf Edition, the Administration will continue to publish a printed copy of each as-made Ordinance in the Gazette as required under section 20(1) of the Ordinance. Moreover, industry players and members of the public may have access to or purchase copies of the authoritative version of the legislation by various ways in the future, apart from downloading from the Database. The Administration has undertaken that it will not seek to commence the clauses concerning the retirement of the Loose-leaf Edition until after all the

chapters in the Loose-leaf Edition have been verified and transferred to the Database, and after consulting the Panel on Administration of Justice and Legal Services, the two legal professional bodies and other stakeholders.

Members note that the past versions before 30 June 1997 will not be included in the Database after its launch. Members have called on the Administration to provide in the Database the past versions of ordinances from at least the first issue of the Loose-leaf Edition in 1991 to 29 June 1997. The Administration expressed no objection to the proposal, but with limited resources, the authorities may not be able to take on the exercise before the Loose-leaf Edition has been fully migrated to the Database. The Administration has also undertaken that even without additional resources, it will consider selectively back capturing certain Ordinances which have a high usage rate.

As the Database project will be a prolonged exercise involving massive tasks, the Administration has agreed to set up a working group as requested by the Bills Committee to monitor the project. The working group will consist of main users of Hong Kong legislation, including representatives of the Judiciary, the two legal professional bodies and the representatives from the Legal Service Division of the Legislative Council Secretariat. The Administration has also undertaken to report to the Panel on the project before the formal launch of the Database.

Deputy President, in light of members' views on the Bill, the Administration will move CSAs to make the Bill more appropriate.

Deputy President, my personal views on the Bill are as follows:

I do not have strong views on the Bill. The Bills Committee understands that the authorities want to adopt a more convenient and faster way to facilitate the public and users to access to Hong Kong Laws. However, as a gatekeeper, we should not weaken the clarity and explicitness of the laws while providing convenient and faster access.

We have expressed our concerns in the process. I would like to express my special thanks to Law Draftsman and his colleagues for responding fully to members' concerns and making substantial amendments to the Bill, so as to make members feel at ease with the Bill.

I believe that the Bill as amended will become clearer and more explicit, and we will not have any doubts about the Bill. Hence, I thank Law Draftsman and his colleagues in particular.

With these remarks, Deputy President, I support the resumption of the Second Reading debate on the Bill.

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

MR LAU KONG-WAH (in Cantonese): Deputy President, the Internet and electronic databases will become increasingly popular, and it is an irresistible trend to set up an online database of the Laws of Hong Kong and give the database legal effects. This is also an essential step to be taken by Hong Kong as an international city upholding the rule of law.

The Bills Committee is also aware that, subject to the passage of the Bill, the Database is expected to commence operation in around four to five years upon completion of internal testing, and the migration of all Ordinances from the Loose-leaf Edition to the Database is expected to be completed within 10 years at the earliest.

In the future, members of the public may download the Laws of Hong Kong from the Database, which is more convenient, faster, cost-saving and environmentally friendly. The Bill to be passed today will give this Database legal status.

Public access to legislation is one of the basic elements of a jurisdiction upholding the rule of law. At present, as-made Ordinances are published in the Government Gazette and deemed to be authentic. The Government is now setting up a new online legislation database containing the latest and consolidated versions of Ordinances. The Database also has improved functions for user-friendly browsing.

The new legislation database is a free website for quick, easy and accurate public access to Ordinances having legal status. The design of the system should include the relevant functions, which allow the Database to provide

additional information such as drawings and maps. The Policy Bureaux and departments concerned should also step up researches on how the Database can provide more information to facilitate wider use.

The proposed establishment of a database of verified and authenticated versions of the Laws of Hong Kong has been approved by the Finance Committee last year. To give the Database legal status, the Government has introduced into the Legislative Council the Legislation Publication Bill and moved Committee stage amendments (CSAs) to the Bill, which have the support of the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB).

In the course of our deliberation on the Bill, I was concerned about the term "national laws applying in Hong Kong" in clause 4(1)(b) of the Bill. The Administration has advised that by virtue of section 3 of the Interpretation and General Clauses Ordinance, the national laws applying in Hong Kong is defined as national laws applied in Hong Kong pursuant to the provisions of Article 18 of the Basic Law, that is, the laws set out in Annex III to the Basic Law, not including all provisions of the Basic Law.

Therefore, under the Administration's original plan, the Basic Law and related constitutional documents, such as Interpretations and Decisions on the Basic Law by the Standing Committee of the National People's Congress may be covered under clause 4(2)(c) as materials and information that the Secretary for Justice considers useful to users of the Database. Nevertheless, this gives rise to doubt and uncertainties, and the Basic Law has not been duly respected.

Hence, I think that the Bill should contain explicit provisions in order to tally with their constitutional status and facilitate users' understanding. The Administration has eventually accepted this idea and proposed CSAs to the effect that the Basic Law is placed under clause 4(1).

Other constitutional documents, such as Interpretations and Decisions on the Basic Law by the Standing Committee of the National People's Congress should also be included in the Database under clause 4(2)(c) to safeguard the Database's integrity and facilitate users.

We are also concerned about the application of the Database. First, security issues, we must not ignore the importance of responding to and

defending against fake legislation databases or hacking activities. Although foreign legislation databases are not frequently hacked and fake legislation databases are uncommon, and we are not certain about the illegal activities that are directly connected with legislation database hacking, we must nip the problems in the bud and formulate preventive measures in advance as network technologies are advancing rapidly and criminals are adopting various means. Hacking activities or fake legislation databases are not necessarily associated with money and interests, and it is not surprising that there may be mischievous acts.

As advised by the Government, the security requirements for the Database will be in compliance with the security standards adopted by the Government. These include anti-virus and malicious code detection, firewalls from different vendors, the installation of separate servers in different locations and disaster recovery mechanisms, and so on. The legislation data in different servers of the Database will also be compared periodically. If any potential hacking activity or discrepancy in the servers is detected, follow-up actions will be taken. Generally speaking, the Database should be able to recover in less than several hours and a public announcement will be issued to alert the public as soon as practicable. Yet, is this enough? We think the authorities should conduct a review from time to time, update security measures and technologies, as well as enhance monitoring to ascertain if the Database has been hacked and if there are fake websites. It would be best for the Administration to make public such problems once they are identified.

By virtue of clauses 26, 27 and 32 of the Bill, the Loose-leaf Edition will be migrated to and replaced by the Database gradually. The Database will become the only authenticated copy of Ordinances. Members worry about the difficulty in accessing authenticated legislation in case of a shutdown of the Database due to hacking, they thus call on the Administration to consider the feasibility of the coexistence of the Database and the Loose-leaf Edition. On this point, the Administration has advised that after the launch of the Database and the gradual retirement of the Loose-leaf Edition, the Administration will continue to publish a printed copy of each as-made Ordinance in the Gazette. Furthermore, members of the public may obtain a printed copy of a consolidated version of an Ordinance by various ways. The Government will conduct consultation and verification again before the commencement of the Ordinance. Hence, I think that the current arrangement is acceptable.

The DAB supports the passage of the Legislation Publication Bill and all CSAs moved by the authorities. Thank you, Deputy President.

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

(No Member indicated a wish to speak)

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

SECRETARY FOR JUSTICE (in Cantonese): Deputy President, first of all, I would like to thank Dr Margaret NG, Chairman of the Bills Committee on the Legislation Publication Bill (the Bill), Mr LAU Kong-wah and other members for their detailed deliberations on the Bill. Dr NG has just introduced in detail the contents of the Bill and the deliberation process. Deputy President, the main purposes of the Bill are to establish an electronic legislation database and a recognized website, to facilitate public access to and printing of the latest version of legislation with legal status through the Internet. The Bill also empowers the Secretary for Justice to make editorial amendments and revisions to Ordinances. Members of the Bills Committee have expressed valuable views in the course of deliberation on the Bill. Having referred to the views of the Bills Committee, we have drafted some amendments to perfect the Bill. The amendments will be moved at the Committee stage. I am now going to go over briefly some of the more important amendments.

At the meetings of the Bills Committee, members had lengthy discussions on the proposed powers of the Secretary for Justice to make editorial amendments and revisions. Based on members' views, we have examined in-depth the scope of the powers. To allay members' concern, we will move Committee stage amendments (CSAs) to transfer some of the Secretary for Justice's editorial powers under clause 12 to clause 17 so that the exercise of the power must be subject to the Legislative Council's scrutiny. I will also move CSAs to delete certain editorial powers on more controversial amendments, and make minor amendments to some provisions so as to clarify the scope for exercising the Secretary for Justice's powers to make editorial amendments and revisions.

As the project on the migration of all Ordinances from the Loose-leaf Edition to the Database is an exercise involving massive tasks that can only be completed in a few years' time, it is essential to confer wide editorial powers on the Secretary for Justice so that the format of the Loose-leaf Edition of the existing legislation will be the same as the new format of legislation adopted by the Department of Justice since July 2010. We thank members for their support so that the editorial powers under clause 12 as amended are also applicable to the Loose-leaf Edition. This will facilitate the updating of the Loose-leaf Edition and the smooth migration of all Ordinances from the Loose-leaf Edition to the Database.

To cater for future technological development and meet the needs of different people, after the Database has officially been launched, we would also publish all Ordinances in the form of a booklet, as well as arrange for the publication of the Laws of Hong Kong having legal status in the form of electronic storage (such as DVD-ROM). The empowering provisions are set out in new Part 2A of the Bill.

Apart from the above amendments, the Government will move other CSAs to deal with minor and technical amendments.

The Bills Committee has considered and approved of various CSAs.

Let me now discuss the concern about clause 4 as mentioned by Mr LAU Kong-wah. As Dr NG has just said, the provisions of the Basic Law have been included under clause 4(1) as essential provisions. As to other factors of consideration concerning constitutional documents, I would like to stress that the contents to be provided in the Database will not be less than all the existing information in the Loose-leaf Edition and the Bilingual Laws Information System (BLIS).

To facilitate users of the Database, our plan is that, after the Database has been put into full operation, we will verify the officially recognized copies of documents against the documents contained in the Database, and give legal status to the latter. In other words, these copies will be presumed to be correct unless the contrary is proved.

Mr LAU has also mentioned members' concern about security. When Dr NG briefed Members of the deliberation process earlier, she already said that we

would adopt all feasible measures to enhance security. We will definitely continue to carefully review the situation and keep pace with the times. If necessary, we will certainly raise the security standards.

Deputy President, as I have said when I moved the Second Reading, public access to legislation is a basic element of a jurisdiction upholding the rule of law. We deeply believe that, in the information technology era today, it is really essential to establish an online database of The Laws of Hong Kong with search functions. In this way, the consolidated version of legislation with legal status can be updated quickly and the accuracy of the contents maintained. The public would always be able to enjoy free browsing, downloading and printing of the consolidated version of legislation with legal status through the Database, without relying on the Loose-leaf Edition or the copies published in the form of a booklet.

As Dr NG has just mentioned, we have plans to invite, in due course, representatives of the Hong Kong Bar Association, the Law Society of Hong Kong, the Judiciary, the Legal Service Division of the Legislative Council Secretariat and the representatives of libraries to form a Hong Kong Legislation Database User Liaison Group. We will report to the Group the latest development concerning the development of the Database at regular intervals, and we will consult members of the Group in the course of the development of the Database.

With these remarks, Deputy President, I hope Members would support the Bill and the CSAs I am going to move later. Thank you.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Legislation Publication Bill.

Council went into Committee.

Committee Stage

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

LEGISLATION PUBLICATION BILL

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

CLERK (in Cantonese): Clauses 3, 13, 15, 16, 18, 22 to 27 and 29 to 35.

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

(No Member indicated a wish to speak)

DEPUTY CHAIRMAN (in Cantonese): I now put the question to you and that is: That clauses 3, 13, 15, 16, 18, 22 to 27 and 29 to 35 stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 1, 2, 4 to 12, 14, 17, 19, 20 and 21, the heading of Part 6 and clause 28.

SECRETARY FOR JUSTICE (in Cantonese): Deputy Chairman, I move the amendments to clauses 1, 2, 4, 10, 11, 12, 14, 17, 19, 20 and 21, the heading of Part 6 and clause 28, as well as the deletion of clauses 5 to 9, as set out in the paper which has been issued to Members.

Clause 1 provides for commencement. To facilitate early amendment to the Laws of Hong Kong and to tie in with the preparatory work on the Database, we propose amending the clause on commencement so that the provisions on revision powers and the consequential amendments can take effect on the date they are published in the Gazette.

Clause 2 is about interpretation. To make it easier for users of the Laws of Hong Kong to understand the operation of the Database and the compilation process of the Ordinances, after listening to members' views, we have proposed minor amendments to certain definitions. For example, "as-made Ordinances" are renamed as the "gazetted copy", so that the public will realize that the authentic copy of the Laws of Hong Kong is published in the Gazette. The "authenticated copy" is also renamed as the "verified copy". These changes in wording will help the public understand the provisions and clearly differentiate the copy of the Ordinances verified by Law Draftsman and the copy published in the Gazette.

Furthermore, we propose the inclusion of the definitions of the terms "official verification mark" and "database instrument". After the launch of the Database for use, we will verify the Laws of Hong Kong, and we will add "official verification mark" at suitable places of verified ordinances, so that the

public can identify if the Ordinances have been verified by Law Draftsman, and whether the Ordinances have legal status.

We also propose adding a provision to deal with provisions that have not come into effect at zero minute zero hour of a day. Under this additional provision, when the Bill refers to a version of an instrument on a particular date, where appropriate, it also refers to a version of the instrument as at a particular time on a particular date.

Clause 4 provides for the contents of the database. We have accepted members' views and proposed that certain documents should be moved from clause 4(2) to clause 4(1) to specify that these documents (such as the provisions of the Basic Law) are contents to be provided in the Database.

We have also proposed an amendment to clause 4(2)(c) to dispel members' doubts about whether the Database includes legislation of other places.

We propose to delete clauses 5 to 9. I will later propose the addition of clause 4A and Part 2A to the Bill. Since these additional provisions already cover the contents of the original clauses 5 to 9, we propose the deletion of these clauses.

Clause 10 contains evidential provisions. We propose replacing the original clause 10(2) to 10(6) with the amended clause 10(2) to simplify the provision to facilitate comprehension by readers. The amended clause 10(2) specifies that a document purporting to be an authenticated copy of a document in the Database is presumed, unless the contrary is proved, to be an authenticated copy of the document.

Clause 11 is about the power to give chapter numbers to Ordinances. We propose empowering, under clause 11(a), the Secretary for Justice to amend the short title and citation of Ordinances, using the term "documents in the Database" to simplify the original wordings in clause 11(b).

Clause 12 sets out the power to make editorial amendments. Having listened to members' views, we have examined in depth all the powers under clause 12. Our proposals can roughly be divided into four categories. I will introduce them one by one.

The first category deletes powers that may be controversial. In the light of members' concern about the power of renumbering provisions under clause 12(1)(c), we propose the deletion of the provision.

The second category changes the way of expressing certain powers to make the scope of exercise more specific. For example, we will delete the wordings "or an error of a similar nature" under clause 12(1)(a), and the word "penalty" in clause 12(1)(d) to streamline the provisions; we will amend the expression in clause 12(1)(e) to help readers understand the power; merge clause 12(1)(g)(i) and clause 12(1)(g)(ii); and limit the scope of the power to re-arranging unnumbered items under clause 12(1)(i).

The third category transfers certain powers to clause 17. We will transfer to clause 17 the powers relating to "the way of referring to or expressing a provision" originally under clause 12(1)(b), (f), (h) and (d), as well as the powers under clause 12(2), such that these powers will be subject to the Legislative Council's scrutiny.

The fourth category is about two additional powers. We propose adding two editorial powers: first, replacing a reference to the short title or citation of an Ordinance with the short title or citation of an Ordinance as amended under clause 11(a); and second, inserting, after an item in a list appearing in the text of one official language, the equivalent of that item in the other official language.

Clause 14 sets out the effect of editorial amendments. Clause 16 specifies that an editorial amendment does not have effect unless the information relating to it contained in the record. We are going to amend clause 14(1) to highlight the relevant provision. I will also propose minor amendment to the way of expressing the definition of "publication date" in clause 14(3).

Clause 17 empowers the Secretary for Justice to make revisions. As previously stated, the amended clause 17 will include some powers originally specified under clause 12, such as the power of changing a reference to a date or the name of a subsidiary legislation, as well as the power of replacing gender-specific wordings with gender-neutral wordings. Moreover, we will make minor amendments to some provisions on powers, so that the scope of exercise will be more specific. For instance, it will be spelt out that the

provisions to be transferred with the power in clause 17(c) will be limited to savings and transitional provisions.

Furthermore, as the power to make certain amendments actually comes from the Revised Edition of the Laws Ordinance 1965, having considered members' views, we agree to use wordings similar to those in that Ordinance; thus, we have amended the wordings used in a number of provisions.

Clause 19 amends the Laws (Loose-leaf Publication) Ordinance 1990. I will later propose the addition of new clause 20A. With the addition of a new clause 20A, we should consequentially add to clause 19 a reference to clause 20A.

Concerning clause 20 and the new clause 20A, I thank the Bills Committee for its support in broadening the editorial powers for the Loose-leaf Edition. The provisions of the amended Loose-leaf Edition will be conceptually the same as clauses 11 to 16. We will consequentially include in the Loose-leaf Edition the overriding principle that the editorial amendments cannot change the legal effect of any Ordinance, as well as the requirement of recording and publishing the record of editorial amendments to the Loose-leaf Edition. Therefore, we also need to amend the original clause 20 and add clause 20A.

As regards clause 21, we move the deletion of clause 3A(1) and (2) of Loose-leaf Edition as proposed in the Bill, and replace them with provisions that will be conceptually the same as the amended clauses 2 and 4A. In addition, we will move certain technical amendments to clause 3A(3) and add the interpretation of official verification mark.

As regards the heading of Part 6, we propose amending it to "abolition and consequential amendments" so as to reflect more clearly the contents of the provisions in Part 6.

Regarding clause 28, in light of this Bill, consequential amendments should be made to the provision of section 13(1) of the Interpretation and General Clauses Ordinance concerning citation of Ordinance. Upon further consideration, we propose swapping the order of the provisions so that reference will be made to this Ordinance before other ordinances, making the provisions easier to understand.

Deputy Chairman, the Bills Committee has approved of the abovementioned CSAs and I hope that members would support the passage of the Bill. Thank you.

Proposed amendments

Clause 1 (see Annex I)

Clause 2 (see Annex I)

Clause 4 (see Annex I)

Clause 5 (see Annex I)

Clause 6 (see Annex I)

Clause 7 (see Annex I)

Clause 8 (see Annex I)

Clause 9 (see Annex I)

Clause 10 (see Annex I)

Clause 11 (see Annex I)

Clause 12 (see Annex I)

Clause 14 (see Annex I)

Clause 17 (see Annex I)

Clause 19 (see Annex I)

Clause 20 (see Annex I)

Clause 21 (see Annex I)

Heading of Part 6 (see Annex I)

Clause 28 (see Annex I)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

DEPUTY CHAIRMAN (in Cantonese): As the amendments to delete clauses 5 to 9 have been passed by the committee of the whole Council, clauses 5 to 9 are therefore deleted from the Bill.

CLERK (in Cantonese): Clauses 1, 2, 4, 10, 11, 12, 14, 17, 19, 20 and 21, the heading of Part 6 and clause 28 as amended.

DEPUTY CHAIRMAN (in Cantonese): I now put the question to you and that is: That clauses 1, 2, 4, 10, 11, 12, 14, 17, 19, 20 and 21, the heading of Part 6 and clause 28 as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clause 4A	Status of verified copies of database instruments
New heading before new clause 10A	Part 2A Reproduction of Verified Copies of Database Instruments
New clause 10A	Interpretation
New clause 10B	Publication of official booklets
New clause 10C	Publication of official storage media
New clause 10D	Evidential provisions
New clause 20A	Sections 2A and 2B added.

SECRETARY FOR JUSTICE (in Cantonese): Deputy Chairman, I move the Second Reading of new clause 4A, the new heading before new clause 10A, and new clauses 10A, 10B, 10C, 10D and 20A, as set out in the paper which has been issued to Members.

New clause 4A — Status of verified copies of database instruments: New clause 4A explains the authenticated copies of a database instrument and specifies that a verified copy of a database instrument is presumed, unless the contrary is proved, to correct state the instrument as at the date specified in the copy.

New clauses 10A to 10D, that is, new Part 2A — Reproduction of Verified Copies of Database Instruments: we propose adding Part 2A which contains four new provisions.

New clause 10A contains three additional definitions included in Part 2A. These definitions are official booklet, official storage medium and storage medium.

New clause 10B empowers the Secretary for Justice to cause reproductions of verified copies of database instruments to be published in the form of booklets. It is specified that the copies so published have legal status.

New clause 10C empowers the Secretary for Justice to cause storage media to be published. It is specified that an electronic or printed reproduction of a verified copy of a database instrument accessed or printed directly from an official storage medium has legal status.

New clause 10D are evidential provisions on instruments published in the form of booklets and official storage medium.

New clause 20A: I also propose the addition of clause 20A to the Bill. I have just said that this new clause broadens the editorial powers for the Loose-leaf Edition and I am not going to repeat what I have already said.

Deputy Chairman, the Bills Committee has approved of the abovementioned CSAs and I hope that members would support the passage of the Bill. Thank you, Deputy Chairman.

DEPUTY CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 4A, the new heading before new clause 10A, and new clauses 10A, 10B, 10C, 10D and 20A be read the Second time.

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

(No Member indicated a wish to speak)

DEPUTY CHAIRMAN (in Cantonese): I now put the question to you and that is: That new clause 4A, the new heading before new clause 10A, and new clauses 10A, 10B, 10C, 10D and 20A be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clause 4A, the new heading before new clause 10A, and new clauses 10A, 10B, 10C, 10D and 20A.

SECRETARY FOR JUSTICE (in Cantonese): Deputy Chairman, I move that new clause 4A, the new heading before new clause 10A, and new clauses 10A, 10B, 10C, 10D and 20A be added to the Bill.

Proposed additions

New Clause 4A (see Annex I)

New heading before new clause 10A (see Annex I)

New Clause 10A (see Annex I)

New Clause 10B (see Annex I)

New Clause 10C (see Annex I)

New Clause 10D (see Annex I)

New Clause 20A (see Annex I)

DEPUTY CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 4A, the new heading before new clause 10A, and new clauses 10A, 10B, 10C, 10D and 20A be added to the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

DEPUTY CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bills

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

LEGISLATION PUBLICATION BILL

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

Legislation Publication Bill

has passed through the Committee with amendments. I move that this Bill be read the Third time and do pass.

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

Does any Member wish to speak?

DR MARGARET NG (in Cantonese): Deputy President, I would like to make some brief remarks.

We have spent a lot of time and energy to carefully scrutinize the Legislation Publication Bill (the Bill). Though many amendments seem to be technical nature, the Bill we are going to enact today is of great significance to the rule of law. We have carefully scrutinized the Bill precisely because of its importance to the rule of law.

Deputy President, the rule of law involves various aspects: first, the laws being passed must comply with the basic rights and principles; second, the published laws must be clear, and they must be read and announced to the public, and the contents and provisions of such laws should also be clearly indicated; third, the laws should allow public access, that is, any member of the public who wants to find out the authoritative version should have easy access at any time, so that he will know very clearly which version is authoritative.

Deputy President, what we are doing today aims at ensuring that we have such a version for public access so that the public will not have doubts whether a version they access to is authentic and up-to-date. Hence, we have scrutinized the Bill very carefully, and I just wish to stress during the Third Reading of the Bill that the Bill to be passed today is of great significance to the rule of law.

Thank you, Deputy President.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Legislation Publication Bill.

Resumption of Second Reading Debate on Bills

DEPUTY PRESIDENT (in Cantonese): We now resume the Second Reading debate on the Stamp Duty (Amendment) (No. 2) Bill 2010.

STAMP DUTY (AMENDMENT) (NO. 2) BILL 2010**Resumption of debate on Second Reading which was moved on 8 December 2010**

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

MR JAMES TO (in Cantonese): Deputy President, in my capacity as the Chairman of the Bills Committee on Stamp Duty (Amendment) (No. 2) Bill 2010 (the Bills Committee), I would now brief the Council on the deliberations of the Bills Committee.

To deter speculative activities of residential property market, the Financial Secretary announced on 19 November 2010 the introduction of a special stamp duty (SSD). The Stamp Duty (Amendment) (No. 2) Bill 2010 (the Bill) mainly seeks to impose a SSD chargeable on an agreement for a conveyance on sale of any residential property acquired on or after 20 November 2010 at regressive rates for different holding periods if it is resold within 24 months. In other words, the longer the holding period, the lower is the rate.

The Bill stipulates that the Stamp Duty (Amendment) (No. 2) Ordinance 2010, if enacted, is deemed to have come into operation on 20 November 2010. Members have expressed concern about the retrospective effect of the Bill and enquired about the consequences if the commencement date is repealed or amended. According to the explanation of the Administration, to avoid speculation during the period prior to the enactment of the legislation, the Bill will take effect retrospectively from 20 November 2010. Given that the public is well aware of the effective date of the SSD, repealing or amending the commencement date will cause confusion and undermine the clear message of the authorities' determination to curb speculation.

The Bills Committee has also conducted detailed discussion on whether the imposition of the SSD is the most effective way to curb speculation, or there are other ways to achieve this end. We have carefully considered and compared the effect of imposing a certain percentage of profits tax for short-term speculation.

After detailed consideration, members believed the imposition of the SSD a more effective approach. It might nonetheless bring about other effects, and this would be further elaborated in the discussion of the exemptions provisions later on.

The Bills Committee has also examined if the imposition of the SSD would boost speculative activities relating to the buying and selling of stock and shares of companies. It hoped that the Government would closely monitor this trend and collect the relevant information and data, and be ready to take corresponding action or legislate at any time. Furthermore, the Bills Committee has also discussed on the definition of "residential property". Originally, the Government did not intend to include residential property in the option to purchase. However, after deliberation, it agreed to include the option to purchase into the relevant definition so as to plug the loopholes in this regard.

For the purpose of determining the holding period so as to ascertain the liability of the SSD, the Bill provides that a person "acquires" a property if he enters into a specifically enforceable agreement for the sale or purchase of that property. Some members have enquired whether a Provisional Agreement for Sale and Purchase (PASP) is a specifically enforceable agreement. The Administration explained that, in general, most PASPs are not specifically enforceable agreements as formal Agreements for Sale and Purchase (ASPs) will be required for the transfer of ownership of the properties. Nonetheless, members have pointed out that there are cases where ASP has not been entered into due to disagreement to certain terms and conditions and the transaction is still completed according to PASP. Taking into account the Bills Committee's views, the Administration has agreed to introduce Committee stage amendments (CSAs) such that the acquisition and disposal dates of a property will be based on the signing date of the chargeable agreement for sale, or if no such chargeable agreement exists, the signing date of conveyance (that is, Assignment). To put it simply, according to the latest CSAs proposed by the Government, PASP entered into on or before 20 November should be exempted.

The Bills has also specified a few cases where the payment of the SSD can be exempted. Members are concerned about cases where owners have to sell their properties within 24 months of acquisition due to substantial changes of circumstances. They have requested the Administration to expand the scope of exemptions to include these cases. Consideration should also be given to

providing an appeal mechanism to assess and decide on the need to pay the SSD on a case-by-case basis. According to the Administration, it is very important that the law should be clear and without ambiguity, and that any exemptions to be considered should be fair and measurable in an objective manner. The types of exemptions should also be clearly set out in the Bill. The proposed appeal mechanism is inconsistent with the present taxation system, where the Commissioner for Inland Revenue has no discretion to waive any types of tax payable. Worse still, the proposed mechanism may be abused by the speculators, thereby undermining the effectiveness of the SSD.

After extensive and detailed discussion, the Administration accepted some important views put forward by members and CSAs would be proposed correspondingly to exempt the involuntary sale or transfer of properties made by or pursuant to a court order; the sale or transfer of a residential property by a beneficiary whose property is inherited from a deceased person's estate; the sale of first-hand residential units, as well as the addition or deletion of names of immediate close relatives when executing a chargeable agreement or Assignment.

Let me briefly explain each of the abovementioned type of exemption in a non-technical way. The first type of exemption is the involuntary sale or transfer of properties made by or pursuant to a court order. There are a few possibilities, and among which is the default loan payment due to sickness or unemployment. The properties concerned will then be put to auction or compulsory sale by the bank. Given that this is involuntary sale, they are exempted. However, I wish to draw Members' attention that the exemptions only apply to banks but not financial institutions. This is because the Government is concerned about the possibility of an abuse if financial institutions are included. Furthermore, the exemptions also cover properties put to "compulsory sale". This is the provision on the compulsory sale of properties for redevelopment which has recently aroused our concern, under which owners sold their properties involuntarily. Exemptions do not only cover minority owners whose properties have been unwilling put to compulsory sale, but all properties which are sold under procedures of a compulsory sale.

The second type is the sale or transfer of a residential property by a beneficiary whose property is inherited from a deceased person's estate, which means transfers relating to the disposal of estates or family agreements. Since a deceased person did not die voluntarily, he may not wish to transfer his properties

in this way. Hence, such transfer is apparently not speculation and should be exempted.

The third type is the sale of first-hand residential units. In other words, if someone bought a site, built on it and sold the flats built thereon one by one, this would not be considered as speculation of properties within 24 months.

The fourth type is the addition or deletion of names of immediate close relatives, including parents, siblings and spouse. Other relatives who do not belong to immediate close relatives, such as uncles and cohabiting partners, will not be exempted. I hope that Members will take note of this.

Since the Government only considers the imposition of the SSD a provisional but not permanent proposal which might affect genuine home purchasers, some members proposed to include in the Bill a sunset clause or an extension mechanism. The Administration has reservation about this proposal, thinking that they might undermine the effectiveness of the SSD. However, it has undertaken to review the need to retain the SSD once every 24 months or as circumstances require, whichever is the shorter, after the enactment of the Bill. Mr Abraham SHEK, however, considers that it is under no compulsion to review the SSD nor can the Legislative Council compel the Administration to do so. He would therefore move CSAs to the effect that the Ordinance, if enacted, shall expire at midnight on 19 May 2012, and that the Legislative Council may by resolution amend the specified date specified. If the CSAs are endorsed, the Legislative Council resolution will decide whether the imposition of the SSD should continue.

Regarding the other concerns expressed by members, relevant CSAs have been moved by the Administration. Members may refer to the detailed report submitted by the Bills Committee to the Legislative Council House Committee. The Bills Committee supports, in principle, the CSAs moved by the Administration.

Deputy President, the following are my personal views.

We hope that the Bill can be expeditiously passed because of its retrospective effect. Legislation with retrospective effect has a significant bearing on the market and transaction, including the operation of professionals

like estate agents and lawyers. It may even give rise to uncertainties in transactions, for instance, whether there is a need to retain some money, and the process of registration and transaction. Therefore, the Bill should be passed the earlier the better.

Nonetheless, as the Bill itself is highly technical and the proposals must be carefully considered by the Government, we have made reference to the views expressed by various professional bodies, which include the detailed views submitted by The Law Society of Hong Kong and estate agent associations, and subsequently we had engaged in extensive discussions with the Government. In the end, we succeeded in persuading the Government to make drastic revisions to the Bill in respect of certain major issues. They are basically the meaning of the 24-month period relating to the acquisition and disposal (the sale and purchase) of properties.

I personally consider that there are three points which may worth consideration. First, is the Bill effective? Second, will the Bill be so effective that it has imposed stringent requirements on innocent people who are not speculators or on people those conditions are worthy of sympathy. Third, how can we ensure that this short-term rather than permanent measure as claimed by the Government will not become an additional long-term tax revenue tool?

Concerning the first point, whether there are still speculators in the market can reflect the effectiveness of the Bill. As evident from the information provided by real estate agencies, the number of transactions as well as the general understanding of the trade, speculators have genuinely become extinct. If property transaction conducted within 24 months or even six months are subject to the SSD of more than 10%, there is no way profits can be reaped in the market within such short period of time. However, I am very surprised to learn that there are dozens to 100 cases of "confirmor sales" each month. I have enquired the Administration and drew its attention to these cases. Enquiries have also been made to trade members, yet no one seemed to know the reasons behind. Some people explained that those cases might involve properties purchased before 20 November 2010 but sold by way of confirmor sales, so they are exempted. How about the transactions conducted after 20 November then? Were the properties involved in those dozens of transactions sold at a loss? Is there any other possibility that we do not know? I hope that the Government will pay special attention to these cases.

Another direct effect is a reduction in supply. Just take me as an example. I am happy to announce that I am going to have a child in November. When I bought the present property, I did not intend to have a baby. Now, I need to hire a maid and have an extra room. Yet, I dare not sell my flat and buy a new one as I would have to pay a 10% or 15% SSD for selling my property within six months. This would kill me. In that case, people who have a genuine need to get a new flat, like me, would be caught. I certainly understand that this is a social policy and some people, including me, would be affected. Perhaps I can convert the study room into a bedroom for the baby and the maid. I will not have a study room then. Anyway, there are always people who have the genuine need to get a new flat; will this kind of destructive compression truly reflect property prices in the long run? We must be very cautious in this regard.

There might be cases where the draft legislation is too stringent, causing a devastating blow. During the deliberation of the Bills Committee, we tried hard to press for exemption of properties subject to compulsory sale or auction by banks. However, a member raised a scenario where someone, being unemployed or had to undergo a major operation, had to sell his property, and if he failed to obtain mortgage loans from banks, what could he do then? The sale of property under this circumstance would be subject to the payment of the SSD. In case there is a genuine need for money for medical treatment, bank loans can be obtained in the first place. When loan repayment cannot be duly made, the bank concerned will put the property to compulsory sale. This is, to a certain extent, to put the property to auction by the bank, and administrative costs and interests will be incurred. Worse still, the property owner's credit record at the positive mortgage credit database would be stained. However, if this approach is not taken, the SSD will be imposed, which is not worthwhile. Hence the present situation is far from satisfactory, but we can only choose the lesser of two evils. If we cannot draw up an exemption mechanism which is absolutely objective, fair and just, and revise the tax regime to facilitate the exercise of discretion by the Inland Revenue Department, the underlying principle of the tax regime will be shaken, which is not worthwhile.

Furthermore, I have to remind members of the public not to fall into traps of having to pay 15% SSD under the present regime. For instance, if a married couple purchased a property and the deposit was paid by the husband (or wife), they can be exempted from payment of the SSD if the name of the wife (or husband) is added when they sign the formal ASP. This is because they are

married couple. However, if they are unfortunately cohabitants or unmarried, the girlfriend's proposal to add the name of her boyfriend or cohabitant when signing the official ASP would mean a transfer of half of her ownership within a few days. This would be regarded as a sale of half of her property. In other words, the girlfriend would be deemed to have sold half of her property in speculation within two weeks. Despite that the property price remained unchanged and no profit is made, she is obliged to pay a 15% SSD. Assuming that the property costs \$3 million, the amount of the SSD payable will be half of \$450,000, that is, \$200,000-odd, which is a huge sum of money. This might be a mistake and if no remedies are done, the one who paid the deposit will be regarded as the property owner, leaving the other party devoid of protection. Even if the boyfriend shares the mortgage payment, only his girlfriend is named the "property owner". This might give rise to many family conflicts.

Therefore, to prevent speculation and avoid having exemption provisions being too broad to prevent abuse, only immediate close relatives will be exempted. For immediate close relatives, only parents and siblings will be exempted but not uncles and nieces. Yet, there might be special cases where uncle and niece are the surviving members of the family and they are like father and son. Nonetheless, if the uncle wishes to add his niece's name when buying a property, he would have to pay half of the SSD. Therefore, the SSD might fail to strike a proper balance in this sense. I would like to take this opportunity to remind members of the public, who are probably listening to or watching live broadcast, to deal with this matter with caution.

Last of all, regarding the sunset amendments to be proposed by Mr Abraham SHEK later on, I am not going to elaborate here. In my opinion, since the Government has advised that this is a short-term but not a permanent measure, it is duly responsible to conduct reviews from time to time with regard to the circumstances. If it is no longer necessary to collect the SSD, the market should return to normal operation. Otherwise, it might be twisted without being noticed.

Real estate sector or real estate agencies have conducted plenty of detailed analysis in this regard, which is worth our attention. The situation is particularly apparent when transaction is extremely inactive, as the drop in property prices caused by a market plunge may be smaller. If, however, the market is overly compressed, the plunge in property prices can be so great that large fluctuations

would be expected. Therefore, I hope that the Government would conduct detailed reviews from time to time to explore the need to retain the existing mechanism. Or else, market operation will be affected. Having said that, amidst this critical transitional period, the Democratic Party and I support the imposition of the SSD, the resumption of the construction of Home Ownership Scheme flats, as well as an increase in the supply of sites for building public rental housing flats, so as to deal with the situation which is temporarily out of control.

MR LEE WING-TAT (in Cantonese): Deputy President, I support the resumption of the Second Reading of the Bill concerning special stamp duty (SSD). Before I speak, I want to say something about the origin of the SSD.

As far as I can recall, more than two years ago (in around September and October 2009), property prices began to rise at a pretty rapid pace. After the delivery of the 2009 Policy Address, we had dinner with the Chief Executive as in previous years. At the cocktail, I pulled him aside and said, "Donald, the property market has been surging rapidly and the Government must do something. The best measure is to resume the construction of Home Ownership Scheme (HOS) flats." However, the Chief Executive immediately replied, "Ah Tat, no need to be afraid as properties valued at \$2 million are readily available in different parts of Hong Kong." This was what he said two years ago, properties valued at \$2 million were readily available. Yet, they are all old buildings.

The Government will not say this anymore. Are there any \$2 million flats? Yes, but very few. A few months later, we can no longer find \$2-million flats in Hong Kong. Only a few old flats valued at \$2 million would be left.

In mid-2010, I told the Financial Secretary and Donald TSANG on a number of private occasions that the Government should examine land supply and the resumption of the construction of HOS flats, as well as formulate some measures to curb speculation. The reply I received at that time was, "Ah Tat", there is no need to do anything as global finance was in a state of turbulence. The PIGS countries (Portugal, Ireland, Greece and Spain) in Europe might collapse at any time. In case any of them collapsed, nothing should be done and everything would be fine.

At the end of 2010, I again talked to a number of senior government officials — I will not disclose their names — I told them that property prices have been surging for more than a year, and during this year or so, private property prices have risen nearly 40%, hence the Government must do something. The Financial Secretary replied that a lot of work had been done, and he had done so and so. The measures, however, did not work, and he still maintained that global finance was in a state of great turbulence and extra caution had to be taken. All in all, he claimed that the Administration would remind potential home purchasers to be cautious when they buy flats, and the Government should not take too drastic actions for there were more than 1 million private property owners in Hong Kong.

Why did I have to record this history in the Hansard? I wish to tell people who read this history in the future who should be held responsible for the rise in property prices and the refusal to resume the construction of HOS flats. Donald TSANG is the first one to be blamed. I will not praise him even though he will announce the resumption of the construction of HOS flats in the coming October. He always takes shortcut. How can he say such words when he is counting down to the last year of his term? We do not need such words. He may as well remain silent and leave these words to the next Chief Executive. He should stop blowing his own trumpet. Even if the resumption of the HOS will be made in the coming October, the mission may not be accomplished. He even went further to release information to the press, saying "where do we get the land for resuming the construction of HOS flats?"

I recall that I was sitting besides CHAN Wing-kee at a meeting of the Commission on Strategic Development (the Commission) when I proposed the resumption of the construction of HOS flats. CHAN Wing-kee had rendered his support too. But what did Donald TSANG say? He said, "Members, where is the land?" I was agitated after hearing this. Being the Chief Executive, if he failed to identify any land for this purpose, he had better quit. CHAN Wing-kee also chided him, saying that he should not be the Chief Executive if he failed to identify any site for this purpose. Just surrender the power and step down. Worse still, the question has been discussed by the Commission for more than two years, but the Government has used hundreds of excuses to shelve the problem time and again.

Are we really in short supply of land? In this year's Application List, we have some 20 000 to 30 000 hectares of land. Secretary Carrie LAM said that the same amount of land would be available for next year. Is it really that difficult to set aside 4 000 to 5 000 hectares of land for constructing HOS flats? Is it really that difficult to reserve 4 000 to 5 000 flats as HOS flats?

Is it so difficult to convert the 5 000 flats to be built under the crap My Home Purchase Plan into HOS flats? Land is actually available and there is downright no problem to build 4 000 to 5 000 HOS flats in the first two or three years. In the medium run, revisions can be made in planning, say, converting vacant schools or community facilities. Some people even propose to change the use of the land adjacent to the country part. Just go ahead!

In the long run, lands can be acquired through rock cavern development or reclamation in the New Territories, and these measures are worthy of discussion. The worst thing about the Government is that it always uses hundreds of excuses to yield to real estate developers.

(Mr Abraham SHEK raised his hand in indication)

DEPUTY PRESIDENT (in Cantonese): Mr Abraham SHEK, is this a point of order?

MR ABRAHAM SHEK (in Cantonese): Yes, Deputy President. I do not understand how the speech of Mr LEE Wing-tat relates to the issue under discussion. Can he explain?

MR LEE WING-TAT (in Cantonese): It is certainly related and I can explain.

DEPUTY PRESIDENT (in Cantonese): Mr LEE, you must speak in relation to this issue.

MR LEE WING-TAT (in Cantonese): This is related because if the Government has done something, we need not impose the SSD at all. What I have said, Mr SHEK, were historical facts.

If there were adequate supply of HOS flats and land, and if the Government accepted our proposals long ago to replace the Application List system by open land auction, we need not impose the SSD, am I right?

DEPUTY PRESIDENT (in Cantonese): Please immediately speak to the question.

MR LEE WING-TAT (in Cantonese): Deputy President, do not worry, I will definitely speak to the question. I will soon mention the SSD, which is relevant to this topic.

The question in hand is that the Government has been using numerous excuses to evade doing its work. Therefore, we must adopt other means, the loan-to-value ratio for properties is one of the various means and the SSD is another.

Yet, there is one point which must be considered. If we have sufficient land supply and the annual production of flats in each of the five years between 2005 and 2010 is not restricted to a mere 10 000, and if the construction of HOS flats has not been suspended between 2005 and 2010, there is actually no need to formulate such a complicated legislation which has taken us so much time to discuss. If the Government is willing to listen to public views and increase land supply by replacing the Application List system with open land auction, and implement a dual-track system, the need for SSD would not exist at all.

Therefore, we should not examine the legislation on the SSD separately on its own. Apparently, the Hong Kong market is pretty divided at present. When I was a member of the Hong Kong Housing Authority, the price of private residential flats was just some \$1 million in 1991 whereas that of HOS flats ranged from some \$600,000 or \$700,000 to \$1 million. It seemed that the markets had overlapped.

If we resume the construction of HOS flats, the price will at most be some \$1 million to \$2 million. However, there are almost no residential units in new buildings that cost some \$1 million or \$2 million nowadays, except for those in old private buildings. The per-square-foot price of new private residential flats almost reaches \$10,000.

Even real estate developers agree that the property market in Hong Kong has been divided into two distinctive markets. This is why real estate developers — I can name some of them — including Vincent LO, Gordon WU and Henry CHENG support the resumption of the construction of HOS flats. Why? Because their business will not be affected. How can buyers of HOS flats priced at around \$1 million afford to buy properties which cost nearly \$10 million? HOS buyers do not belong to this market.

Therefore, when we discussed the Bill on the SSD, we should not just consider this issue on its own, instead we have to take into consideration the situation of the whole society. As evident from the prevailing phenomenon, the SSD is effective. Yet, its effectiveness is gradually eroding as the market has already digested the message. Undeniably, when the proposed SSD and draft legislation were introduced, the number of short-term speculators had dropped by 40% to 50%. However, even if those speculators who, in the capacity of confirmors, have left the market, that does not mean that property prices will be suppressed.

It was not until recently when the Government hinted on the possible resumption of the HOS that people in the property market began to think that the Government may introduce measure to supply flats for another market, with grass-roots people being the target group. As Members may be aware, the effect of this measure is much greater than the imposition of the SSD. Over the past two weeks, the transaction volume of all major housing estates has dropped significantly. Property prices of individual units, but not all units, have slightly dropped. In my opinion, if the Government really wants to stabilize property prices, it cannot solely rely on the SSD, which is mainly directed against speculators. I still think that the Administration should increase land supply, put up land for sale on a regular basis and resume the production of about 5 000 HOS flats every year. With this multi-pronged approach, the property market will steadily develop.

Deputy President, many people may query whether these measures would smash the property market? Firstly, I do not agree that the crash of the property market in 2000 was in any way connected with the HOS. This is a simple but illogical analogy. From 1977 to the present — apart from the suspension of the construction of HOS flats in 2003 — the property market between 1977 and 2006 had been soaring, why then do we not make the analogy that the HOS has boosted the property market?

The fluctuations in the property market or the economy in 2000 were affected by the Asian financial turmoil. Even though Thailand and Indonesia did not have HOS flats, their property markets had dropped by 30% to 40%. What were the reasons for this? What has it to do with the HOS? This is the excuse used by people who wish to shift the blame on others. Deputy President, the proposed 5 000 HOS flats only account for one fifth of the 25 000 HOS flats that were produced in 2000 at its peak, and a quarter of the overall supply of private residential flats. Therefore, I do not think that this would smash the property market. It is nothing but a remark to scare off people.

Secondly, the administration and Donald TSANG always say that there are more than 1 million private property owners, and we should not do anything to arouse their concern. I had commented that this was just a fallacy. According to the four consecutive surveys conducted by the Democratic Party last year, nearly 90% of the respondents supported the resumption of the construction of HOS flats. Why? Because parents who have their own properties think that their children can hardly afford to buy their own homes in their entire life given such high property prices, unless they save the down payment for their children and they pay the monthly instalment.

I am aware that this is exactly what many Legislative Council Members are doing. Otherwise, how can their children save enough for the down payment? Assuming that one earns some \$10,000 a month and he can save 30% of his salary — I have done some calculation — he can only save \$500,000 to \$600,000 in 10 years. How can he pay for the down payment? He has no choice but to rely on his parents to pay the down payment for him.

This explains why a large percentage of private property owners support the resumption of the construction of HOS flats. Both Donald TSANG and John TSANG — I am not sure if the Secretaries of Departments are the same — have

very little knowledge of the plight of the masses and the difficulties encountered by them. Yesterday, I met some people from the SOCO — and Mr Frederick FUNG was also present. They pounded on the table and said angrily, "Mr LEE, Mr FUNG, I only earn \$6,000 to \$7,000 a month, but the rent of those lavishly decorated cubicles is as high as \$2,500. Thus, 33% to 40% of my wage is spent on rent."

I had once asked Eva CHENG, "Your monthly salary is \$280,000, what would you think if you have to spend \$100,000 on rental alone?" Deputy President, we are talking about spending 30% to 40% of one's income on rent. The reason why we feel "painful" and agitated is that those senior government officials do not seem to live in this world. They are not aware of the plight of young couples earning a monthly salary of \$20,000, but having to pay as much as \$6,000 to \$7,000 for en suite units or cubicle apartments. With a monthly income of \$280,000 and \$300,000, how can they feel the pain of the heat?

Deputy President, I do not agree with the CSA proposed by Mr Abraham SHEK though it seems to have an advantage of empowering the Legislative Council to amend the commencement date. Nonetheless, I do not wish to convey any inaccurate or misleading political message to industry players at this stage, making them think that we agree to abolish the SSD in the near future. I do not consider it desirable to get this message across.

Thank you, Deputy President.

MR ABRAHAM SHEK: Deputy President, let me tell you a story. In the winter of 2008, against the United States Federal Reserve Chairman Ben BERNANKE's decision to sharply cut the federal funds in just four months, Milton FRIEDMAN, the world-renowned economist, once critically commented BERNANKE as "the fool in the shower", referring a bather who, thinking his shower water is too cold, turns the hot water all the way up and hurts himself in the process. Today, herein the debate on the Stamp Duty (Amendment) (No. 2) Bill 2010, nothing shall I find it more appropriate than this analogy which I shall dedicate to our Administration which seems to fall on deaf ears to the *cri de coeur* in reality. Prelude to elaborating my view on the Bill, I shall thank the Committee chairman Mr James TO for his leadership under which a total of 13 meetings have been held, reflecting the inadequacies of the draft Bill.

In tapping the hot shower in the property market, I recognize our Government's attempt in adjusting the cold switch to the extent that a stable and healthy private sector property market could be maintained. Time and again, during the earlier discussions on the Bill, however, I find our Government always bears benign intention, but acts as a bull raging in the china shop. I understand that our Government proposes to curb short-term speculative activities in the local residential property market, bearing the hope that at least the residential property prices will not have climbed further. In fact, Deputy President, it misses the logic that the two are not directly and necessarily related: the short-term speculative activities are only one but not the most significant reason contributing to the current property price level many may see as exorbitantly high, also worded by our Chief Executive recently as "frightening".

Firstly, we have to concede that with the two rounds of "quantitative easing" (the QE) in the United States following the financial tsunami in 2008, there is an excess of money supply while most of which flows to the East for investments. Hong Kong, under the low interest-rate environment with our free and open economy, and pray for its continued existence without which we will not be having the success that we are now enjoying. This free and open economy allows unrestricted capital inflows and outflows, becomes a paradise for our local, Mainland and even global investors. Against this backdrop, it is not hard to understand that due to the strong external demand and the limited supply of land previously released, another blunder of the Administration, the property prices have been on a rapid rise since 2009. It is worthwhile to note that it is under this environment that the short-term speculative activities are groomed, adding fuel to the fire-hot property market. Although I have no qualms with our Government's efforts in combating the short-term speculative activities, I do have much reservation of whether the property market will go as our Government's plot. If not, where will we be eventually led to by the Government? The cloud-cuckoo-land which is heaven-distance away from Hong Kong? They are leading us farther and farther away from reality.

(THE PRESIDENT resumed the chair)

One of the prominent features found in the Bill is that the special stamp duty (SSD) was imposed on transactions of residential property acquired on or after 20 November 2010 and resold within 24 months after acquisition at the

regressive rates from 15% to 5% for different holding periods, thereby treating every honest transaction, with the exception of those having granted the exemption, as speculation to be taxed indiscriminately. Surely this is not the Spirit nor the Letter of the Bill. Now half a year has gone, according to the latest statistics, the average number of monthly residential property transactions in the first five months of 2011 was 9 200, recording a 30% decrease from 13 200 transactions in last November. While it is relieved that the speculative activities in residential properties is seen as a sharp decline, nonetheless, it is interesting to learn that the property prices remain at the same level, if not increasing and breaking new records. A question has popped up: if the end in curbing speculative activities in the local residential property market has already been achieved, thanks to the SSD, should our Government agree with the CSA which I shall later propose to include a sunset-clause on the SSD mechanism? If not, then it means that the SSD is an integral part of our Government's long-term tax revenue policy rather than the short-term cure in curbing speculative activities. If they want to catch the thief, they catch everybody. This is the whole essence of this SSD.

If the SSD is in fact seen as a means in achieving the ultimate aim in stabilizing the residential property prices, it is doomed to be "on the fool's errand of history". On top of the SSD, our Government has kept switching on the cooling button in the shower: for example, the rate of stamp duty has earlier been increased from 3.75% to 4.25% for transactions of immovable property valued at more than \$20 million. A week ago, the mortgage loans for residential property valued at between \$10 million and \$12 million were tightened from 60% to 50% while for properties valued at between \$7 million and \$10 million, the maximum loan-to-value ratio was lowered from 70% to 60%. In addition, the total loan value must not exceed \$5 million. By greatly increasing the borrowing costs with a couple of measures all in one go, it is important to stay vigilant of whether a hard landing will be resulted if the interest rate will subsequently increase following the United States Federal Reserve's decision of whether the QE practice will be aborted next month. Due attention also needs to be paid to the public who may find it increasingly hard in purchasing their homes with the increase in borrowing costs. In other words, our Government ought not go too far and do too much in flip-flopping between the hot and cold switches lest the near 8 million Hong Kong people in the shower will be in peril.

Like most Hong Kong people, I am also in favour of a stable property market. I understand the limits of the SSD and the aforementioned tightening

measures of mortgage loans. In addressing the huge surplus in property demand over its supply, the only and the most feasible way out is to increase land supply so that the discrepancy between the demand and supply of the residential properties will be narrowed. As Mr LEE Wing-tat also pointed out, the resumption of the HOS is another area which the Government should look into in order to give confidence to the people that they could also own property. In light of this, I propose that the SSD shall not be chargeable where there are internal transfers or sale of the bare site between the associated corporations within the 24 months. On contrary to the hypothetical claim by our Government that certain loopholes will be created for the possibility of speculation, the truth is however opposite: the development potential of the land will be put to full use, while, with the operation cost being optimized in accordance with the principle of the economies of scale, the progress of land development for residential properties will be expedited and more importantly, the development cost of the residential project will be saved. At the other end, more prospective buyers, especially those aspiring youngsters, will be offered more affordable homes.

President, in rationalizing the shower temperature of our property market, our Government should stay alert to the external economic environment, especially the United States, and Mainland economic changes from time to time. If one day is already too long in politics, equally, the abrupt announcement of the Federal Reserve over any changes in interest rate level that comes, even in a minute's time, is long enough to pull and push our residential property market to the extreme. The memories of the negative equity days must still be fresh in our mind. After all, the chargeable rate and arrangement of the SSD have to be reviewed from time to time lest any procrastination — and the Government is famous in this — failing to catch up with the impending economic changes is enough to drag the public into irreparable catastrophe where we may get burnt or frozen to death, being the casualties of "the fool in the shower".

Thank you, President.

MR WONG KWOK-HING (in Cantonese): President, I speak in support of the Second Reading of the Stamp Duty (Amendment) (No. 2) Bill 2010 (the Bill). Actually, the Government has introduced a series of measures since the start of this legislative session in last October to curb speculations in the property market with the latest one being this special stamp duty (SSD) under discussion today.

As a matter of fact, the SSD is effective in curbing "confirmor sale" and speculations, driving some speculators off the market. This is a true fact. However, I had also queried during the deliberation of the legislation whether honest people would be victimized in the chaos arising from the imposition of the SSD. There are cases in which families or individual home purchasers may have to sell the property they have just acquired due to certain grave and unexpected incidents involving themselves or their family members. In that case, should an appeal system be established by the Government to exercise discretion and take concessionary or relief measures in order to cope with these special, unusual and individual cases?

Unfortunately, the Government responded by saying that it was difficult to establish this mechanism because the mechanism would be prone to abuse once it was established and it was also difficult to adjudicate whether an application should be granted the discretion. The Government further said that the mechanism was not feasible at the taxation level. Nonetheless, I wish to raise this proposal again at the resumption of debate on the Second Reading because we cannot rule out the possibility that individual home purchasers may run into some unforeseeable incidents or be caught in a trying situation after they have purchased a property. For instance, they or their family members may suddenly find that they have contracted a terminal illness and a large sum of money is needed for treatment. I thus hope that the Government will ultimately be willing to establish this mechanism, so that compassionate relief can be granted to people caught in similar situations. If not, while the Government is successful in driving speculators who sell their properties by way of "confirmor sale" off the market, innocent people will be victimized. Hence, I wish to use this opportunity to call on the Government again to consider afresh my proposal.

In fact, the SSD is only one of the many measures to curb speculation. Mr Abraham SHEK will later move an amendment to add a sunset-clause. However, the Government has already undertaken at the deliberation of the Bills Committee that it will review the arrangement on a regular basis. Thus, I find it difficult to support Mr Abraham SHEK's amendment. I hope the Government will undertake During the deliberation at the Bills Committee, the Government has undertaken that reviews will be conducted on a regular basis. I thus hope that later the Secretary can take this opportunity today to reiterate its undertaking made at the Bills Committee.

President, the people of Hong Kong have difficulties in purchasing or renting a flat due to the long-existed "three-high policy", that is, high land premium, high rents and high rates. In order to address their difficulties in purchasing or renting a flat, particularly in addressing the current abnormal speculative activities in the property market, is the measure of SSD proposed a few months ago alone sufficient to work the magic? As a matter of fact, the answer is in the negative. Statistics on the first quarter and the early second quarter of this year show that property prices have already exceeded the prices at 1997. In view of the present situation, this Council has repeatedly called on the Government on different occasions, including committee meetings and motion debates at the Legislative Council meetings, that proper and long-term housing policy and strategy must be put in place. I hold that this is the only way to get to the root of the problem.

Hence, in this debate on the Bill today, I wish to take the opportunity to call on the Government again not to adopt a piece-meal approach, but to put in place a proper housing policy and strategy. This is the only way to prescribe the right remedy for the problem. I hold that we can only regard the SSD proposed in the Bill as a dose of pain reliever or cold medication. It can only drive the speculators off the market. The Government needs to increase the land supply for housing to solve the problem at root. Hence, in terms of land supply, I hope the Government can approach the problem at several levels and tackle it with comprehensive, forceful and effective measures.

The first measure is certainly to increase the construction of public rental housing (PRH) flats. The Hong Kong Federation of Trade Unions hopes that the Government can construct 20 000 PRH flats each year, such that in five years' time, 100 000 PRH flats will be made available to speed up the flat allocation process for applicants on the PRH waiting list. Despite the Government's pledge that the average waiting time will not exceed three years, this is often not the case in reality. Under the Quota and Points System, one-person applicant has to wait for more than three years, or even four years, five years or six years. This is unsatisfactory. I thus hold that the Government should solve the problem at root by increasing the number of PRH flats constructed.

Besides, the Government should also improve the chance for people to get onto the rungs of the home-ownership ladder. The Tenants Purchase Scheme (TPS) has proven to be an effective scheme and a benevolent policy, it should thus be resumed. Although the Government may later turn down my proposal in

its reply, I still hope it can reconsider this proposal because according to track record, the TPS has won the support of PRH occupants and the general public. If PRH occupants can purchase the flat that they are now living in, they can live and work in peace and contentment. The housing problem of the younger generation under the present speculative market can be solved as they can stay with their parents to support and take care of them, thus the housing estates would not become an elderly estate. Moreover, resuming the construction of Home Ownership Scheme (HOS) flats is actually a very fundamental measure. Although the SSD can curb speculative property transactions, the middle class and the grassroots who cannot afford expensive properties can only buy HOS flats to be supplied by the Government.

Recently, Mr WANG Guangya, Director of the Hong Kong and Macao Affairs Office (HKMAO), paid a short visit to Hong Kong. He visited local communities and then to Macao, commenting that Macao was doing better than Hong Kong. In response to the comment, the Secretary said that the two places have different starting points and thus generalizations were hard to be drawn. Yet, in all fairness, have we done a good job? Can people live and work in peace and contentment? The reality is, people have great difficulties in acquiring their first property. They find it very difficult to purchase a home. In addition, in many neighbouring Mainland provinces and cities, measures have been implemented to strictly curb property speculation. Mainlanders can only buy one property, and numerous criteria have been imposed for the purchase of the second property. Thus, the objective situation has driven a large sum of Mainland capital to the property market in Hong Kong, thus pushing up the prices of some local properties which are originally suitable for our middle class or the grassroots. Under this circumstance, I think the Government truly has to make up its mind and resume the construction of HOS flats.

I notice that in the last 10 days or week after the HKMAO Director Mr WANG Guangya's visit to Hong Kong, senior government officials seemed to be a little disoriented. I hope the Government can be more decisive because leaking certain information or speaking in a casual tone is not enough to put the mind of the public at ease. Instead of waiting until October, the Government should announce its policy earlier. If the Government can take this step, I believe it can more effectively address Hong Kong people's grievances on their difficulties in purchasing or renting a home and their lack of peace and contentment in life and work. Moreover, the Government may even be able to

boost the prestige of its governance. I thus hope that the Government can seriously consider formulating short-term measures. For instance, is it possible to use the land earmarked under the My Home Purchase Plan for constructing HOS flats? If the Government can truly do this, it will be able to hit the target in one go.

President, I have said a lot on the long-term housing policy and strategy, but I mainly wish to point out that having the Bill passed by the Legislative Council today is not enough. The Government should formulate long-term housing policy and strategy that are comprehensive, sound and forward-looking. I hope that the Secretary can later respond to this point in her speech.

Thank you, President.

MR CHAN KAM-LAM (in Cantonese): President, the Financial Secretary announced a new policy on 19 November 2010 to restrain the property market, proposing that with effect from 20 November 2010, special stamp duty (SSD) at the rates of 5% to 15% be chargeable on residential properties resold within two years after acquisition, so as to curb short-term speculations in the property market. This is one of the many measures launched by the Government in curbing speculative activities in the property market. This amendment bill on Stamp Duty Ordinance seeks to introduce the SSD into the Ordinance.

Property prices have skyrocketed in the past two years. Before the proposal of the SSD was announced, cases of "confirmor sale" and properties resold within 24 months after acquisition had surged. Many short-term property speculators have pocketed a few hundred thousand dollars by reselling their properties within a few months after acquisition. Some speculators have, after signing the provisional sale and purchase agreement, resold the property to another buyer before the formal transaction was concluded. By paying the 10% deposit, they could earn a few hundred thousand dollars in return. The SSD aims to combat these short-term speculative buyers. Thus, the implementation of the policy can effectively cool down these speculative activities and substantially reduce short-term speculative transactions and "confirmor sales".

According to statistics, 72 cases of properties sold by way of "confirmor sale" were recorded in April this year, which was 78% lower than the monthly average of the first 11 months last year; overall property transactions also

dropped from 13 200 cases in November last year to the monthly average of only 9 200 cases in the first five months of this year, showing a 30% drop in total transactions. It is evident that the measure is effective and can fundamentally curb speculative activities in the property market. Thus, the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) supports the Stamp Duty (Amendment) (No. 2) Bill 2010 (the Bill).

Nevertheless, despite the drop in the overall property transactions in the first half of this year, property prices have not dropped but continued to surge. It is still extremely difficult for people to own a home. It is apparent that by curbing short-term speculative transactions alone is not sufficient to put the property market back on the right track. We hope that the Government can step up its efforts and put in place more measures to foster the healthy development of our property market.

In the motion debate on Enhancing the My Home Purchase Plan last month, we once again called on the Government not to regard housing as a single market; it should not respond to public aspirations by simply saying "no market intervention" and then shirk the responsibility. We firmly believe that the Government is duty-bound to assist people of the lower echelons in acquiring their home, irrespective of whether the economy is at its bloom or doom. How can people live in contentment if they do not even have a dwelling?

In his recent visit to Australia, the Chief Executive said at an interview that "People are not without a dwelling in Hong Kong; but rather, the biggest challenge lies in how to help the middle class acquire a home." We agree that it is necessary to assist the middle class in home ownership, but we beg to differ with his remark that "People are not without a dwelling in Hong Kong". I think the Chief Executive should take a look at those people who are now living in cubicles and sub-divided units. At present, sub-divided units can be found in tenement buildings, industrial buildings and even in illegal squatter huts. What kinds of "dwellings" are they living in? Are these "dwellings" really a decent home? It all boils down to the housing policy of the Government, which insists on not curbing the property market. As a result, property prices remain at an all-time high and these people, who cannot afford to purchase or rent a private residential flat which they can live in a safe environment, are left with no choice but live in cubicles and sub-divided units. The recent fire tragedy has precisely

reminded us of the poor living environment of cubicles where tens of thousands of grass-roots people are now living and the plight of the people who have nowhere to escape in case of an accident.

With respect to home ownership, it affects not only the middle class. The income ceiling for a three-person family applicant of public rental housing (PRH) is \$15,560. If the monthly total income of the three-person family exceeds \$20,000, they are not eligible to apply for PRH, but can they be classified as a middle-class family? The Government says that it wants to assist the middle class. Then, will it also assist this group of people who are not as well-off as the middle class? How can they purchase a home for self occupation under the present market situation? Obviously, PRH is out of the question. Resuming the construction of Home Ownership Scheme (HOS) flats may be their obvious choice. Nonetheless, we all understand that no policy can be applicable forever. Some policies worked well in the past but they may not work now. The Government must take stock of the current situation and adopt appropriate policies. In the past, it halted the construction of HOS flats to save the property market; today, it can also resume the HOS to give people a place to live in.

The Financial Secretary has indicated that the repayment-income ratio for people taking out a mortgage loan has now reached 49%. If banks raise interest rates by 3% to a relatively normal level, the repayment-income ratio will rise to 63%. We can imagine that by then even the middle class will be subject to a heavy mortgage burden. With its flats to be completed in 2014, the My Home Purchase Plan (MHPP) is obviously not a solution to the problem. Under the present trend of the property market, the middle class may not even be able to purchase the MHPP flats. In my opinion, with the present soaring property prices, even if the Government resumes the construction of HOS flats and sells them at 70% of the prevailing market prices, eligible applicants cannot afford to buy them.

Adjusting the overall property market remains the best way to assist the middle class in home ownership. In order to address the housing problems of the grassroots, the Government must differentiate between properties purchased for investment and those purchased for self occupation, and then increase land supply according to the demands in these two markets, such that people can

purchase a home they can afford. By so doing, the Government can also lower property prices, making it possible for those who wish to become a home-owner to realize their dream.

Recently, the debate over the resumption of the construction of HOS flats has become increasingly controversial. There are opinions saying that resuming the HOS can be the last straw that crumbles the property market, dealing a heavy blow and triggering a hard landing. This precisely exemplifies why Hong Kong is such an adorable place: you will be criticized for implementing a certain policy, but you will also be criticized for not implementing a certain policy. Nevertheless, we have to look at the issue pragmatically. The supply of private residential flats in Hong Kong has been consistently low since 2007. The market in general has been in short supply of flats. Property developers only concentrate on constructing luxury apartments which are often purchased by investors and they have no interests to construct affordable flats for the middle-lower echelons. The property market is out of control under the exuberant investment atmosphere with property prices soaring higher every day. Even the prices of tenement buildings, with poor environment and conditions, have soared to an abnormal level.

According to rough estimates, there are about 100 000 to 130 000 households in the market which have a demand for owner occupied flats. The proposal of constructing 3 000 to 5 000 HOS flats can only cater to the psychological need, it does not help in curbing the property market, not to mention dealing a blow to the market. Moreover, we suggest the Government to impose conditions for resale of properties to prevent speculations of HOS flats. In our discussion with the Financial Secretary on the property market in 2009, we urged him to keep track of the property development trend and take early actions to prevent the formation of asset-price bubbles, so that the public could purchase an affordable home. With much regret, our advice at that time failed to engage the full attention of the Government, making the property problems today even tougher to solve.

In addition, the Government should also be prepared for an economic downturn that may happen anytime. Hong Kong is a small and external-oriented economy which may easily fall victim to external economic factors. With the impending rates increase, rampant inflation and rising demands, our economy is under immense pressure, but what is more worrying is

the blow that an unstable external economy may deal to Hong Kong. The loose monetary policies adopted by European and American countries, coupled with the ever-escalating risks brought by the debt-ridden European countries, may trigger another economic crisis anytime, which will deal another heavy blow to the property market and the overall economy of Hong Kong. The past history of Hong Kong and the economic downturn in the United States once again prove the wisdom behind the saying "if the asset market is stable, so will be the economy". The higher the property prices, the greater extent of impact on property market in times of setback in future. If the authorities fail to grasp the opportunity to timely cool down the property market, it will be difficult to stabilize our macro economy and financial system in times of external economic fluctuations.

President, Mr Abraham SHEK has proposed an amendment today to exempt the levying of the SSD on bare sites. We do not think the amendment is necessary. Given that it is our wish to curb speculative property transactions, the sale of sites should also be under regulation. The Bill has already provided exemption for internal transfer between associated companies, that is, internal transfer of bare site between associated companies is already exempted from levying the SSD. It is against our wish that bare sites are completely exempted from levying the SSD, as this may provide room for speculative activities in the conveyance of sites.

We also disagree to the amendment to add a sunset clause. Setting a date for the SSD-related provisions to lapse will fuel the hope of property speculators that they may be able to avoid the payment of the SSD. This will substantially undermine the effectiveness of the SSD. In our opinion, the time of stopping the levying of the SSD should be subject to the actual situation of the property market. Thus, the DAB opposes this amendment.

Although the Administration has undertaken that review on the SSD will be conducted every 24 months, given the volatility of the market, reviews made at a two-year interval may not be able to catch up with the market momentum. Thus, the DAB hopes that the Government can come to the Legislative Council to brief us on the latest development whenever necessary. It is paramount that the SSD is timely reviewed and relevant policies are timely adjusted.

With these remarks, President, I so submit.

DR MARGARET NG (in Cantonese): President, the Civic Party has been calling on the Government to adopt measures to stabilize the property market. Undoubtedly, the authorities wish to stabilize it by means of the special stamp duty (SSD). We will thus support the Government in principle for putting forth this policy.

Today, I mainly wish to voice out a major problem, which is the retrospective effect of the Stamp Duty (Amendment) (No. 2) Bill 2010 (the Bill). For instance, the SSD legislation is not made retrospective to the date when the Bill takes effect, but to the date when this policy was announced by the government official. The prejudicial effect this retrospective legislation has on the affected persons is that they have to pay more. As a general principle, this is not desirable because under the basic assumption that people are law-abiding citizens, their actions will be regulated by the law. When a piece of legislation is introduced by the Government, people will alter their actions to comply with the restrictions or measures laid down in that piece of legislation. Thus, it is unfair to the people who have already committed the restricted actions when the legislation takes effect. Hence, we in principle do not wish to see such retrospective legislation. Generally speaking, it is against our principle.

While retrospective legislation on criminal matters is considered an outright trample on human rights, retrospective legislation on policy matters is not absolutely impossible, though rare, and the latter is subject to certain principles, such as whether the authorities foresee people will commit the action concerned. At the annual budget delivery, the Financial Secretary often announces budget proposals to increase the duty on vehicle, tobacco or wine with immediate effect. Orders provisionally providing for the taxation arrangement will then be passed as soon as practicable by this Council to give legislative effect to the policy proposed by the Financial Secretary. This is a common practice and it has its indispensability. Without such retrospective legislation, people will start hoarding the dutiable items concerned once the duty-increase proposal was announced. This will significantly undermine the effectiveness of the taxation policy. Thus, generally speaking, we accept this practice.

Nonetheless, this Bill is different. The Government has specifically said that the Bill seeks not to increase tax revenue, but to stabilize the property market and curb speculative property transactions. The Civic Party cannot fully agree with the approach of using the SSD to curb speculative property transactions

because this is another issue. The Government has made it clear that this is not a taxation issue, but nonetheless it has made the Bill retrospective. We urge that at least two things should be done. First, the policy/the ordinance must be clear and simple, and second, the policy has to be expeditiously implemented. The date on which the Government announced the policy and the date on which the Bill is passed should not be too far apart. Why? It is because legislation can lay down restrictions on people, but policies announced by government officials cannot. They cannot say that "I shall be the law" or "My words shall be the legislation". If this is the case, the Government has violated the very principle of the rule of law. We thus hope that the SSD will not be implemented a long time after the Government has announced the policy.

However, the Bill under discussion today will take effect retrospectively to 20 November 2010 which is a very long interval. Why? Are Members to be blamed because we have scrutinized the Bill in great detail and proposed too many amendments for the Government to make revisions? The main reason actually is that the definition of the SSD as proposed by the Government is too unclear and ambiguous and we found many parts of it confusing and doubtful. Most importantly, the policy specifies that if a residential property is acquired and the same property is then disposed of within 24 months after acquisition, the property is chargeable of the SSD. However, legal practitioners specializing in property transactions immediately questioned what the meanings of "acquired" and "disposed of" are. During the scrutiny of the Bill, we even have different understandings on "the same property".

If the Government wishes to formulate a policy with retrospective effect and have it quickly endorsed, it should lay out the policy clearly. For example, if the Government says that the duty on tobacco or wine will be increased by a certain percentage, this will not cause any confusion because the policy has been clearly laid out. Contrarily, if a policy specifies that a property is "acquired" and then "disposed of" within 24 months after its acquisition, it is ambiguous and obscure. Not only people in the legal profession, property agents also find problems with the policy, and so are the banks. For instance, should the mortgage already taken out be regarded as being "disposed of"? Should the handover of the property be regarded as being "disposed of"? If the property is left by will or inheritance, should the property also be regarded as being "disposed of"? All these are valid questions for the Government to answer. As Legislative Council Members, we cannot say that it does not matter; we should

trust the Government and find a solution later. We must iron out the ambiguities and let the Bill pass without any obscurity.

Most important of all, this will affect other ordinances. The SSD cannot be considered separately on its own. Reference must be drawn to the original Stamp Duty Ordinance for the definition of the SSD. In considering whether a property is being "disposed of" and "acquired", one may also need to refer to ordinances, legal cases and common practices concerning property transactions. Hence, during the scrutiny of the Bill, we strongly felt that the Government had taken the matter too lightly and had not thoroughly considered the Bill against different scenarios. As a result, by the time when stakeholders expressed their views, the Government realized that many things still needed to be done and thus it could not have the Bill quickly passed in a perfunctory manner.

Equally important is that the Bill will unintentionally create many unfair situations. Measures to curb or stabilize the property market aim at combating speculative activities and discouraging people from speculating on properties by means of some restrictions. However, there are many situations which do not involve any speculation. One such exceptional example is the compulsory sale of properties. Some property owners involved who do not wish to sell their property to the Government may even contest the compulsory sale in court with their own money. How can it be fair to these property owners if they are also regarded as having disposed of their properties? Another example is the addition of names of family members (such as spouses or brothers) to the title to a property. In this case, the property transaction is not speculative in nature, but these people also fall victim to the government policy. In order to speedily complete the scrutiny of the Bill, we may be asked to turn a blind eye to the problems in the Bill or leave the problems to a later stage, but I am afraid we cannot do so.

For all that I have said, I only wish to illustrate what I said in the beginning, that is, the Bill should not be vested with a retrospective effect. Even if the Government has a genuine and momentous cause for making the Bill retrospective, it must present the Bill and the policy to be implemented in such a way that it is clear, specific, simple and easy to comply with. However, I am afraid the Bill has failed to achieve these ends. Hence, the Civic Party I cannot say on behalf of the entire Civic Party as some members may have a different idea. During the deliberation of the Bill Committee, some Members

have supported the Government to stabilize the property market and they have even supported the government approaches which were barely acceptable to them. However, at a certain point of the scrutiny, Members really found themselves in a very difficult position. The Bill was really a "chicken rib" to them, not knowing whether they should support it or not. Hence, Members were in a real quandary.

It is under this context that Mr Abraham SHEK proposed the sunset clause. I have a special feeling about sunset clauses because I also proposed a sunset clause for the Interception of Communication and Surveillance Bill which was passed hastily. I wish to clarify a point with Mr Abraham SHEK. The context under which I proposed the addition of my sunset clause was a little different from that under which he proposed his sunset clause. At the discussion of the Interception of Communication and Surveillance Bill, since the privacy of communication is protected by the Basic Law and intercepting communication is basically in violation of human rights, we were of the view that the authorities should provide the grounds for the necessity of intercepting communication. As the Interception of Communication and Surveillance Bill was scrutinized in such a hasty manner and there were numerous clauses we found unsatisfactory, the only option was to add a sunset clause to force the Government to make a review. However, the SSD today is not related to human rights and it concerns a policy. Nonetheless, I think Mr Abraham SHEK's amendment is worth supporting because the Bill is made retrospective for a special cause.

Mr CHAN Kam-lam and some other Members said just now that it is unnecessary to add a sunset clause because the Government has already promised to conduct a review in two years' time. President, my advice is, the Government is not trustworthy. The Government may not necessarily have a wicked heart, but it may not make good on its promise either. The Interception of Communication and Surveillance Ordinance is a good example. The Government also said at that time that it was unnecessary to add a sunset clause and promised that it would conduct a review some time later, I forget it is two years or three years, but to date, it has not done so. I thus hold that Mr Abraham SHEK's amendment is worth supporting despite the fact that his sunset clause has a different context than mine.

Thank you, President.

MR RONNY TONG (in Cantonese): President, as I sit in this Chamber longer, this feeling gets stronger: I wonder whether it is me or the SAR Government being out of pace with society. I really cannot tell what the actual fact is.

President, the question under discussion today is related to the Second Reading debate and passage of the Bill on special stamp duty (SSD). I believe a majority of the people in Hong Kong will share my view that the discussion today is long overdue. It is not in-depth and redundant. Why? President, the answer is simple. Reality proves that the objective of bringing property prices down to a reasonable level is unattainable. Since the implementation of this measure by the SAR Government last November, property prices have not gone down, and on the contrary, it has surged continuously in the past six months. What actually is the objective of the Bill?

President, this is a matter of simple logic. If property speculation does not have a bearing on property prices, why should such behaviour be curbed or punished? In a capitalistic society with free economy, why am I barred from an activity that enables me to make money? Certainly, if it is said that such activity should be stamped out due to its damage to society as a whole, where the rocketing property prices have prevented many people from purchasing their first home, I will consider the reason acceptable. However, the situation today tells that the measure may have caused the innocent to suffer.

President, I must make it very clear that I do not sympathize with property speculators. However, even if we have to enact the legislation, we have to consider carefully what we are going to vote for in this Chamber?

President, why the present Bill or the introduction of the SSD fails to cap property prices at a reasonable level even though speculative activities have actually decreased as shown in figures. President, I choose not to use the more radical term of combating the property market, for I think the term "combating the property market" may convey the impression that we are intending to pull down the property market and bring Hong Kong back to the state in 2003. As such, I think it is inappropriate to use that term. Hence, I consider it more suitable to say that it seeks to maintain property prices at a reasonable level to enable people to purchase their first home, for this is a common goal in society. However, why is it that this objective cannot be achieved even though the problem of speculation has subsided or receded?

President, the answer is simply an issue of demand and supply. Even though speculators have stopped running after the property market, sellers still consider their properties valuable and worthy of the price they ask, so they will not lower their asking price. They do not mind if the buyer does not buy it today, for they believe the buyer will have to pay more when they want to buy it a year later. Under such circumstance, what can we do to reach the objective of combating "speculators" as announced publicly by the authorities? President, I am in grave doubt. Perhaps it is a matter of my personality. I personally consider that measures combating speculation in the property market may be of some use, and the surge in property prices may be held back from reaching 100% and reduced to 95%. If the measure can only lower the increase to 95%, is it appropriate to introduce such measure? I think it is appropriate.

President, I will sum up the Bill in one simple sentence: It is only a superficial stopgap measure failing to address the root of the problem. If our objective is to maintain property prices at an affordable level to the public, pardon me to say that this Bill can in no way achieve this objective. Hence, despite spending six months to discuss the Bill I am not criticizing the Chairman of the Bills Committee for spending so much time. Honestly, I only reckoned it futile to continue participating in the discussion of the Bill after I had been involved in the discussion for two months. The Bill is not thorough, pointless and long overdue. I would rather spend my effort on discussing other legislation, such as the competition law or the company law, for they are more worthy of my time. I hold the same view regarding the discussion today. Sorry, I still consider that many questions like the sunset clause and exemptions, and so on, are indeed overstating the importance of the Bill to an extent that I can hardly agree.

President, Dr Margaret NG gave her support to the sunset clause earlier, yet I must point out that I differ from her. Surely, Dr Margaret NG supports this clause for she considers the Bill worthy of support in certain aspects, yet due to the issue of retrospective effect, she considers that it should lapse earlier. However, I have a different view. I think if the objective of the Bill is to combat property speculation, the inclusion of a sunset clause will be tantamount to an advance notice informing speculators that the Ordinance will lapse two years later, where they will get prepared and continue with speculation on the first day after the two-year period. In my view, this is a completely wrong message. You may as well say that the Ordinance should not be implemented. However,

if you consider the Ordinance would serve a purpose, the inclusion of a sunset clause will run contrary to the legislative intent of the Ordinance. Logically, you cannot support the Bill and the inclusion of a sunset clause simultaneously. Sorry, I am really unconvinced about this.

President, I will then assume that the Bill has considerable merits, that is, it has some effects in combating property speculation. If that is the case, I think the effort made by the Government is inadequate. Why? It is related to the scope of the Bill. Actually, when the Government first proposed the Bill, I had reminded the Government that not only speculative activities of residential premises should be curbed, the speculative activities of commercial premises should also be addressed. President, the property market does not simply compose of residential premises. There is another issue that I consider strange. In the course of the scrutiny, the Government proposed that "involuntary sale" of premises should not be exempted. Why it should not be exempted? For the Government considered that some people would take advantage of the "involuntary sale" to engage in speculation, and the granting of exemption to such transactions would violate the legislative intent of the Ordinance. If that is the case, why does it not address the speculative activities involving commercial premises? Why does the Government not impose the SSD on commercial premises to deter speculative activities?

Should this be attributed to the presumption that speculation of commercial premises is mainly the daily operation of major entrepreneurs and estate developers but not the general public, and that the stamping out or even sanctioning of such activity is considered evil and unforgivable in Hong Kong, for the "great landlords" should not be trespassed? President, I can hardly agree with this presumption. I absolutely disagree with this. If the Bill seeks to prevent the risk of developing a property price bubble, speculative activities on commercial premises must be curbed.

President, I will then talk about the issue on exemption. President, during the discussion and scrutiny of the Bill, we had spent a lot of time to debate the issue on exemption. President, as I mentioned earlier, honestly, I consider such discussions beside the point. Whether I am listening in this Chamber or not, I consider it improper. Many people may consider this unfair in principle. Why exemption is not granted on this and that condition? Why the Government has to seek legal opinions on many different issues?

In respect of transactions of residential premises, the Government seems to adopt the attitude of "better have the innocent wronged than to let go the wrongdoers", as I mentioned earlier. It is extremely reluctant to consider any kind of exemption. Despite holding this attitude, as I mentioned earlier, the Government turns a blind eye to speculative activities on commercial premises. The Government seems to be suffering from dissociated personality — sorry, I have used the wrong term, it is not dissociated personality but schizophrenia. I think if the Government aims at combating speculation, it must accept that exemption should be granted to transaction not involving speculation. We should not spend so much resources and time to argue about the granting of exemption for non-speculative transactions.

President, if the sale of property is made under a court order, or if the resale of the property is made as a result of some inevitable incidents, it is obvious to all that no speculation is involved. If so, why should such transaction still subject to the levy of a punitive stamp duty? President, I cannot understand the rationale. Surely, President, it is fortunate that most of the proposals on granting exemption have eventually been accepted by the Government, and the Government has put forth reasonable amendments. However, I consider that the cost for such compromises is extremely high. Frankly, it costs a dozen of Members spending days and nights in discussions. As I said earlier, is it worth the effort eventually? Actually, had our efforts been spent on the discussion of policies on maintaining property price at a reasonable level, would it not be more fruitful?

President, I must reiterate here a message expressed earnestly by many colleagues. The Government should not think that the passage of the Bill will solve all the problems in the property market, nor should it give the public the wrong impression that the development of a bubble in the property market will be brought to a halt upon the passage of the Bill. On the contrary, reality proves that the effect of the legislation on the development of a property bubble is I dare not say that it has no impact at all, but the slight effect should be a cause of concern.

If so, how should the problem of the development of a property bubble or runaway property prices be addressed? President, it is a simple issue about demand and supply. President, increasing land supply is not the antidote to the problem. The mere provision of land is not the solution. Under the high land

price auction system, the provision of land will only offer an opportunity for estate developers to hoard to push up the price of "flour", and the price of "bread" will eventually be expensive. In other words, to face the unbalance problem in demand and supply squarely, the Government has no alternative but to increase the supply of completed flats rather than the supply of land. That is to say, other than increasing the construction of public rental housing and resuming the construction of Home Ownership Scheme (HOS) flats, the Government does not have other options.

Given the prolonged discussion, it deems unnecessary for WANG Guangya to say this and that. Frankly, his remarks do not have much influence on the people of Hong Kong. The Government should have understood this out of its own accord. To put it in a serious manner, the Government is obliged to implement this arrangement as soon as possible. The SAR Government now asks the public to wait till the delivery of the Policy Address in October this year, where there will be a brand new scenario in the new Legislative Council Building by then. President, I think it is not only insulting to the people of Hong Kong but also an irresponsible remark. If Hong Kong is facing a very serious problem about the development of a property bubble, why this cannot be addressed immediately but has to wait till it can be addressed in the new Legislative Council Building gloriously? It is obviously pursuing for glorious scene at the expense of practicability, is it not? President, I find this attitude unacceptable.

President, I hope that the SAR Government will reflect on this seriously. It should give a correct message to Hong Kong society, that is, the SAR Government will increase the supply of completed flats, increase the construction of public rental housing and resume the construction of HOS flats to address the unbalance in demand and supply in Hong Kong. This is a real solution to the problem of the development of a property bubble.

President, regarding the voting decision today, the Civic Party definitely has its stance. Though I think that the Bill is beside the point and unnecessary, it is effective in some way, and thus it should not be voted down. As I mentioned earlier, I do not sympathize with property speculators all along. Hence, I will say that in my own preference, I have a clear conscience even though I vote for the Bill. However, regarding the sunset clause, sorry, I am still not convinced. I hope that more convincing justifications will be put forth by other colleagues

later, to make me think that the Bill should be amended by including the sunset clause.

Thank you, President.

MS MIRIAM LAU (in Cantonese): President, in the past 30 months, property prices in Hong Kong have increased by an average of 2% on a month-on-month basis, with an accumulated increase of up to 80%. According to a survey conducted recently, housing is the gravest concern to the public. It is obvious that the property market in Hong Kong has been seriously distorted, and the public look forward to the rectification of the Government.

The surge in property prices should be attributed to many factors, such as the inadequate supply of land, the successively low interest rate, the implementation of quantitative easing policy by the external economies and the quantitative easing monetary policy, which have brought about asset bubble and the inflow of hot money. Premises in Hong Kong have become the targets of many Mainland investors. They come to Hong Kong to purchase flats and luxury flats, pushing property prices higher and higher. I believe these are the major causes of the exuberant state of the property market and increasing property prices. Many people take advantage of the situation to engage in speculative activities, rather than making investment. Due to the speculation in the property market, a large number of transactions are made in the form of "confirmor sale". Under the "confirmor sale" arrangement, the buyer resells the property within a very short period after the property has been acquired, or even before the signing of the agreement on transaction, so as to make a profit. This is called "confirmor sale" which Members are familiar with. Hence, I think the exuberant state of the property market and the surge in property prices may be attributed to the factors I mentioned earlier, such as the inadequate supply of land. These factors may be the major causes. Yet, transactions in the form of "confirmor sale", which are speculation on property, can be regarded as the accomplice leading to the present situation in Hong Kong.

According to the figures provided by the Government, in the first nine months of 2010, as compared with the same period in 2009, the number of resale within 24 months has increased by 32%, whereas the number of resale within 12 months has increased by 114%. Regarding the intensifying spree of speculation

in property, last year the Liberal Party proposed a number of proposals to combat speculation in September, before the release of the Policy Address, and in December, during the consultation period of the budget. These proposals include requesting the Inland Revenue Department to make extra effort to recover profit tax related to speculative activities in property, extend the ban on deferral of payment of stamp duty, tighten the threshold requirement for investment migrants and impose restrictions on companies for carrying out "confirmor sale", and so on. In order to combat speculative activities, the Liberal Party supports the Government in levying the special stamp duty (SSD) as a measure to curb speculation, particularly short-term speculative activities like "confirmor sales".

Actually, it is evident that upon the imposition of the SSD, speculative activities have cooled down markedly. In the first five months of this year, as compared with the first 11 months last year when the SSD had not yet been imposed, the number of "confirmor sale" transactions had dropped substantially by over 60%. The number of registration of last month's "confirmor sale" in residential flats only accounted for 0.65%, less than 1%, of the overall registration of second-hand residential flats. In other words, among 10 000 transactions of second-hand residential flats, only 65 transactions were "confirmor sale". This was not only a record-low since the introduction of the SSD by the Government last year, but also the second lowest record since 1996, when the first record was made, just higher than the lowest rate of 0.57% recorded in October 1998. With the latest measures rolled out by the Government to tighten residential mortgage and the possibility of considering resuming the construction of Home Ownership Scheme flats, it is expected that the confirmor sale registration rate will drop further.

Upon the introduction of the SSD, property prices have indeed dropped. When the measure was introduced last November, I was immediately told by the estate agents that property prices had dropped 3% to 6% on average and the volume of transactions had dropped by 70% in the first and second weeks. However, one month later, the volume of transaction bounced back, and property prices scaled new heights rather than decrease. Actually, we cannot expect that the prevailing problem of rocketing property prices will be solved by a "single dose of medication". Since the property market is still in the exuberant state, we believe that some people will continue to seize the opportunity to make quick money, seeking to make profit via short-term speculative activities, which will definitely push up property prices. After the speculator purchased the premise, someone will surely be willing to offer higher price for the premise if the property

market is still in the exuberant state, the speculator will make profit from this, and property prices will be pushed up continuously. In some cases, the premise does not only involve one "confirmor sale" transaction but may be several. It is not uncommon that a premise may have several confirmors, and property prices are pushed up constantly. It is evident that the effect of the SSD is limited. In the first month of the introduction of the measure, property prices did drop by several percentage points, but it then took an upward trend. Transactions in the property market had slowed down for two to three weeks, but it became buoyant again. As mentioned by a number of colleagues earlier, the effect of the SSD is indeed very limited.

However, to be honest, the introduction of the SSD is not totally ineffective. It has at least prevented some short-term speculators from pushing up property prices continuously. This is exactly its effect. Certainly, regarding the property market as a whole, the problems cannot be cured by the "single dose of medication" of the SSD. In fact, I think the SSD is only a pain reliever. It may perhaps relieve the pain and symptoms, but I do not think a pain reliever can cure the illness. Yet, the pain reliever has side effect. Under the existing across-the-board arrangement of the Government, if anyone resells the property within 24 months, he will be subject to the SSD. I cannot help ask, if someone who bought a premise for self-occupation has some unexpected problems, such as unemployment, divorce, serious financial problem or suffer from serious illness, and has to sell his premise within 24 months, what can he do? He has no way out. Perhaps as Mr James TO said earlier, if one was in need of cash, just get a bank mortgage with his premise as the security. Since he cannot sell his premise, he will leave it to the bank to sell the premise. This is an indirect approach and involves a lot of administration fees. The owner concerned may have to bear unnecessary loss. Hence, the levy of the SSD is a harsh policy to genuine users.

During the scrutiny of the Bill, we have successfully strived for a number of exemptions, for instance, involuntary sale made in accordance with court orders will be exempted in some measure, and the scope of related persons has been expanded. These are good exemptions that can relax the extremely stringent policy. However, the relaxation and exemption still fail to assist the users we mentioned earlier. Hence, I still regard this legislation as a harsh law. I will compare the situation to the prescription of a pain killer to someone suffering from pain and illness. However, due to the side effect with long-term

use of pain killers, the patient cannot take the pain killer for a long term. We cannot rule out the possibility that after the legislation come into effect, there may be cases warrant exemption on compassionate ground. By then, we can do nothing to help them under the legislation even though we are sympathetic to them.

Having said all these, I want to bring out the point that this legislation should be removed as soon as possible. Once property prices in the market return to a reasonable level, the Government should proactively consider repealing the legislation. It should not consider the way forward only when the public find the legislation very unreasonable and unfair and have no idea what they can do.

Given the position of the Liberal Party in supporting free economy, this kind of measure will after all affect free economy and restrict the market, thereby reducing the operation flexibility of the market. Hence, this kind of measure should be introduced when the market is in distortion, hoping the market situation will return to normal within a short term. When the market returns to normal, there is no reason to retain such a harsh law. Actually, it will have a bearing on investors. Hence, the Liberal Party urges the Government to keep close watch on the market condition, and if — I repeat, I am saying if and only if — the market takes a turn for the worse, the Government should remove this "potent medication" immediately. It should avoid repeating the mistake in the "85 000 housing policy" and avoid any actions arousing criticisms against the Government for pulling down the property market.

President, the illness with the property market is complicated, which cannot be cured by a single dose of medication. Besides, as I mentioned earlier, the medication prescribed is ineffective in curing the illness, it fails to tackle the root of the problem and is merely a pain killer. Hence, I hope the Government will adopt a multi-pronged approach and apply the so-called "cocktail" therapy to treat the serious illnesses of the property market.

Though we consider that the SSD is not a desirable prescription, we do not support the cessation of this medication. We will support the Bill today. However, we will not support Mr Abraham SHEK's proposal about the sunset clause. I will explain it briefly afterwards why I do not support the proposal. In our view, in order to properly address the problems of the property market,

cool down the property market and facilitate the sandwich class and young people to purchase their home, the Government should work on the supply of land. It should conduct land sale regularly and introduce "flats with limited floor area for first-time Hong Kong home-buyers", so that 12 000 flats with limited floor area will be provided each year, which are only open for sale to Hong Kong citizens who are first-time home-buyers. Yet, today is not a suitable occasion to discuss this question in depth.

Before I come to the discussion of the sunset clause, I would like to point out that the present Bill is targeted at residential flats. As for non-residential flats, many speculators have indeed turned to the commercial property market. Records indicated that 48 transactions in commercial premises have been completed in May, a month-on-month increase of 33%, which is the record high since 2008. As for shops, over 30 transactions have been recorded in four consecutive months, and in the past, there were only less than 30 transactions. Members should have noticed that speculators have changed their focus from residential market to the market for commercial premises and shops. The Government must pay close attention to this situation and examine whether measures should be introduced. Nowadays, many small and medium enterprises complain about the plight of meeting the exorbitant rent, where some are forced to move out by owners. If the Government fails to face these issues squarely, serious problems will definitely arise.

As for the sunset clause, sensationally, I very much wish to support Mr Abraham SHEK, as I mentioned earlier, this requirement will restrict the market. From the perspective of supporting a free market and free operation of the market, we consider that extra intervention of this kind by the Government should be minimized. However, the inclusion of the sunset clause may give a wrong impression to speculators that these regulations will be lifted according to the sunset clause. They may find opportunities to take advantage of this clause to engage in speculative activities. At the present stage, though the effect of the SSD is minimal, it can at least control speculative activities that push up property prices continuously. Yet, small is better than none. We do not hope that there will be loophole for speculators to take advantage of. We hope the Government will closely monitor the market, and if the market condition takes a turn for the worse, it must act decisively to repeal the harsh policy. Thank you, President.

MR FREDERICK FUNG (in Cantonese): President, unlike my usual approach, I will adopt a different approach today by changing the sequence of my presentation. I used to present the existing situation and the figures first, then identify the problems based on the figures and eventually put forth proposals and solutions to the problems. However, today, I will reverse this sequence. I will first talk about the Bill, and examine the problems the authorities seek to solve by imposing the special stamp duty (SSD) and whether the Bill can really solve the problems. I will then put forth proposals that I consider may solve the housing problems we are facing in actuality. Finally, I will present some figures to elucidate to the Government and Members the problems reflected by these figures and identify ways to handle and examine these problems in future.

The objective of levying the SSD is to increase the cost on the resale of property. Hence, a higher rate of the SSD is levied on resale in a shorter period, that is, 15% for resale within six months, 10% for a period of 12 months and 5 % for a period of 24 months. The focus of this levy is to increase the costs of buyers who resale the property within a short period upon acquiring it, but it will not increase the supply of flats. From the perspective of supply and demand, the arrangement fails to address the need of the public by increasing the supply in the market, which will alleviate the problem of excessive demand and make it easier for the public to purchase their own flats.

Since some people regard residential flats as a commodity and make profit through continuous transaction, the levy is imposed mainly to combat these people. As more people use this way to make profit, residential flats will be turned into a commodity mainly for speculation, whereas the purpose of meeting basic housing needs will dwindle. It is obvious that the Bill seeks to put off speculators or increase their capital costs for speculative activities, so that they may not necessarily get relatively high profit from the speculative activities. I think this is the most important objective of the Bill.

However, will the housing problem faced by Hong Kong people be solved by the Bill? At present, the Government intervenes directly in the property sector and solves the housing problem mainly through public rental housing. Now, 15 000 public rental housing flats are constructed every year on average. In addition to public rental housing, the authorities proposed recently that 5 000 units would be provided under the My Home Purchase Plan (MHPP) five years

later. In fact, there are still uncertainties about the MHPP, and it is heard that the plan will have to be postponed for another year.

Hence, apart from public rental housing, there is basically no specific housing plan. In other words, the Government only addresses the rental housing needs of 15 000 low-income households, whereas the other issues are left to the market. Is leaving everything to the market the best approach? As I mentioned earlier, if residential flats on the market are not only used to meet basic housing needs but are also traded as commodities, whereas the market focuses on commodity speculation, the purpose of meeting housing needs will definitely be affected. Hence, it is impracticable to rely solely on the market to address the issue.

We notice from the situation in the past few years that this approach is unreliable. Since last February, the Government has introduced many measures. It announced the increase of the supply of flats in the Budget and introduced "nine new measures and twelve requirements" to step up the regulation on the sale of newly constructed flats. The ban on "confirmor sale" is one of the measures adopted. Later, the authorities proposed in the Policy Address that in the next 10 years, land would be made available annually for 20 000 private residential flats on average. By the middle of November, the Financial Secretary announced the measure on implementing the SSD. The Government has introduced a lot of measures to prohibit or hinder speculative activities in the property market. However, over the year, had those measures been able to curb the increase in property prices? Have property prices been cooled down?

The answer is in the negative. We notice that property prices have increased by 9% in the first quarter of this year. The Financial Secretary and the Government also admitted that current property prices had exceeded the level in 1997, with the affordability ratio increased to 48%, which was 7% higher than the previous year and at the level of 10 to 20 years ago. Hence, I do not think that the "nine measures and twelve requirements", or even the Bill on the SSD proposed to be passed today will address the housing needs of the people of Hong Kong, let alone solve the problem.

In my view, the housing problem faced by Hong Kong people can only be addressed when residential flats are primarily used for residential purpose and trading as a commodity is only the secondary purpose. In other words, flats

constructed must target rightly at a market with minimal or no speculative activities. The commodity element of residential flats should be minimized, whereas the objective of meeting residential purposes should be fully enhanced so as to solve the housing problem.

We may look at the history and examine under what circumstances this can be achieved. In fact, we have been striving for this for a long time. However, the Government only heeded the view of a certain person, that is, the Director of the Hong Kong and Macao Affairs Office, WANG Guangya. Once he put forth that view, the whole world listened to it. In the past two years, the Legislative Council had mentioned the proposal numerous times, members of the public and Members had appealed to the Government repeatedly, but government officials just turned a deaf ear. I wonder why they would suddenly listen to the view on providing Home Ownership Scheme (HOS) flats. Since HOS flats have many restrictions, the commodity element will be minimized.

What limitations are HOS flats subject to? Let me just count, I can think of at least six requirements. First, the buyer must be age 18 or above. Second, the buyer must be a Hong Kong resident with not less than seven years of residence in Hong Kong. Third, there is an income limit. Fourth, in the past, if an owner wanted to sell his HOS flat in the market, he could only do so 10 years after the date of first assignment. But the criteria had later been changed to five years after the date of first assignment, and it is now shortened to three years. As for surplus HOS flats, there is no time limit for selling in the market. Fifth, HOS flats are in general medium-sized flats. Sixth, the flats are primarily pragmatic. Luxurious design is a secondary concern. Actually, the flats are in no way luxurious. I think the six criteria mentioned above are limitations of HOS flats.

Due to the six limitations, the commercial elements of HOS flats are very low, which can ensure that HOS flats are primarily for residential purpose. Since these limitations have been relaxed recently and the transactions of HOS flats have been made easier, influence of the market has spread to HOS flat market. Yet, I believe the Secretary knows that only a small number of HOS flats owners are willing to sell their flats for speculation by paying regrant premium. There are probably less than several percentage points of these owners.

Under this circumstance, how can the authorities expeditiously provide an adequate number of residential flats primarily for residential use, targeting at people who find private housing unaffordable? The quickest approach is to resume the implementation of the HOS. The greatest difficulty encountered in providing HOS flats is the identification of sites. Hence, I will try to raise some proposals regarding the quickest approach in identifying sites for the construction of HOS flats, so that flats may be made available for occupation in one and a half year or two years.

The Secretary may consider it ludicrous. She may query at heart the possibility of identifying sites where construction works can be completed and flats made available for occupation in two years. Even for formed land, the construction work will take three years the fastest. As for land which formation work has not been carried out, it will take seven years for the flats to be completed and available for occupation. Hence, I think the Government and the Secretary may refer to my proposal below. At present, the target is to construct 15 000 public rental housing flats each year. In other words, the Government has already confirmed the sites for the construction of 75 000 public rental housing flats in the next five years. According to the present situation on the construction of public rental housing flats, there are some limitations. According to my observation and understanding, this is at least the case in Kowloon West. The number of floors of public rental housing has now been reduced. In the past, public rental housing buildings were built to 40 to 41 floors, but now they are reduced to 38 or 35 floors. Take Sham Shui Po district as an example. I believe the Secretary also know this. In a housing plan on a site opposite to the "Four Dragons in Kowloon West", the number of buildings to be built has reduced from four blocks to three blocks and the number of floors of each block has been reduced from 38 floors to 35 or 30 floors due to the protest of certain Members from the pro-establishment camp. That means a smaller number of flats will be built on the sites of the same area.

Is the present situation a sign of moving backward? On certain formed sites set aside for building public rental housing flats, will public rental housing blocks of 41 floors be built? That means the target will be raised from 30, 35 or 38 floors to 41 floors. If a few more floors are built and the building target is maintained at the level of 15 000 public rental housing flats each year, some area of land will be vacated. This is the first point I would like to make.

Second, is it possible to build flats of a smaller size? I believe the Secretary knows this point. The largest area of a public rental housing unit is around 600 sq m. Since families today mostly have three to four members, the number of large public rental housing units may be minimized or even reduced to zero. Instead, the authorities should focus on providing medium-sized public rental housing units of about 500 sq ft with two rooms, which is quite good. Besides, it should keep in mind that we are talking about the usable areas now. This arrangement will vacate some areas of land. In other words, the authorities may meet the target of constructing 15 000 public rental housing flats each year, that is constructing 75 000 flats in the next five years. By increasing the number of floors of public rental housing blocks and reducing large flats to medium-sized flats, some areas can be saved. As for sites where construction works of public rental housing are underway or top out works have not been carried out, will it be possible to vacate part of the sites for constructing HOS flats? As I mentioned earlier, under this arrangement, HOS flats can be put up for sale in one and a half year or two years. Furthermore, the authorities can construct two to three blocks of HOS flats on the lands saved, thereby providing 1 000 to 2 000 flats. In that case, the Government may announce in six to nine months that the public may start applying for the purchase of HOS flats which will be ready for occupation in two years.

Another proposal is to reduce the number of large HOS flats to be constructed. Since "flats with limited floor areas" are now introduced in the private market, and even Cheung Kong has to build "flats with limited floor areas", should "flats with limited floor area" be provided under the HOS? The authorities only need to make it clear that no large-sized flats will be built, and only small and medium-sized HOS flats with two rooms will be built. This will increase the number of HOS flats completed. This is the most effective approach. The Chief Executive will be able to announce in the Policy Address this October that HOS flats will be put on sale by Chinese New Year.

Moreover, the authorities may utilize some of the sites on the Application List which have not been triggered for constructing HOS flats. However, these flats will only be available for occupation after three to five years. The waiting time may be longer, but there is at least a date. I hope the Secretary will consider these proposals and respond to them shortly.

After putting forth this approach which I think can make available HOS flats for sale and occupation within the shortest time, I would like to point out that the housing problem of the public can no longer be left to be controlled by the market. I still hope that the Government will expeditiously examine measures to cope with the existing situation of decreasing young population and increasingly elderly population, and formulate a population policy to devise a long-term housing strategy. The last time a long-term housing strategy was introduced was in 1998, which was 13 years ago. Should the Government formulate new plans to let the public know the population development in future and the possible complementary arrangement in housing facilities? I earnestly hope that the Secretary will put in more efforts in this aspect.

I have put forth the salient points of my speech today just now. Now, I would like to with Members some basic figures. These figures are significant in leading us to think thoroughly about the long-term housing strategy to be adopted in future. The first group of figures is about the distribution of the 2.3 million households in Hong Kong. In fact, the distribution ratio has remained unchanged for the past 10 to 20 years. If so, has a trend been established? Will this become the trend of the future housing development? If so, it will become the trend for future planning. At present, there are 700 000 households, and a total of 2.1 million people live in public rental housing. Around 380 000 households, that is, a total of 1.3 million people (about 18%) live in subsidized housing, including HOS flats and Sandwich Class Housing Scheme (SCHS) flats. Another 1.2 million households, a total of 3.6 million people (about 52%), live in private housing. The distribution ratio of these three categories of housing has not changed much in the past 10 years.

I would like to put forth the second group of figures. By the end of 2009, there were about 745 000 public rental housing units and 393 000 subsidized privately-owned accommodation, including HOS flats, SCHS flats and Tenant Purchase Scheme flats. Since subsidized home-ownership flats are regarded as private residential flats after the payment of regrant premium, and 60 000 flats fell into this category, the total number of flats in private buildings amounted to 1.42 million after deducting the aforesaid flats. Among the 1.09 million private residential flats, 50 000 were left vacant, and 400 000 flats were aged 30 years or above. Hence, among these private residential flats, around 600 000 to 700 000 flats were available in the market for frequent transactions. Hence, there were about 700 000 second-hand flats. From these figures, we may briefly know

what kind of planning should be made for the long-term housing strategy or for solving the housing problems.

The third group of figures is about land use. Hong Kong has a population of 7 million living in an area of 1 104 sq km, with each square kilometer accommodating 6 480 people. However, the population distribution is uneven. The most densely populated district is Kwun Tong. The highest density is 53 000 people per square kilometer. President, is it very serious from this perspective? On the other hand, among the area of land suitable for construction of buildings, about 255 sq km (20%) had been used, and another 40% of the land, that is 400 sq m, are protected areas zoned as country parks that cannot be used. These restrictions will affect the availability of land in the future. Are these restrictions reasonable and proper? I think this is an issue open to discussion. As for less popular country parks, can the land be used for building houses? Members may discuss this issue.

The last set of data is, in the past 10 years, the average number of sale of public rental housing flats and HOS flats was about 4 600 units; in the past 20 years, it was 7 600 units; and in the past 25 years, it was 7 500 units. However, no public rental housing flats and HOS flats are put on sale now. Even though no new HOS flats but only surplus units are put on sale, there are an average of 5 000 flats sold each year. The figure shows that despite the continuous sale of HOS flats, which is not of small number, the property market has remained unaffected. Hence, worries about the influence of HOS flats on the property market are uncalled for. I think the above figures are worthy of the Secretary's consideration. Thank you, President.

MR PAUL CHAN (in Cantonese): President, recently, the Chief Executive and Financial Secretary John TSANG have finally awakened and admitted the extraordinary situation in the Hong Kong's property market. All along the Government has introduced a number of measures, but they failed to stabilize the property market and address the people's aspiration to live and work in contentment. Nevertheless, late awakening is better than persisting on the wrong course. At least for me, I look forward to the Government's expeditious introduction of measures to deal with the property market, without having to wait until the delivery of the Policy Address.

President, on 19 November last year, the Secretary introduced the key initiative of SSD which was as high as 15% to combat speculative resale of residential properties within 24 months. Although the property price in the past few months still soared, there were, in fact, fewer short-term speculations in the residential property market in recent months. I have looked at some figures. In April this year, the number of short-term resale cases was only 253, which was 49% lower than that in March. The amount involved was also 51% less than that in March. In other words, these two figures, that is, the number of resale cases and the amount involved, hit a record low in 25 months. The decrease in the number of cases of short-term resale of properties valued more than \$10 million was even more drastic. In March there were only six cases, and in April there was simply none. As a result, the introduction of the SSD to combat speculation was not ineffective.

An Honourable colleague has just mentioned whether there should be retrospective effect. I think from the legal perspective, given the time of introduction and the scrutiny period of this Bill, it may not be desirable to make it retrospective. However, President, in terms of practicality, if it does not carry retrospective effect, it will absolutely be unable to curb speculation.

President, I basically support the passage of this Bill. During the scrutiny of the Bills Committee, members as well as deputations and individuals who came to express their views were concerned that this punitive SSD might substantially affect genuine users who had financial difficulties and had to urgently sell their properties. They asked why we could not introduce a higher profits tax targeted against property speculators. President, I have thought about this issue for quite a while. I think the effects of the SSD and profits tax in targeting at short-term property speculation are different. The SSD has to be paid within 30 days upon the signing of the agreement for sale and purchase. As we know, regarding the profits tax — especially where property speculation is carried out in a company name, the tax return can simply be submitted in the next financial year. By the time the tax demand note is received, it is probably one to two years or so after money was gained from speculation. Those who are dishonest — there are many such people — will simply split the gain as soon as the money is received. Then the Government will have to demand payment from the company, and these people will not mind even if the company is closed down, since it does not worth any money. Thus it will be futile to try to collect the tax.

On the other hand, given such a high rate of the SSD, it actually compares favourably with the imposition of a hefty profits tax of 50%. Hence, to forcefully combat those who may adopt illegal means to evade the tax, I find the SSD more effective.

President, in response to the views of the deputations and Members, the Government has also clearly stated in the Bill that exemption may be granted if the property is transferred to siblings or sold involuntarily pursuant to a court order, for example, in cases of divorce, compulsory sale and winding up of companies. I consider that there should be such a stipulation. Some Members have mentioned that those who need to cash their properties owing to special reasons or illness cannot enjoy exemption in this regard. This is an objective fact. However, it is not easy to legislate on this aspect because there is a lack of objective criteria. Besides, I think if someone has a property, nowadays it will not be difficult for him to raise a loan in Hong Kong to meet his urgent needs. In other words, the relevant parties will have to weigh the burden of the loan interest against that of the SSD.

President, I would like to take this opportunity to express my worry about a possible loophole in property speculation. I have repeatedly pointed out here that people can hold a property in the name of a limited company and transfer the company's shares rather than the property during speculation, thereby evading the SSD. President, in response to this question, the authorities provided some figures to point out that the situation of property speculation by limited companies during the six months or so from April 2010 to January 2011 did not seem to be very serious, and they considered there would be difficulties in enforcement. Thus they did not accept my proposal. What did I propose? I opine that we can draw reference from places like Australia, where there is a concept called "land-rich company". That is, when a company's land and properties reach a certain percentage of its assets, transfer of its shares will be regarded as transfer of its properties, for which a stamp duty will be imposed. Australia is divided into a number of states, and the percentage set by each state is different. Generally speaking, it is over 60% or 70%. The purpose is to combat the act of transferring shares in the name of a limited company to evade the stamp duty.

Such a loophole has actually existed in our present stamp duty legislation for a long time. Even before SSD was introduced, there was a similar way to

avoid paying the higher rate of the stamp duty — at present, for transfer of properties valued more than several million dollars, we need to pay 2.75%, whereas for transfer of shares, we only need to pay 0.4%. This loophole has existed for a long time. I think the Government should target at such a loophole and make rectification. The Government has said that there will be difficulties in enforcement. President, actually I do not think this is difficult because in handling such transfer of shares, especially when it involves properties, usually people will carry it out through a lawyer or accountant. These professionals will abide by their professional ethical standards and bear their own risks. If our law provides that these middlemen (that means the professionals) who handle the transactions will also be held liable, and they will even have to bear the responsibility of paying the tax should they omit to do their work, then no one will dare to treat the matter lightly. Even if someone engages some non-professionals to do such work and still goes ahead, knowing very well that it is against the law, I believe he will suffer from big mental stress.

Hence, I hope the Government can target at this loophole and handle it actively, instead of saying that given the small figures, it will not be treated. In the past when I was in active practice, I saw many people save the stamp duty payment by means of using a limited company to conduct the transfer. I am not simply referring to properties valued at \$10 million, \$20 million or \$30 million. Sites which involved billions of dollars as a whole also worked this way. This is in fact a very big loophole.

President, another point which I would like to raise is, before this discussion on the SSD, I had particularly consulted some professional accountants and officials in Australia. As I have mentioned here earlier, the practice in Australia is to impose restrictions on foreigners in purchasing properties in Australia. I asked them why there was the need to impose restrictions. President, they said that according to their local policy objective, if a foreigner wants to purchase a residential property in Australia, he will not be granted approval unless the supply of residential properties in Australia is raised. In other words, if a foreigner wants to buy a property in Australia and if it is a new property, his application will be approved. After the purchase, the property will either be used for self-occupation or leased to someone else. If you are not an Australian citizen or permanent resident, you will not live there. Most probably you will lease out the property. In this way the supply of residential properties in the market will be raised.

On the other hand, based on such policy consideration, when a foreigner wishes to buy a second-hand property, it is unlikely that the Australian government will grant approval because the second-hand property to be purchased is already being used in the market. This will not raise the supply of residential properties, so it will not be approved.

As I have mentioned to the Government in the Council before, I consider that today, we should divide the residential property market into two parts. One is an investment market where people can invest, make purchases and sales and even speculate. The other part is a market for self-occupation by Hong Kong people. I think regarding the latter, the market for self-occupation by Hong Kong people, the Government is duty-bound to play a considerable role and safeguard our interest. This is similar to the situation in Singapore. The price of the local private properties is by no means low. How come they do not have such big discontent like Hong Kong people? If we are talking about residential properties, it is because with respect to housing for Singaporeans, the Housing and Development Board flats offered by their government enable their people to afford a comfortable place where they can live in contentment. Hong Kong's starting point is different from that of Singapore. We cannot replicate its experience in Hong Kong. However, I think regarding the supply of properties, apart from constructing "flats with limited floor area", with such distortion in the current market, more consideration should be given to constructing small and medium-sized flats which only Hong Kong people are allowed to purchase and restrict their resale to Hong Kong people only.

President, what I have said is focused on the supply of new flats. If we introduce such an approach, it may affect the property price in the current market, and it will be unfair to people living in these properties or those who have already invested in these properties for self-occupation. However, regarding new flats, if we introduce these restrictions, you are already well-aware of the responsibilities and risks that you need to undertake when you make the purchase. Besides, through such restrictions, the price of these flats will be closer to the affordability of members of the public. They will find it more affordable to buy their first homes for self-occupation.

President, another point which I would like to raise is, I hope the Government will notice that although we will achieve certain effect in controlling — controlling, not extinguishing — the fire of speculation in the residential

property market through this Bill, another fire has turned very fierce. People have shifted their money to speculate in shops and offices in commercial buildings of even grade B and grade C, causing the selling price of premises in commercial buildings to rapidly surge to a very high level and pushing up the rent substantially in the previous period. The pressure in business operations, especially for small and medium enterprises, is huge. I hope the Government will face up to this problem and where appropriate, take decisive measures in response.

The next point I would like to talk about is Mr Abraham SHEK's several proposed amendments, one of which concerns the sunset clause. Mr Abraham SHEK, please forgive me for not supporting the sunset clause. My major consideration is that in my opinion, we should never encourage people to make money by short-term property speculation and stir up troubles in the property market. Thus, with this consideration, I find it inappropriate to set a sunset clause, unless our property market is so depressed and weak that we need some lubricants and measures to foster more frequent purchases and sales. Only then will I find speculators having a role to play. Otherwise I will consider it useless. Hence, please forgive me for not supporting the sunset clause.

Another clause is about whether resale of land in two years' time should be exempted from the SSD. I opine that it should not be exempted. Land is actually the same as flour. How expensive the land is has a direct bearing on how expensive the bread will be. If we do not wish property price to be forced up by people's short-term speculations, similarly, I think we do not wish to see such a situation happen to land either.

As for the third amendment proposed by Mr Abraham SHEK, I will give my support. The third amendment concerns transfer of properties by companies under the same group. However, owing to the time restraint, I will talk about it more during the discussion on that amendment later. Thank you, President.

MR LEUNG KWOK-HUNG (in Cantonese): President, the League of Social Democrats has also proposed levying a special stamp duty (SSD) before. At first we proposed it to John TSANG. The property market was not that terrible back then, but people could make a lot of money from the stock market. As we know, the rise in the share price of Hong Kong Exchanges and Clearing Limited

is actually attributable to the blooming stock market. At that time we said to John TSANG, after all, the stock market was just like a casino, so why not collect more taxes? Gamblers will not have much objection. Singapore has a "casino", so does the Mainland. I mean the stock market. The attractiveness of these "casinos" is relative. People can make their own calculations and comparisons. I have said such things five times, but did he do anything in the end?

So, why levy the SSD now? Of course the truth is, I believe, there is political pressure. This Council is a place of political contest. It is also a place of contending for interests. Is this measure effective? There is a saying on the Mainland: "When a policy is devised at the top, there are always ways of getting around it from below." As Mr Paul CHAN has mentioned, if one buys the property through a company, he can get away. I remember that shortly after this issue was mentioned, someone already bragged with a smile on television, "How will this be useful? I can simply set up a company to make the purchase." Actually the Government was told brazenly that such an approach would not work. I do not know if senior officials had watched the television that night.

The SSD is certainly those people's pressing task at the moment, but in the past that was already the case I heard that the Chief Executive's flat with unauthorized building works (UBW) was also bought under a company name, right? He also bought it under a company name. As a result, now we all know about the advantages of buying properties under a company name. Why did the Government not plug this loophole? The reason is, the general public will not consider this method, will they? In the interview that night, that person also taught people not to work this way if there were too many procedures and the property was not too expensive, since the loss might outweigh the gain. Just think about it. If our Government officials know this method, other people in similar capacity are highly likely to use this method too. Hence, we can see who will benefit and who will suffer if this loophole is plugged. This is as clear as day. There is of course an excuse for not plugging this loophole, putting it nicely that ours is a business society. As a result, we should try our best not to introduce any legislation to control market transactions. From this issue, we can see two major characteristics of the Government's so-called legislation. First, since the people's grievances are indeed overwhelming, Members in the Legislative Council, whether they are from the pro-Government camp or the pan-democratic camp, were unable to resist continuous pressure from public

opinion and were forced to request the Government to do something. So the Government could not but do something.

Mr Abraham SHEK proposed to include a sunset clause. The sunset clause is of course formidable. I once filed for judicial review to force the Government to expeditiously introduce legislation. That time the Government lost the case for the Interception of Communications and Surveillance Ordinance, but it still asked the Court to give it six months, saying that it had to conduct consultation. Today, that Bill, that by-election mechanism oh, it is called the replacement mechanism. Without being challenged by anyone, not by the Court and not by me, it will not consult the public. That time, even though the Court had delivered its judgment, it still tried to delay by requesting six months more and repeatedly applied to the Court for exemption. At that time Members from the pro-Government camp said that "Long Hair" suddenly filed for judicial review and won the case, but the Government really needed some time. Thus "Long Hair" should not press the Government too hard to avoid doing a disservice despite the good intention. Look at what happens now and what happened back then. This Council is indeed deeply rotten without any logic, compassion or shame. Mr WANG Guangya visited Hong Kong as though he was visiting a foreign country, interfering with the others' internal administration. When there was nothing to say, he said some pleasing words like a politician, "Oh no. I am really moved. Seeing the residents in the slum area in such misery, I really feel sorry for them." However, did WANG Guangya tell you that the replacement mechanism would pose a serious problem? He did not. He never mentioned this.

The first day the Director of the Hong Kong and Macao Affairs Office came to Hong Kong, I already listed him as a "wanted" person, but he simply did not dare to see me. On the following day I was excluded from the guest list, so I was unable to see him. On the third day, seeing that the situation was pretty good, he started to make speeches and talked about a number of things. He even ate egg tarts in imitation of "Fatty Patten". Then he ate Portuguese egg tarts. He really loves tarts. In fact, he is someone who pursues rancidness. What did he say? He did not tell you not to allow by-election. He told you to share people's urgent concern. Did he talk about the stamp duty? After all the detours, Mr Abraham SHEK was found to stand in the way and propose the amendments. You have got to know, if you choose to eat salty fish, you should not be afraid of getting thirsty. The new SSD is for everyone in Hong Kong, no

matter whether they are ignorant or unruly All the Hong Kong people wish that the Government would do something to curb property speculation and let those who attempt to make a profit know that they may — not that they may earn less. Rather, they may have big trouble. The spirit of the SSD is as simple as that. Yet it still took such a long time. In comparison, the legislation which concerns some 3 million voters was passed by this Council in an instant. President, Hong Kong people are most concerned about low wages. After the implementation of the minimum wage, the disadvantaged were ill-treated. School places are inadequate. Public utilities have charged unreasonably high fees and are being monopolized. However, what did our Government do?

President, you were still not the President at that time — you were already the President then? — The Mass Transit Railway Corporation merged with and the Kowloon-Canton Railway Corporation. The two of them "colluded" with each other. Members of this Council pointed out the need to set up a mechanism for supervision and also requested them to install platform screen doors. However, the Government was so high-handed that such matters were not even allowed to be mentioned in the long title of the Bill. Did we not accept it all the same? You may say that Hong Kong people's right to vote is not that important. You may be right. Yet I would like to ask, suppose someone resigned. The people were asked to vote but they did not vote. What would they lose?

PRESIDENT (in Cantonese): Mr LEUNG, please go back to the subject of the stamp duty.

MR LEUNG KWOK-HUNG (in Cantonese): someone said there would be a loss of \$100 million, buddy. However, do you know how much extra money Hong Kong people have to pay each year because of MTR Corporation Limited's fare hike? Rising costs caused by property speculation — Mr Paul CHAN has gone out, but he is still kind of conscientious. He has mentioned the situations of shops, industrial buildings and commercial buildings — and the cost which has shifted. How should it be calculated? The toiling masses have difficulties paying the rent and they spend thousands of dollars to rent sub-divided units. How should this be calculated? Today, saying that it is trying to save \$100 million for some 3 million people in Hong Kong, the Government proceeds with the "collusion".

I have got to talk about this matter here every day. Besides, this is the only thing I can do — President, forgive me for being blunt. If there is no referendum, and if not all the 60 Members in the Council are returned by direct election, how can this be done? The Government is the best liar. John TSANG and Donald TSANG claimed that there was no problem in the property market. They said there would be serious consequences in building Home Ownership Scheme (HOS) flats, so the Government would not build HOS flats. However, after WANG Guangya said a couple of words in Hong Kong, the Government made a U-turn.

President, this is not the first time. Joseph YAM, Donald TSANG and Rafael HUI said similar words in 1997 and 1998. At that time George SOROS came to play the game of "money withdrawal". He played it every night, thus pushing up the interest rate to several hundred percent. The Government said there was no problem, adding that the free market ran in such a way, and that they did not see any irregularities. A month or two later, did they not frustratingly use the "discount window" to tackle the issue? For the interests of a small bunch of people, the Government lies in the Council to deceive Members and the public. With the brutal force of the majority which should not exist, it oppresses Hong Kong people every day. \$100 million? Is the amount kind of small?

President, the SSD is only one of the methods. Actually the simplest if the Government really loves talking about the market that much, if the Government really wants to ensure that members of the public have a place to live in, then on the one hand, it should let the market run on its own, while on the other hand, it should construct more public rental housing flats and HOS flats outside the market, rather than going so far that even senior officials have set up companies to join in speculation and having UBW.

Another point is, one day when I was buying coffee at the 7-Eleven in the estate where I live, someone came to talk to me, "This Government is crazy to limit the floor area instead of the price. Limiting the floor area instead of the price just means the price for each square foot will be higher. It will be so if the supply is small." Since the amount of flour is small, the bread produced cannot be too big. It has to be made smaller. However, will bread become cheaper because of that? Even a sixty-year-old folk came to tell this Government off with foul words. What a shame that I cannot repeat those foul words here. What the Government has done is too outrageous, is it not?

President, what we are talking about is the most basic housing problem among the issues of people's livelihood in terms of clothing, food, housing and transportation. It is a problem of development. Without any shelter, how can one study? How can one have a family life? If a family needs to spend 40% of its income to meet the rent, how will it possibly be a happy family? How can the family live in harmony? However, at present, whenever the Council comes across anything favoured by the Government or the rich people, it will work for them with some 30 votes. What kind of Council is this?

President, I have made only one observation: for the things which Hong Kong people are really anxious about, the Government shows no anxiety. However, for those things which Hong Kong people do not care or for advantages which can be taken at the expense of Hong Kong people, the Government will handle them at the fastest speed. With regard to the stamp duty or any reform which is favourable to members of the public, a lot of time will be spent on discussion. The case of minimum wage is the most obvious. The capitalists were given two years to deal with the issue. It was not until they failed to deal with it that the Government started to work. If Members really needed to pass that piece of legislative urgently, why did they not say it back then? During those two years, how much money did the workers lose?

Besides, the cap on working hours is being delayed. It is said that we have to wait two years for the next-term Government to handle it. When Donald TSANG refused to carry out any consultation, did the Members not accept it all the same? Whose urgent concern do you, the Hong Kong Federation of Trade Unions and the Democratic Alliance for the Betterment and Progress of Hong Kong in particular, actually share?

President, I have digressed from the topic because I am angry. I have to tell the Government that it will get its retribution. This time the Government has deprived Hong Kong people of their right to vote. I will make sure that it gets its retribution.

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

MR CHIM PUI-CHUNG (in Cantonese): President, in principle, I support this Bill. Speaking of property, it is, in fact, a major issue in Hong Kong, China and even some of the neighbouring regions and countries.

In retrospect, history tells us that some 60 years ago, when Kuomintang retreated to Taiwan, Taiwan was rather poor back then. How did Taiwan prosper later? It was because its land and real estate developed rapidly and became valuable. If we look back at the situation of Hong Kong in 1950s, the property price was less than \$200 per square foot. The lowest price was \$70 or \$80. That was the situation of the present Haven Street in Causeway Bay in the early days. At that time YIU Cheuk-yin, the most famous player in the South China Athletic Association Football Team, bought two flats in a season, while another player MOK Chun-wah, who is in his eighties now, also bought a flat those days. The highest price of a flat was some \$20,000 then. When we look back at history, the price of a flat in To Kwa Wan was some \$10,000 or \$20,000. Of course, the area of those flats was not 200 sq ft to 300 sq ft or 300 sq ft to 400 sq ft. Rather, it was around 700 sq ft to 1 000 sq ft. Owing to historical development, of course the population in Hong Kong kept growing, while the socio-economics has improved. So we began to have a few more aspirations.

As I mentioned, since Hong Kong does not have its own resources, the only thing it can do is to seek to become the second home town of Chinese people around the world who have the financial means. That is, wherever they live in the world, they can buy properties and set up companies in Hong Kong. It will certainly be the best if they can employ tens of Hong Kong people and turn Hong Kong from a city which originally does not have any resources into a city with resources. Of course, things will not be that simple as you would imagine. In fact, in the past 20 to 30 years, given the high technology and rapid development of the property market on the Mainland, people in Mainland China have prospered much faster than people in other parts of the world. Furthermore, as there are a number of special circumstances in Hong Kong which attract some rich people on the Mainland, who, as I have just mentioned, have turned Hong Kong into their second home town and have purchased properties in the territory. Once they have purchased properties, they learnt that the quantity of land in Hong Kong, especially on Hong Kong Island, was limited. As a result, when they took actions together, the price of land and property soared.

Today our discussion is mainly on the imposition of an additional stamp duty for real estate. Of course, some Hong Kong people hold a different view on this issue. That is, since Hong Kong is a free city, all the supply and demand should be decided by the market and we should not put in any human factors. However, if we look back, actually properties in Hong Kong had been subject to restrictions with regard to rent or other aspects over a very long period in the past. Then in the SARS period, owing to the downturn in the external economies and subsequently in the real estate market, the Government immediately abolished rent control. Following the abolition of rent control, now the real estate market has started to run in an abnormal way. The decision to adopt special measures in this period, in my opinion, is necessary and appropriate. Of course, the Hong Kong Government has a number of conditions which are rather focused. If any occasional incidents or special circumstances have arisen after the implementation of this legislation and the Government finds it necessary to make adjustments or amendments, the Legislative Council will be ready to hold meetings at anytime to help solve the problem. So in theory, there is no conflict in this regard.

President, as real estate in Hong Kong will affect Hong Kong's economy and actual environment and may even be used as a political issue, the Government will certainly give priority to it as a prime policy area to be tackled. The Government will also definitely learn from the experience in other places, especially our competitor Singapore. Singapore adopts two approaches. On the one hand, its nationals — Hong Kong is not qualified to call its people nationals, it can only call them residents — can have their own homes. The government tries its best to enable them to live and work in contentment. As for commercial buildings, other commercial means and policies are adopted to make adjustment. This is absolutely normal. Nevertheless, under such circumstances, I strongly believe that in the Policy Address to be announced in October this year, there will be appropriate arrangements and adjustments for the Home Ownership Scheme (HOS) flats or public rental housing flats. Of course, the Chief Executive will prefer the home purchase plan. I personally think that no matter what, since members of the public have such an aspiration, it will not be wrong for a responsible government to listen to public views and make members of the public feel that they are highly regarded by the government, will it?

I hope you will understand that Hong Kong is limited in land supply, and country parks have also taken up a substantial proportion of Hong Kong's area.

Where does the land in Hong Kong come from? It comes from reclamation. However, the current trend in society moves towards environmental protection. We are not allowed to consider using the sites in country parks. Neither can we consider reclamation. Then where will the land come from? Are we supposed to move up to the sky? In this regard, since we are Legislative Council Members, we need to think about this issue. Do not shift the responsibility to the Government. What is government? Government is not the people's enemy. Government is not our opponent, and government officials are merely civil servants — of course, the Chief Executive has said that he wants to get his job done, and his job is to be the Chief Executive. Hence, both members of the public and Legislative Council Members should make concerted efforts to work out an effective solution and request the Government to implement it on our behalf. We should not be affected by what was done by some members of the media who have ulterior motives and shift the responsibility to the Government, which will topple the Government. After the Government is overthrown, certain people will regard themselves as very noble. Yet actually, if anyone of them acts as the Chief Executive, that person will be the target for attack all the same. Therefore, since we need the Government, I hope members of the public will put themselves in the Government's shoes. They need HOS flats, public rental housing and other things, but where will the land come from? Members of the public have got to think. Can we work out a way with regard to country parks? Can we work out a way with regard to reclamation? Otherwise, where can we get any land? I strongly believe that if there is land for the Government, the Government will absolutely accede to public opinion. This is not difficult. I am not trying to explain for the Government, because being Government officials, they have to work out a solution themselves. To get public recognition and support, politicians need to reason with the public. Only then will they be able to meet the public needs.

President, as far as the stamp duty is concerned, usually the levy on property transactions is 2.75% while that on transfer of companies is much less, which is 0.4%. However, President, why do Hong Kong people still prefer to keep it simple and only buy and sell properties? Because the transaction of a property, the law firm will assist in checking the title deed. The obligation will be discharged at one go and there is no need to worry about anything. As for the purchase of companies, verification is difficult. If one can check the information clearly, of course there will be no problem. However, if something is untraceable and then a dispute arises — for example, after the buyer has made

the payment, the seller hands over the company to him. During the checking process, of course the seller was not found to be in debt. However, if, by any chance, it turns out that the company has a huge debt, there will eventually be a lawsuit. By then the buyer has already made the payment. If he demands repayment and even initiates criminal proceedings against the other party's fraudulent behaviour in trying to recover the money, what will he get? Of course, if the registration is made in person, the situation will be different.

Hence, President, in this regard, regarding the colleagues' query about the few cases in which companies being used to control real estate, it is because there is such a situation. Therefore, President, today we hope that the Government can properly grasp the lifeline of the real estate market in society. We also need to understand that although the recent bidding price for the site at Borrett Road has not reached the highest peak, the per-square-foot cost still amounts to some \$30,000. We should understand that property developers are not philanthropists. On completion of the building, what will be the property price per square foot?

As a result, President, in my opinion, the Government absolutely should make use of this stamp duty or other political tactics to adjust the property price. The question is, concerning the illegal use of "inflated flats" by some property developers in the past, I consider that the Government should enforce more stringent prohibition so as to enhance fairness in society and reduce social grievances. This is much more important.

As for the other aspects, the Government should take heed of the views of all parties in order to help the small and medium enterprises in due course so that they will not be affected by the substantial increase in rent. This point deserves more attention from the Government in the future.

President, I so submit.

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

(No Member indicated a wish to speak)

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

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, first of all, I would like to thank Mr James TO, the Chairman of the Bills Committee on Stamp Duty (Amendment) (No. 2) Bill 2010 (the Bills Committee), members of the Bills Committee and the entire Legislative Council Secretariat for their efforts such that the scrutiny on the Stamp Duty (Amendment) (No. 2) Bill 2010 (the Bill) can draw to a successful conclusion. I would also like to thank the Bills Committee and the House Committee for agreeing to resume the Second Reading debate of the Bill today.

One of the objectives of the Bill is to amend the Stamp Duty Ordinance (the Ordinance) so as to provide the legal basis for imposing a special stamp duty (SSD). The SSD is part of the basket of measures introduced by the Government since last year — I want to stress that a basket of measures has been introduced — to ensure the healthy and stable development of the residential property market by curbing short-term speculation in the market. This is not a measure for regulating property prices as suggested by some Members. I want to make this point clear.

Furthermore, the Bill proposes to cancel the existing arrangements for deferral of payment of stamp duty chargeable on residential property transactions valued at \$20 million or below. The overall effect of this measure, together with the amended Ordinance passed by the Legislative Council in 2010 to disallow deferment of payment of stamp duty chargeable on an agreement for sale made in respect of residential property valued more than \$20 million, is that no deferment of payment of stamp duty is allowed for all residential property transactions, and this serves to further increase the speculators' burden of liquidity for speculating on residential properties.

In fact, the Administration has been monitoring the development of the private residential property market closely and remains vigilant on the risks of an asset market bubble. Over the past year or so, the exuberant state of the property market is mainly fuelled by the high liquidity and persistently low

interest rates. In this connection, the Government has warned the public time and again that the environment of high liquidity and low interest rates will not stay forever, and property prices cannot go up all the time. Members of the public should carefully monitor the potential impact of increasing interest rates on the market, and prudently weigh the risks involved as well as their own affordability when making the decision of property acquisition. In this regard, the Government has introduced various measures in February, April, August, October and November 2010, as well as February and April 2011, in four areas to ensure the healthy and stable development of the property market. They include increasing land supply to tackle the problem at source, combating speculative activities, enhancing the transparency of property transactions, and preventing excessive expansion in mortgage lending.

The Government has adopted a multi-pronged approach to provide the people with opportunities of home ownership at affordable prices. Some Members may have the misconception that subsidized housing will help regulate property prices. I want to reiterate our view that as proven by history, subsidized housing is not a tool for regulating property prices.

The effect of the SSD in combating short-term speculation is remarkable. According to statistics, there are only 72 confirmor transactions in April 2011, representing a drop of 78% as compared with an average of about 320 cases a month in the first 11 months of 2010 (that is, the period prior to the introduction of the SSD by the Government). I hope Members will support the Bill and the Committee stage amendments (CSAs) proposed by the Administration so as to allow the formal implementation of the SSD.

In the course of scrutinizing the Bill, the Bills Committee has expressed many valuable views on the detailed arrangements for implementing the SSD. Moreover, we have also received views from relevant professional associations and trade associations on the Bill. The Administration has incorporated the views of Members and stakeholders as far as reasonable and practicable into the proposed CSAs. Detailed discussions have been held by the Bills Committee on the Bill as well as the CSAs proposed by the Administration.

Our proposed CSAs mainly fall into the following three categories.

First, CSAs are proposed to set out in more explicit terms in the original proposal as to how the date of "acquisition" and "disposal" of ownership for the purpose of charging the SSD should be defined.

Second, there are CSAs in relation to further exemptions.

Third, CSAs are proposed to state more clearly that the SSD is generally not applicable to the sale of first-hand residential properties.

The Bill together with the proposed amendment provisions have clearly set out the detailed arrangements for implementing the SSD after listening to views of the Bills Committee and stakeholders. In gist, if a residential property acquired by a person on or after 20 November 2010 is sold or transferred within 24 months or less, the SSD will be chargeable in respect of the "chargeable agreement for sale" or a conveyance unless exemption has been granted for or the SSD is not applicable to the said transaction.

The SSD is chargeable at the following regressive rates for different holding periods:

- (i) 15% if the property has been held for six months or less;
- (ii) 10% if the property has been held for more than six months but for 12 months or less;
- (iii) 5% if the property has been held for more than 12 months but for 24 months or less.

Under the Bill and the proposed amendment provisions, a clear benchmark is set for determining the holding period of a residential property. Taking into account the views of The Law Society of Hong Kong and members of the Bills Committee, we have adopted the signing date of the "chargeable agreement for sale" as the "acquisition" and "disposal" dates of a property. If no such "chargeable agreement" exists, the signing date of "conveyance" will be adopted. In addition, for the purpose of determination of the date of "acquisition" and "disposal", "chargeable agreements for sale" mean those agreements for sale as defined in section 29A of the Ordinance.

The SSD is a measure intended to curb short-term speculation of residential properties. The Administration has already stated clearly at meetings of the Bills Committee that it is not the policy intention to apply the SSD to the sale of first-hand residential properties. As reflected in the Bill and the CSAs proposed by the Administration, first-hand residential properties are generally not affected by the SSD. Simply put, the SSD is not applicable in the following scenarios.

First, the sale or transfer of residential flats built on a bare site, regardless of whether the developer purchases the piece of land from the Government or from another developer.

Second, the sale or transfer of redeveloped residential flats after the original properties have been acquired and demolished.

Third, the sale or transfer of bare sites after the original properties have been acquired and demolished.

Situations in relation to bare sites are generally covered under the Bill and the CSAs proposed by the Administration. It is only under the scenario where developer A acquires a bare site not from the Government, and instead of building on it, sells or transfers the bare site to developer B within 24 months that the SSD will be chargeable.

Regarding the situation where a developer acquires a bare site and transfers the same within 24 months or less, Mr Abraham SHEK has proposed an amendment to the effect that the SSD is not chargeable on the transfer of bare sites as he opines that land supply will be affected if such transfers are not exempted. We have already considered the suggestion of granting the SSD exemption for this scenario carefully. Given that transfer (including bare sites) between associated companies is already exempted from payment of the SSD under the Bill, and considering that the possibility of speculation in the sale and transfer of bare sites cannot be ruled out and the granting of exemption for this scenario may create loopholes, we opine that it is not appropriate to provide the said exemption. We are of the view that as long as clear provisions have been made under the law, developers should be able to flexibly adjust their business strategies and operation in the light of the new taxation environment after enactment of the Bill without affecting the supply of residential properties.

Under the Bill and the proposed CSAs, we suggest that certain exemptions from the payment of the SSD be provided for the sale or transfer of residential properties within the holding period of 24 months or less. When suggesting these exemptions, the Administration's primary consideration is that the possibility of speculation and risk of abuse under the relevant circumstances are not high, or that the sale or transfer of properties is involuntary. In addition, as the Administration has stressed time and again to the Bills Committee, we consider that the law must be clear and without ambiguity, and that any exemptions to be considered must not undermine the effectiveness of the SSD and they must be fair and measurable in an objective manner. The types of exemptions should be clearly set out in the Bill.

Under these principles, the Administration has listened to the views of the Bills Committee and the relevant stakeholders carefully, and proposed a series of exemptions under the Bill and the proposed CSAs.

Regarding the exemption for the transfer of properties between associated companies, an amendment is proposed by Mr Abraham SHEK to the effect that when a company (say, company B) disposes of a property acquired by its associated company (say, company A), the date company A acquired the said property, and not the date company B acquired the property, will be adopted for the purpose of calculating the holding period of company B in order to determine whether the SSD is chargeable.

Notwithstanding the exemption provided under the Bill for the transfer of properties between associated companies, we do not agree with the said arrangement because the property in question has actually been "disposed of" and "acquired" through the execution of relevant instruments. As such, the date company B acquired the property still applies for the purpose of calculating its holding period of the said property. This principle also applies generally for other SSD exemptions provided under the Bill and the proposed CSAs. As we do not consider that transfers between associated companies should be treated differently, we do not agree with Mr SHEK's proposal.

As the SSD is intended to curb short-term speculation of residential properties, genuine home buyers will not be affected under normal circumstances. The Administration will review the continued need for the SSD periodically, and

when the SSD is considered no longer necessary, we will seek legislative amendments through the normal process. In the course of the Bills Committee's deliberation, some members considered that the Administration should give a clear undertaking that the continued need for the SSD would be reviewed periodically. On behalf of the Government, I would like to clearly state here again that the SSD will be reviewed once every 24 months after the enactment of the Bill, or as circumstances require.

We are aware of some members' concern that it would take longer to cancel the SSD by amending the legislation through the normal legislative process. However, the Administration believes that so long as the amendment has the support of Members, the legislative process will be completed in a smooth and timely manner.

An amendment has been proposed by Mr Abraham SHEK to include a sunset clause and extension mechanism in the Bill to the effect that all amendments introduced through the Stamp Duty (Amendment) (No. 2) Ordinance 2010 shall expire at midnight on 19 May 2012, or that the Legislative Council may by resolution substitute the expiry date of 19 May 2012 by such date as specified in the resolution.

Under the proposed provisions, the sunset clause and extension mechanism are not only applicable to the SSD, but also the amendment introduced under the Bill to cancel the arrangements for deferral of payment of stamp duty chargeable on residential property transactions valued at \$20 million or below. We consider the relevant provisions unacceptable.

The sunset clause and extension mechanism will undermine the effectiveness of the SSD, as speculators would know or speculate on the time frame when the SSD lapses. As it is not possible for the Administration to foretell when the SSD is no longer necessary, and the relevant provisions may give rise to certain expectation which will send a wrong message and add volatility to the market, we implore Members not to support the CSAs proposed by Mr Abraham SHEK in relation to the sunset clause and extension mechanism.

In order to ensure the smooth implementation of the SSD and give the stakeholders a clear understanding on the application of the SSD, the Inland

Revenue Department will update the relevant practice notes for reference by the industry. In addition, the Inland Revenue Department will also maintain close communication with The Law Society of Hong Kong, the Estate Agents Authority and the estate agents industry as regards the specific contents and implementation details of the SSD, and frequently asked questions will also be uploaded onto its website for public information. Hence, regarding the question raised by Mr James TO about down payments made by courting couples, I think arrangements would be made in future to provide reference to the public.

Some Members raised the question about whether more should be done in terms of providing discretion or the setting up of an appeal mechanism. Perhaps allow me to respond to this point later in the context of the relevant amendment provisions. As regards retrospective effect, I will also respond to this point in relation to the relevant CSAs.

President, as I pointed out earlier, the proposal for introducing the SSD and cancelling the arrangements for deferral of payment of stamp duty chargeable on residential property transactions valued at \$20 million or below is an integral part of the basket of measures introduced by the Government to ensure the healthy development of the residential property market. There is no doubt about the Administration's determination in ensuring the stable and healthy development of the property market. With the introduction of a series of measures, the Hong Kong Monetary Authority has recently issued guidelines to the banks on 10 June in relation to their residential mortgage lending business, requiring them to implement measures to further lower the maximum loan-to-value ratio for residential properties and strengthen risk management in residential mortgage lending business. Separately, the Development Bureau has also announced land sale arrangements for July to September. The Government will continue to closely monitor the development of the property market, and implement suitable measures when necessary to ensure the stable and healthy development of market.

Regarding the worry expressed by Mr James TO just now about the impact of the SSD on genuine home buyers, I think his current plan for upgrading his flat should not be affected unless he intends to have another child within the next 24 months. I think genuine home buyers like him will not be affected.

President, the Bill as well as the CSAs proposed by the Administration have the support of the Bills Committee, and it has not moved any CSAs of its own. I implore Members to support the Bill and the CSAs proposed by the Administration.

I so submit. Thank you, President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Stamp Duty (Amendment) (No. 2) Bill 2010 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Stamp Duty (Amendment) (No. 2) Bill 2010.

Council went into Committee.

Committee Stage

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

STAMP DUTY (AMENDMENT) (NO. 2) BILL 2010

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Stamp Duty (Amendment) (No. 2) Bill 2010.

CLERK (in Cantonese): Clauses 2, 3, 6, 11, 13 and 15 to 18.

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

MR JAMES TO (in Cantonese): Chairman, there are still some legal issues which I want to discuss with Members.

The question of liability for the special stamp duty (SSD) has been discussed at meetings of the Bills Committee on Stamp Duty (Amendment) (No. 2) Bill 2010 (the Bills Committee). I personally consider that it would be more appropriate for sellers to pay the SSD. Nonetheless, the Government has taken a relatively simple approach by following the practice generally adopted for the levy of stamp duty where both buyers and sellers are liable for payment. As such, the SSD is no exception. All in all, the Government considers that it would be better to hold both parties liable for the SSD.

However, I opine that this approach is incorrect in principle, and I have also considered proposing Committee stage amendments (CSAs) to the Bill. But as the Stamp Duty (Amendment) (No. 2) Bill 2010 (the Bill) is very complicated, I consider that it will be very difficult to propose the relevant CSAs, and other provisions of the Bill may also be affected. As a matter of fact, I have tried drafting the CSAs myself, but I give up eventually due to the intricacies involved. I have to admit that I am inadequate in terms of the technical aspects.

If the present Bill is enacted, the market and the industry players who actually apply the Bill (including front-line estate agents) must duly execute the Provisional Agreement for Sale and Purchase (PASP) because the amount of the SSD involved can be substantial. In addition, if the buyer does not know for certain whether the property was acquired by the seller within 24 months, he may not have all the correct information even though a search of land record at the Land Registry has been conducted. Hence, if the Administration cannot provide practical assistance to both parties of the transaction so that they understand the interests and liabilities involved as well as the levy of this heavy tax before they execute the Formal Agreement for Sale and Purchase in law firms, the situation where the buyer is "tied" may occur and it will be too late to provide any remedies.

In my view, the question of liability for the SSD can be resolved through practical operation. Everything will be fine if the buyer is willing to pay the SSD after bargaining because that is an outcome reached after a negotiation process. However, I am worried that "unintended effects" may arise. What I mean is that not all transactions are handled through estate agents or professionals. If both parties know each other and they sign the PASP on their own without specifying who is liable for paying the SSD, a difficult situation may arise if they must finally pay a large sum of tax.

Of course, the situation can be resolved through the Court's interpretation. If the liability for the SSD has not been specified in the PASP, the Court may make a ruling according to the context of the case (for example, supplementary provisions to the said agreement made by both sides during the negotiation process). If the Court finally decides that the SSD shall be shared equally between the buyer and seller, I think it is unfair to the buyer.

Therefore, I only hope that extensive publicity of the SSD will be launched by the Administration. I am less worried about transactions conducted through estate agents because they will surely render their advice in this regard; otherwise, it could be dereliction of duty on their part. However, if problems arise in cases where both parties have completed the transaction "in private" without knowing the consequences and the sum involved is substantial I hope members of the public can stay more vigilant.

Chairman, in these provisions Chairman, I am sorry, my speech should end here because the views I intend to state are related to the ensuing CSAs.

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

MR RONNY TONG (in Cantonese): Chairman, regarding the question just raised by Mr James TO, we have already discussed it in detail when scrutinizing the Stamp Duty (Amendment) (No. 2) Bill 2010 (the Bill). My view is that no problem will arise. Why is that so? Chairman, it is because the objective of the Bill is to target sellers who intend to sell their properties within 24 months of acquisition, so that they will not sell their properties within two years. As such,

if they indeed sell their properties, they should consider whether they themselves should pay the special stamp duty (SSD).

In fact, the forces of a free market will certainly determine whether the seller can shift the burden of the SSD to the buyer because the buyer has a choice of buying properties not acquired within two years. That is the first option. Secondly, in all conveyance transactions I handled throughout my years as a lawyer, I have never come across any agreement for sale and purchase that is silent on the liability for stamp duty. Of course, stamp duty is paid by the buyer in general, but there are also cases where the buyer and seller are jointly liable. I have never come across any case where the liability for stamp duty was not specified in the agreement.

Hence, no dispute will arise when the Bill comes into operation, let alone the situation where the Court is asked to decide that the SSD shall be shared equally between the buyer and seller. That scenario will not arise, or at least, I have never come across such cases.

The spirit of freedom of contract has always been championed under the common law, and the Court will absolutely respect the decision made by both sides of the transaction about sharing the payment of stamp duty. Hence, ultimately, the scenario where an unwilling buyer is forced to pay the SSD will not arise. After the passage of the Bill, I think aspiring buyers will not only consider the price of a specific property, but also whether it was acquired by the seller within two years. If so, they must consider whether they are willing to pay the SSD. If they are unwilling, they can firstly choose not to buy the specific property, or secondly, bargain for a lower price so that it is equivalent to the seller paying the SSD. Therefore, no problem will arise.

I think there is no need to discuss this point in detail.

MR JAMES TO (in Cantonese): Chairman, having heard the speech made by Mr Ronny TONG, I hope I can tell him through you, Chairman, that this is indeed a problem, although such problem may not arise for most of the property transactions would be handled through estate agents.

Although I have less years of experience as a lawyer than Mr TONG, as a solicitor and Member, I have often tendered advice on agreements for sale and purchase in my capacity as a Member. Honestly, I have indeed seen agreements for sale and purchase of relatively low-priced properties that the duty of paying stamp duty (that was before the introduction of the special stamp duty (SSD)) was unspecified as both parties were well acquainted.

I also think that the following scenario is likely to happen. For example, if the prospective buyer and seller of a relatively low-priced property (say, a flat in an old building in Sham Shui Po) are well acquainted Of course, the seller must ensure that he has held the relevant property for 24 months on or after 20 November for the SSD not to be applicable. The parties may have no idea that the SSD has already been introduced. Surely, Honourable colleagues, as well as estate agents and lawyers would know about it. However, as a result of the seller's ignorance about the SSD, only a simple remark was put in the agreement that "stamp duty shall be paid by the buyer". As the buyer also knew nothing about the SSD in the first place, he may only find out afterwards that he is the one responsible for paying the SSD. Under the circumstances, the judge may rule that all stamp duty (including the normal stamp duty and the SSD) shall be borne by the buyer. As a result, the buyer must pay a large sum of money.

I have been hoping to persuade the Government to provide for the so-called "fallback position" or "default position". If the responsibility of paying stamp duty has not been specified, both parties can of course negotiate and then clearly state the outcome in the agreement. But if the agreement has indeed not specified the responsibility, then in order to cater for such a situation, perhaps the Government should consider providing for a "fallback position" in the Bill so as to determine whether the seller or buyer should be responsible. What will be a relatively fair treatment if the agreement has indeed not specified the responsibility? Or should both the buyer and seller be jointly responsible? Or whether it will be more in line with the spirit and essence of contracts that the judge should decide which party is to be responsible for payment under some special circumstances (for example, nothing has been specified in the agreement)?

Of course, all the three scenarios above are probable. If the Government, out of convenience in terms of tax collection and drafting of the Bill, simply takes the view that the normal practice adopted for stamp duty can adequately resolve all problems, then I am very sorry for I consider that there are bound to be

situations left uncovered. Of course, I also agree that such situations are uncommon.

As I am a particularly cautious person, I know that such social situations can arise. Therefore, I hope the Government would make the necessary amendments. However, as the Government is unwilling, there is nothing I can do. I have also read through the provisions of the Bill, and honestly, it would be very difficult to draft the relevant CSAs because they are all interconnected.

Mr Abraham SHEK told me that he admired me very much. Even though he just proposed one simple CSA to this Bill, he knew how difficult it was to draft the CSAs because much work was involved. I just want to say the drafting of CSAs is a mammoth task, and I cannot do it. Otherwise, I would surely propose the necessary amendments.

Of course, we know that my CSAs, even if drafted, would surely be vetoed because we do not have enough votes. But it does not matter because even so, we often go ahead and propose our amendments. However, due to the complexity of this Bill, there is great difficulty involved in drafting the CSAs. If I have the capability, I would surely put forth the necessary amendments.

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

(No Member indicated a wish to speak)

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Chairman, I thank Members for putting forth their views and observations just now. I would like to respond briefly on two points.

First, these provisions are in fact about the retrospective effect of the Stamp Duty (Amendment) (No. 2) Bill 2010 (the Bill). Under the Bill, the effective date of the provisions in relation to the special stamp duty (SSD) would be 20 November 2010. I just heard the views of some Members that it might not be appropriate for the Bill to have retrospective effect. I would like to explain to Members that we have appointed the next day the SSD measure was announced as the effective date because we need to send a clear message to the market that the Administration is determined to combat speculative activities, and to avoid

inadvertent creation of a loophole for fuelling speculation during the period prior to the enactment of the legislation. In fact, the public is well aware of the effective date of the SSD as announced, and buyers/sellers have already taken into account the SSD when considering flat sale/purchase or otherwise on or after 20 November 2010.

I also heard Members' discussion just now about how the liability for the SSD should be divided between the buyer and seller, or whether both parties should be jointly liable. I have noted the concerns raised by Members. In fact, stamp duty is a kind of tax chargeable on instruments. Under the existing Stamp Duty Ordinance, all parties executing a chargeable instrument are jointly and severally liable to pay the stamp duty. This principle, which applies to agreements for sale and purchase as well as leases of properties, is one of the fundamentals of our stamp duty regime. Therefore, we should uphold this principle. Our decision is made not out of convenience, but principle. This is a well-established arrangement which the market is familiar with.

Regarding the SSD, many choices of residential properties are available in the market. When considering properties which have been held for more than or less than 24 months, prospective buyers will make their own comparison, and I think they can make a wise choice. We also believe that if a specific property has been held for less than 24 months, the parties to the transaction will negotiate between themselves who is responsible for paying the SSD. In other words, while it has been the general market practice for buyers to pay for the current *ad valorem* stamp duty, this may not necessarily be the case upon the implementation of the SSD because as Members said, buyers can choose to buy properties which have been held for more than 24 months instead.

Chairman, I would like to respond briefly to the scenario just cited by Member, that is, if both parties agree after negotiation that the SSD should be paid by the seller, we suggest that the buyer should consider specifying in both the provisional and formal agreements for sale and purchase that the seller should make available a sum equivalent to the SSD to be held by the law firm as payment of the SSD.

Chairman, I so submit. Thank you.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clauses 2, 3, 6, 11, 13 and 15 to 18 stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 1, 4, 5, 7, 9, 12 and 14.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Chairman, I move the amendments to clauses 1, 4, 5, 7, 9, 12 and 14 as set out in the paper circularized to Members.

The above amendments are mainly technical amendments, and they concern the cancellation of the existing arrangements for deferral of payment of stamp duty for residential property transactions valued at \$20 million or below, as well as granting exemption from SSD for the nomination of brothers and sisters to take up assignment of a property and for the transfer of the property to brothers and sisters.

I hope Members will support the relevant amendments. Thank you, Chairman.

Proposed amendments

Clause 1 (See Annex II)

Clause 4 (See Annex II)

Clause 5 (See Annex II)

Clause 7 (See Annex II)

Clause 9 (See Annex II)

Clause 12 (See Annex II)

Clause 14 (See Annex II)

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

MR JAMES TO (in Cantonese): Chairman, I will just talk about the special stamp duty (SSD).

The Government has proposed the amendment to extend the exemption to brothers and sisters. However, we have made a comparison with normal stamp duty and found that for normal stamp duty, only spouse, parents and children are mentioned. There is no mention of brothers and sisters. I opine that the principle of both of them should be the same. If no SSD is levied on the so-called speculation cases, or the chance of speculation is slim, should the exemption also apply to the normal stamp duty? Perhaps this issue was neglected in a certain part of the legislation process at that time. As a result, I wish to remind the Government to include similar exemption for normal stamp duty in its review.

Just now I also mentioned stepping up publicity so that the buyer — in particular, boy friend and girl friend — if one of them signed the preliminary agreement first and the other name was included only when the formal agreement for sale and purchase was signed a few days later, they would have to spend several ten thousand dollars more for no reason at all. That will certainly lead to quarrels and divorce. Hence, I hope the Government will do more publicity work, while professionals, especially front-line property agents, must exhort the buyers to seriously consider whether the formal agreement for sale and purchase will later be signed by the same signatory/signatories. Otherwise it will lead to a big dispute. It may even induce people to try to stall by saying that they have not signed the agreement and end up being charged for committing a criminal

offence. Then there will be big trouble. So this may be a serious problem. I hope front-line professionals will pay particular attention and remind the buyers.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Transport and Housing, do you wish to speak again?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Chairman, I have already explained these clauses during the resumption of the Second Reading debate. I do not have any other things to add.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): As the amendment to delete clause 4 has been passed by the committee of the whole Council, clause 4 is therefore deleted from the Bill.

CLERK (in Cantonese): Clauses 1, 5, 7, 9, 12 and 14 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the above amended clauses which have been read out stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 8 and 10.

CHAIRMAN (in Cantonese): The Secretary for Transport and Housing has given notice to move amendments to clauses 8 and 10. The Secretary's amendments to clause 8 seek to amend the heading of the proposed section 29CA in the Bill and subsections (2) to (9) of that section, as well as to add subsections (3A), (4A), (6A) and (6B). The Secretary's amendments to clause 10 seek to amend the heading of the proposed section 29DA in the Bill and subsections (1) to (12) and (14) of that section, and to add subsections (3A), (7A), (9A), (9B) and (13A).

In addition, Mr Abraham SHEK has also given notice to move amendments to clauses 8 and 10. Mr Abraham SHEK's amendments to clause 8 seek to amend subsection (2) of the proposed section 29CA in the Bill, and to add subsection (11) to that section. Mr Abraham SHEK's amendments to clause 10 seek to amend subsection (2) of the proposed section 29DA in the Bill, and to add subsection (13B) to that section.

Irrespective of whether the amendments of the Secretary for Transport and Housing are passed or not, Mr Abraham SHEK may move his amendments.

CHAIRMAN (in Cantonese): Members may now have a joint debate on the original provisions, and the amendments of the Secretary for Transport and Housing and Mr Abraham SHEK. I will first call upon the Secretary for Transport and Housing to speak and move the amendments.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Chairman, I move the amendments to clauses 8 and 10 as set out in the paper circularized to Members. I would like to briefly explain the major amendment made in the various amendments.

The relevant amendments specify more clearly that under usual circumstances, the special stamp duty (SSD) does not apply to the sale of first-hand residential properties. Moreover, we have set clear criteria in the amendments for counting the holding period.

Besides, regarding the transactions exempted from the SSD, we have put forward a series of further exemptions. The above amendments seek to reflect the policy objective of the authorities and facilitate the legislation to operate more smoothly upon implementation.

The Bills Committee has conducted extensive discussion on the various amendments and generally agreed with the amendments. I hope Members will support the amendments. Thank you, Chairman.

Proposed amendments

Clause 8 (See Annex II)

Clause 10 (See Annex II)

CHAIRMAN (in Cantonese): I now call upon Mr Abraham SHEK to speak, but no amendment is to be moved at this stage.

MR ABRAHAM SHEK: Chairman, I move amendments to clauses 8 and 10, which concern the acquisition and disposal of bare sites and transfers between associated corporations.

Chairman, clause 8, section 29CA(2) sets out that a chargeable agreement for sale is chargeable with the special stamp duty (SSD) if the residential property concerned is disposed of within 24 months beginning on the day on which the vendor acquired the property. While clause 10, section 29DA(2) sets out that a conveyance on sale is chargeable with the SSD if the residential property concerned is disposed of within a period of 24 months beginning on the day on which the transferor under the conveyance acquired the property.

The two amendments I move are about acquisition and disposal of bare sites. The SSD is imposed as an extraordinary measure under current exceptional circumstances to discourage short-term speculation in residential flats, I repeat, in residential flats. Where a developer acquires a bare site and sells the site before any building is erected on the site, no speculation concerning residential units is involved and there is no justification for imposing the SSD.

Imposing the SSD on the disposal of bare sites could have the unintended effect of reducing land supply, which is against the general consensus on stabilizing the residential property market by increasing land supply.

This worry is not unfounded. To avoid payment of the SSD, developers could hold onto the sites for longer. A developer, in some instances, who has acquired a bare site may find himself in financial difficulties and might wish to sell the site before any building is erected on it. Moreover, in some other circumstances, a developer could, for commercial reasons, decide not to develop the bare site himself. He could decide to sell a site that is too small to be developed into a quality building to another developer who owns an adjoining site, to enable the other developer to amalgamate the two sites into a larger site for a better development.

In any of the above cases, the imposition of the SSD would inhibit the disposal of the bare site by the developer, with the consequence that supply is reduced. Furthermore, the additional cost of the SSD would eventually be passed on to consumers.

I therefore propose that where a person acquires a bare site and disposes of the site within 24 months, before any building has been erected, the SSD shall not be chargeable.

The proposed amendments to sections 29CA(2) and 29DA(2) are intended to cover the above scenarios. The only difference between section 29CA(2) and section 29DA(2) is that section 29CA(2) deals with certain agreements for sale, while section 29DA(2) deals with conveyances on the sale of residential property.

Chairman, the proposed new sections 29CA(11) and 29DA(13B) provide that where an internal transfer has taken place, the date of acquisition for the purpose of the SSD shall be deemed to be the date of acquisition by the transferor.

The Administration has accepted that the SSD is not chargeable for a transfer between associated corporations where the transfer is exempted from payment of stamp duty under section 29H(3) or section 45.

However, the Administration refuses to accept that for the purpose of the SSD, in the event of a disposal by the transferee, the 24-month period should count from the date of acquisition by the transferor, instead of the transferee. The Administration is saying that the period should count from the date of transfer to the transferee.

These transfers are effectively internal transfers within the same group. It would be logical to count the 24 months from the date when the group first acquired the property, that is, the date when the transferor acquired the property.

Chairman, I am not convinced by the Administration's flimsy explanation that it is inappropriate to provide specific exemptions for the abovementioned scenarios because the possibility of speculation cannot be ruled out, or because it could send the wrong message and create loopholes. My CSAs concerning the provision of exemptions from the SSD for acquisition and disposal of bare sites and transfers between associated corporations contain no hidden agenda or ulterior motives to weaken the SSD which I support. Instead, they are intended to minimize the negative impacts that the SSD could have on the property market in restricting the adequate supply of land. It is disappointing that the Administration is reluctant to understand the difficulties of the developers and

their usual practices and accept my CSAs. If the Administration really cares about loopholes, how can it turn a blind eye to the loopholes it has created?

One of the biggest loopholes in the Bill is that it separates the SSD from the Administration's housing policy, such as the resumption of the HOS. The SSD and other measures like mortgage loan ratio and increasing flat supply should be considered as a whole. They cannot be brutally separated. While the Administration is flaunting its declared determination to increase flat supply, is it logical for the Administration to push ahead with legislation that could defeat that purpose? I am speaking as a practitioner of the trade, and I know this will happen. As an old Chinese proverb goes, "lifting a rock only to have his own toes squashed." (拿起石頭壓自己的腳趾。) That is the best illustration of how this Administration formulated the SSD.

Thank you.

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

MR JAMES TO (in Cantonese): Chairman, one of the purposes of this CSA is to exempt the special stamp duty (SSD) in respect of first-hand properties. In other words, if a real estate developer has purchased a piece of land, and he has, for whatever reasons, completed the foundation works and other works, and has the building ready for floor by floor sale within 24 months, such floor by floor sale will not be regarded as sale of properties within 24 months and liable for the payment of the SSD. This is the exemption provided in the CSA.

Mr Abraham SHEK pointed out that if a real estate developer purchased a piece of land and then sold it without building anything thereon, this would be regarded as a speculation of land as nothing has been erected for sale. He is therefore liable for the payment of the SSD.

However, after discussing a few cases at the Bills Committee meetings, I was aware and came to believe that what happen in reality may not be smooth as expected. The Government may meet future challenges in some cases, especially when the SSD is imposed on properties involving relatively higher selling prices. Let me cite some examples to explain why we believe the Government will encounter certain difficulties.

First of all, the Government highlighted the so-called "same property concept" in the Bill, meaning the same property. What is meant by different properties then? If a building has been erected on the land concerned, it became a different property. If someone bought an old building, pulled it down and resold the land concerned to another real estate developer, this change from a building to a piece of land will be exempted from the payment of the SSD as they are different properties. This is the basis which the Government has relied upon. However, I can tell Members that I have no idea why the Government would think this way. I just want to know why the SSD can be exempted when someone bought a building, pulled it down and resold it later. This is also a speculation of land. Contrarily, one is liable for the payment of the SSD if he bought a piece of land and resold it afterwards. It is therefore not justifiable from the perspectives of principle and logic.

Secondly, suppose I bought two flats (Flats A and B on 18th floor) at a building in Taikoo Shing and sold Flat 18A when property prices stood high, the Government clearly stated that the SSD must be paid because one of the two properties bought by me had been sold. I was liable for the payment of the SSD. If I sold the two properties one after the other, I would be required to pay the SSD for both of them.

Where does the difficulty lie? It lies in a point which we have previously raised. For instance, someone owns a piece of land — we usually talk about buildings in the New Territories these days — which can be used to build a three-storey small house. However, it turned out that only two storeys were built. A two-storey small house is therefore erected on the land which, legally speaking, can have a three-storey building erected on it. The owner just built a two-storey house. In other words, the buyer bought a two-storey small house. After examining the relevant plot ratio or other restrictions, he found that one more storey could be built. So, he legally built the third storey and then sold the three storey house together with the land. I then ask the Government if all three storeys or only the ground and first floors are liable for the payment of the SSD. It is impossible for the second floor, which did not exist in the first place, to be resold within 24 months after acquisition as it has not been sold before. However, the Government's reply seemed to imply that all three storeys are liable for the payment of SSD. I am confused. This does not seem to reconcile with the previous examples, and is not also justified.

There are certainly many more examples, but I am not going to quote any of them. What I want to say is, while the Government advised that the Bill should be endorsed in its present form, we had asked, during the deliberation of the Bill, if more clarifications could be made. We certainly have limitations in this regard. If the Government is reluctant to make further clarifications and we fail to come up with a better amendment, the Bill would be procrastinated. Given that it has retrospective effect, the entire industry or property market will become more and more uncertain.

To choose a lesser evil, I think the proposal put forward by the Government is perhaps the best solution for the time being. However, if you ask me for my advice, I would say that the explanation of the Government did not totally tally with the proposal and it would be subject to future challenges. Nonetheless, we need not worry as there is a court system in Hong Kong, under which one may challenge the Government. Take the case of the example cited earlier. The Government originally intended to impose the SSD on all three storeys, but it may receive only two thirds of the SSD in respect of the building in the end if it loses the lawsuit. The second floor is not liable for such tax payment. This is the worse scenario and most extreme case. It does not mean that the entire legislation will become paralysed or useless. I just want to add one footnote, and that is, there are certain uncertainties.

I want to raise another point concerning the Democratic Party's views on the CSA moved by Mr Abraham SHEK just now. Firstly, it is not satisfactory and probably slightly inconsistent. However, if the land concerned is pretty valuable and those real estate developers or experienced real estate agents are able to solve the problems that may possibly arise through certain commercial and pre-determined arrangements We are worried that the final and most direct outcome will be an evasion of tax payment through the buying and selling of company shares. If the Government is so ridiculous that it has expressed particular concern over possible speculative activities and therefore imposed the SSD to address this concern, it would be very simple for speculators. They will simply switch to the buying and selling of company shares. It can be that simple and the problem will be resolved. They may even succeed in evading all tax payments.

All I can say is that we will not support the CSA moved by Mr Abraham SHEK because under the actual business environment, people can still made use

of pretty complicated or even sophisticated pre-determined arrangements to minimize the unfairness or uncertainties arising from the Government's refusal to change.

MR RONNY TONG (in Cantonese): Chairman, first of all, I wish to respond to the speech made by Mr James TO. However, I do not want to give an impression that I confront him, which is not the case. It is just that I have a slightly different viewpoint, which has actually been discussed during the deliberation of the Bill.

I think that the problem raised by Mr TO earlier may not necessarily exist. The cited examples do not exist because in Hong Kong, ordinary buildings are sold and purchased in terms of shares, which are associated with the entitled area therein. So, if shares are used as the basis of calculation, the case mentioned by Mr TO will not happen.

However, the sale and purchase of small house is a completely different case as no share is involved. Small houses are sold or purchased in terms of lots and the buildings on them. Since I had lived in a small house, I know that the problem mentioned by Mr TO does not exist. Assuming that a third storey is subsequently added to a two-storey small house, the sale and purchase of this small house will still be conducted in terms of the lot. An exception is that the three storeys are partitioned by way of a deed poll, thus there will be three separate deeds and shares as a result. And yet, such an exception is different from the example cited by Mr TO earlier.

No matter what, even if there are uncertainties in the provision concerned, under the present system, it will be the Court which determines the genuine legal consequences of the terms used in the relevant legislation after enactment. Thus, I do not think that there is any serious problem.

Regarding the CSAs moved by Mr Abraham SHEK, I must state clearly that — as I have said in my earlier speech — the legislation aims at curbing speculation. Chairman, what is meant by speculation? In my opinion, speculation means properties are sold or purchased not mainly for self-occupation purpose, but for profits. Therefore, we hope that the provision of exemptions would by all means prevent the genuine users — meaning consumers who

genuinely live in the property instead of using it for business purposes — from being inadvertently caught by the legislation and bear the unreasonable tax obligation. On this premise, if a line has to be drawn somewhere to define profitable business acts, it would fall nearer to the type of building used for speculative rather than self-occupation purpose.

The two CSAs moved by Mr Abraham SHEK actually intend to facilitate the operation of real estate developers, which is reasonable as he is a representative of the real estate sector, he will certainly move CSAs in the interests of real estate developers. However, strictly speaking, if a line is drawn in the way as I have just said, I consider it reasonable for profitable acts not to be exempted under the Bill.

MR LEUNG KWOK-HUNG (in Cantonese): Chairman, there is a Chinese saying that "lifting a rock only to have his own toes squashed". In fact, one needs not kneel down and lift the rock; all he has to do is to kick the rock hard, and his toes will swell up at once. The same applies to Mr Abraham SHEK. There is no need for him to kneel down. He can simply hurt his toes by kicking the rock hard. As a representative of the real estate sector who is so smart, there is no reason he cannot see the relationship between flour and bread. If he does not want expensive bread, the price of flour should not be too high, right? If his CSAs aim to provide exemption for flour, how about the bread then? This is indeed an easily comprehensible economic knowledge.

Mr Ronny TONG just now mentioned capitalism, which is a concept of buying for the sake of selling and *vice versa*. What is the commodity? As I have said before, a coffin shop owner only needs one coffin. What is the use of having 100 coffins in the shop? There is no doubt that 99 of them will be sold. They are definitely commodities sold for profits. No one would buy something for the sake of loss. Neither is this the way that money should be handed out. In case someone wishes to hand out money, he can simply distribute \$6,000 like the Government. The problem with the Government is that it has failed to do it properly and administrative fees are payable to banks. The Government is so incompetent that it does not even know how to hand out money.

Handing out money is different from the deliberate act of incurring loss in business. How is the prevailing property market in Hong Kong? There are

definitely people buying for the sake of selling, meaning that they buy one thing and sell another. This is possible because everyone wants to have a larger flat. This gives rise to the process of selling old flats to buy new ones. Given that the price of the HOS flats has risen and people are now better off, they may wish to buy a larger flat by paying an additional sum of money. I believe Our Honourable colleagues recounted their difficult childhood and how hard they had worked in order to buy their first flat. This is nonetheless a process, during which people share the society's residual value. After all, there must be someone who suffers a loss. However, I consider this tolerable because this is a cycle of capital indeed. Actually, the flats cannot be regarded as capital if they are self-occupied. We can do nothing but admire If a person has only one flat, he can only admire

CHAIRMAN (in Cantonese): Please speak on the relevant provisions and the two CSAs.

MR LEUNG KWOK-HUNG (in Cantonese): This is the point under discussion. Mr Ronny TONG has explained what a commodity is and stated that the special stamp duty (SSD) should not be imposed on anything that is not a commodity. May I ask him to enlighten me whether or not land is a commodity? Land is definitely a commodity on which buildings can be built for the owner or other people to reap huge profits. It is the root of all evils. How come things have been put upside down? This is impudent insubordination and may have fatal consequences. In this Chamber, I was called If I resign, I believe there is a very slim chance that I can return to this Council. Therefore, here, I will give full play to the function of teaching all mankind. There is a group of people who is trying to put things upside down, and later on Mr Abraham SHEK and I

CHAIRMAN (in Cantonese): Please speak on whether or not the SSD should be imposed.

MR LEUNG KWOK-HUNG (in Cantonese): I will certainly not disclose the answer to the riddle now. What do you think my answer will be? How do

you know when I have yet to finish my speech? You never know what I am going to say. Perhaps I will answer in the affirmative, right? Simply put, with regard to this question, I learnt that school principals, teachers teaching liberal studies or discipline teachers will first ask students to express their views, which will be followed by some counselling. They will not ask the students, "Do you think that the People's Republic of China is a republican country?" Neither will they ask, "Tell us the definitions of a republican country or people, or what is meant by China." It is certainly beneficial to ask these questions as they cover all the three elements of a modern country. The same case applies here. I am actually explaining why I have to oppose Mr Abraham SHEK's CSAs.

If we learn that something, say, coffins, are certainly for sale, they are capital and therefore liable for tax payment. In fact, a tax has been imposed. So, what is question now? The question is not only 100 but 1 million coffins or all Liuzhou wood around the world has been bought, thereby causing a monopolization of the market. I have yet to speak to the point, and no one knows what I am going to say. Land is just like Liuzhou wood. If a person monopolizes the best Liuzhou wood in the world, then what is the reason of A Member said that the buying of coffins for profits should be liable for tax payment and should be suppressed. How come the hoarding of Liuzhou wood or any other kind of wood which can be used to make coffins will not be subject to any punishment? Is this not taking effect for cause?

Chairman, you remind me that I have to speak on the topic. As the place where I am standing was previously the High Court and presently the Legislative Council, I must therefore say something about the Legislative Council, right? I consider this Council unfair as it has put things upside down. Although I do not have much talk with Mr Abraham SHEK, there is nothing I can do. Why would such thing happen to him this morning? This is what members of the public want to know very eagerly. We have spent so much time discussing how to curb speculation, but still hurdles have been created in the end. Members of the public do not have any strong views, but it is better than none after all. Why should it be removed outright?

In fact, the same concept applies to personality or dignity, and that is, buying for the sake of selling, and *vice versa*, but just in another way. Some people sold their personality for a job, and then sold the job for a better personality sort of buying and selling from time to time.

Therefore, I think I cannot agree with Mr Abraham SHEK Although he has demonstrated his courage and determination in this case, I really cannot agree with him. I do not agree with the CSAs moved by "Courageous SHEK".

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

(Mr Abraham SHEK raised his hand in indication)

CHAIRMAN (in Cantonese): Mr Abraham SHEK, before I call upon you to speak again, let me see if any other Members wish to speak.

(Mr Paul CHAN raised his hand in indication)

MR PAUL CHAN (in Cantonese): Chairman, my speech will focus on the second CSA moved by Mr Abraham SHEK, which concerns with calculation of the 24-month period in respect of the exemption for transfer between associated corporations within the same group.

Since the purpose of imposing the special stamp duty (SSD) is to combat short-term speculation, we have therefore set the limit to 24 months. As far as I understand, section 45 of the Stamp Duty Ordinance (the Ordinance) has provided a case concerning two companies belonging to the same group, which holds 90% or more of the shares of these two companies. In other words, the group holds two companies, namely Company A and Company B. The existing section 45 of the Ordinance provides that property transfers from Company A to Company B can be exempted from the payment of stamp duty. The major consideration behind this exemption is that in actual business operation, some companies might need to reconsolidate their business or assets to facilitate better operation. The transaction itself only involves one group and no actual transfer of economic benefits to a third party has taken place. It is therefore not liable for stamp duty.

There is nonetheless a case which needs to be considered, and that is, the transfer of a property from Company A to Company B, which subsequently sold it. As far as I understand, Mr SHEK proposed that if Company A sold a

property to Company B, which later sold it to Company C outside the group, how should we calculate the two-year period? This CSA proposed that the two-year period should count from the date of acquisition by Company A. I consider this reasonable because our target is the transfer of properties for profits by way of short-term speculation. Since both Company A and Company B belong to the same group, the property is not sold to a third party. According to the CSA, the two-year period should count from the date of acquisition by Company A. I consider this reasonable and support the CSA moved by Mr Abraham SHEK.

Thank you, Chairman.

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

MR JAMES TO (in Cantonese): Chairman, I will not repeat my arguments. There are nonetheless some words that have not been said. Chairman, the issues under discussion include the exemption provisions.

Chairman, subjectively I hope that many Hong Kong people are listening to our discussion, I therefore consider it particularly important to remind them of certain important points relating to the exemption provisions. Let me start from the last part. The relevant provision states that if a bank provided a mortgage to a property owner who later failed to make repayment, the bank could assist the owner concerned to sell the property so as to recover the mortgage loan. The balance would be returned to the owner. Such sale is involuntary and therefore not liable for the special stamp duty (SSD). The mortgagee did not sell the property voluntarily. In other words, the owner will be liable for the SSD if he sells the property on his own initiative. Contrarily, if he fails to repay the bank's mortgage loan, the bank can subsequently sell the property concerned. Thus, property owners can evade the SSD payment by so doing. I wonder if any speculators will use the bank loans to pay for the administrative fees and interests to evade the SSD payment. It is therefore more desirable to sell the property through the banks.

Certainly, mortgagees/borrowers will have a poor record at the positive credit database as a result, but this is their problem. There is nonetheless an exception, and what I mean is the case of financial institutions. At present,

many people with financial difficulties may borrow from financial institutions and use their properties as mortgage. While the sale of properties by financial institutions through mortgage is not exempted from the payment of the SSD, the same provision points out that properties sold under court order will be exempted. In that case, financial institutions may have to do something more. They will apply for a court order to secure an exemption for the sale of properties by the financial institution concerned. I therefore believe financial institutions will apply for more court orders in future. This will not only exempt the properties concerned from the payment of the SSD, but is also a fairer arrangement to the borrowers. However, additional lawyer fees will be incurred for the application of court orders.

Lastly, the third scenario is that divorced couples must be cautious in the disposal of properties. If the disposed property was bought within 24 months, the divorced couple must request the divorce court to rule for the sale of the property. If agreements were only reached on children, whereas properties were sold and the proceeds were shared equally without applying for any court order, the sale of a property bought within 24 months in the absence of a court order will be liable for the SSD even though it was sold on a voluntary basis. Contrarily, so long as the sale of a property is sealed by the Court, indicating that the property is sold under a court order and the asset will be shared equally, the sale will be deemed involuntary and therefore exempted from the payment of the SSD. One may notice a great difference of as much as tens of thousand of dollars, and this might bring significant changes to the schooling and living of their children.

I therefore wish to take this opportunity to draw people's attention to these provisions. I am not teaching them to abuse the SSD. I just want to point out that it is reasonable for the Government to provide exemptions to certain scenarios. I wish to remind people that under such a circumstance, a couple should better save the tens of thousand of dollars of the SSD payment by way of court orders.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Mr Abraham SHEK, do you wish to speak again?

MR ABRAHAM SHEK (in Cantonese): Chairman, I thank the many Members who have spoken and wish to respond to their earlier speeches. First of all, I would like to respond to the speech made by Mr Ronny TONG. He said that I represent the real estate sector, which I certainly do. The Basic Law requires balanced participation, and I am a representative of the real estate sector, which is one of the financial constituencies. Nonetheless, I do not only speak for the real estate sector, but also for the entire community. I also agree with Members in this regard and support the proposed special stamp duty (SSD).

I raised views because I am aware that problems will arise in my industry. This is why I have spent much effort and time during the deliberation of the Bill, like what many other Members have done. We anticipate that the industry may encounter those problems. If a real estate developer sells a piece of land to another developer, it is liable for the SSD. Given that wool comes off the sheep's back, the 15% tax payment will be added to the cost of the land. Flour — as Mr LEUNG Kwok-hung has said — will become more expensive. Who will pay for this higher price? It is certainly the general public. What is the purpose of raising this point? To make flour cheaper.

Secondly, Chairman, Mr Ronny TONG said that there are various ways to tackle this problem. However, I wish to point out that Legislative Council Members responsible for scrutinizing this Bill are eager to have the legislation as specific as possible. This will scare off people who want to play with the law by hiring lawyers only to serve their purpose. This is the last thing which we would like to see. We want to have every single provision written very clearly. I want a legislation that is clearly written with specific provisions, as well as a sunshine policy for all to see. Perhaps Mr TONG — who just said that he is not interested to spend too much time on this legislation — does not understand. During the deliberation of the Bill, Chairman, we had spent a lot of time on discussing the sale and purchase of land I want to tell Mr Ronny TONG that during our discussion on the Bill, we had touched on the case where the SSD payment was necessary when land was sold by one real estate developer to another real estate developer. I wonder if he is aware that when the Bill was examined, we had queried why the sale of a Government land acquired from auction to a third party could be exempted from the payment of the SSD. We

queried why the sale and purchase of private land was liable for the SSD, whereas the acquisition of land from the Government for sale to a third party was exempted. Chairman, perhaps they do not get it. For me, I want every single case to be fairly dealt with. The most important of all is, not to Why do we need to combat the speculators? When speculators leave the market, land can be turned into bread more expeditiously without affecting the market. With increased supply, bread will certainly become cheaper with larger supply, and speculative activities will become less active. I therefore move CSAs to speed up the process of turning land or flour into bread without pushing up the price. Let me explain to Mr LEUNG Kwok-hung. I need not kick a rock. Moreover, I am not blind. Earlier, I said that the Government is like lifting a rock to smash on its toes because the proposal is not absolutely fair.

Chairman, just now a Member from the pro-establishment camp asked me if I had calculated the number of votes required to endorse the two CSAs. Chairman, although this is the first time I move CSAs, I have nonetheless obtained great satisfaction, especially because I will have been a Member for 11 years a few months later. I have never seen the passage of CSAs moved by Members, especially those moved by the opposition party. Today, I can taste the joy of being an opposition party. My greatest contribution is to make the Democratic Party support the Government. It supports the Government simply to act against real estate developers. I will be very grateful to do this again in case more of such opportunities come up.

Chairman, secondly, let me tell you. I have explained to Members from the pro-establishment camp that I will not solicit their support. Why? I told them as it was their role to support the Government, they should do so anyway. Nonetheless, Chairman, I have called on them to consider if the Government is acting in a fair, open, reasonable, just and lawful manner before making a decision. As I have explained to Mr Ronny TONG earlier, the Government has not acted fairly because when land is sold to a third party which is subsequently transferred, such transfer is exempted from the SSD. However, the sale and purchase of this transferred land is liable for the SSD. Is this fair?

Chairman, I hope that Members will understand this point. I do not oppose the passage of the proposed SSD. I hope that Members will support the proposal and refine it so that it is capable of combating the speculators. The speculators have now left the market, Chairman, which is a good thing. The

problem is — just as the Financial Secretary has said, property prices are increasing day by day — Chairman, the reason is very simple. Many owners have withdrawn their properties from the market in view of the SSD, thereby resulting in a fall in supply and a rise in property prices. Such a rise in property prices is not justified. A reduction in transaction volume

CHAIRMAN (in Cantonese): Mr Abraham SHEK, you should speak on the CSAs under discussion.

MR ABRAHAM SHEK (in Cantonese): Chairman, this can possibly happen and that is why I am showing Members the full picture of the situation. Further elaboration will be made when the sunset clause is discussed later on, which involves the supply of land. I will now go back to my CSAs, which relate to land supply. Property prices are currently high because many owners or real estate developers have decided to adopt a wait-and-see attitude in view of a possible rise in cost brought about by this legislation, fearing that the price of the bread may become unacceptable to the general public. As a result, supply will fall.

Secondly, as Mr LEUNG has said earlier, given that the Government supplies flour and real estate developers sell bread, the latter has to purchase flour from the former. Very simply, the sale of the site at Borrett Road last week is a good example. The following day after the sale of the site, the Government had asked the HKMA to lower the loan-to-value ratio of all mortgages in the hope of reaping the most benefits. Morally speaking, the Government should announce this policy before the land auction. Only by so doing can the Government be regarded as open and enlighten. It has, however, called on people to buy land on the one hand, but announced the above measure on the following day.

Chairman, sometimes the Government says in one way but act on the other. While it blames someone for doing something, it allowed itself to do the same thing. This also has something to do with the supply of land, and is therefore slightly relevant to my two CSAs. Thank you, Chairman.

CHAIRMAN (in Cantonese): Mr LEUNG Kwok-hung wishes to speak again. I would like to remind Members that I would allow the mover of the CSAs to give

a reply at last, and that Members may not necessarily satisfy with the content of the reply. In case Members feel dissatisfied with the reply and request to speak again, our debate will be never ending. Therefore, Mr LEUNG, I will let you speak, but I hope that you will be as concise as possible and do not repeat your previous arguments.

MR LEUNG KWOK-HUNG (in Cantonese): I just want to tell another joke. When a person, who is holding a rock, is wondering where he should go, he suddenly kicks another rock, he feels so painful that he drops the rock in hand onto his toes and thus suffers double pain.

I agree with your remarks, which have actually depicted the lousy property market. If a commodity has not been monopolized, it would not be possible to make up for the additional cost at will. You also studied economics, do you get it? Now that the flour has been monopolized, he can therefore make up for the additional cost no matter what you do. This is a fact.

The question is indeed very simple. If the seller is liable for a tax at 15%, how can he shift the cost onto the buyer? If the seller has not hoarded, it will not be so easy for him to shift the tax payment onto the consumers. And yet, the legislation can do nothing to regulate such act. I certainly understand what you mean as I am not that stupid. You must, however, explain from the economic perspective why the sellers have to shift the required payment onto the buyers, who then again shift the payment onto the first-hand buyers?

Chairman, I will not argue with him anymore because I am talking about politics. Everything is political in nature. May I ask why the person who consumes bread at the final stage has to be exploited by the bread maker who purchases flour under the incompetent Government as described by you?

Chairman, I know that you have become very impatient, but I must make a clarification here. What the real estate developers bought is not flour but heroin, which is then mixed with some Ketamine to produce a new drug. We are induced to take this new drug and become addicted. When the price of Katemine rises, the price of this new drug will also rise accordingly. When the price of heroin rises, the new drug will also rise. It is therefore useless to fight with Mr SHEK, who is so committed. After all, this is a political-economic issue rather than a logical one.

MR ABRAHAM SHEK (in Cantonese): Chairman, although I have never discussed either political or economic issues with Mr LEUNG, our ideological differences have not stopped me from listening to him. The problem is his speech is illogical. He said that I lifted a rock to smash my foot. This is nonetheless better than people lifting a rock to throw at others on impulse. He never knows nor bothers where the rock will fall. It would be better if he throws the rock at himself than do something which harms others but brings no benefit to himself.

The economic principle mentioned by him just now is actually like this, it harms others but brings no benefit to oneself and is completely illogical. The Government needs to sell flour so that the proceeds will be used to build hospitals, schools and implement other measures. The Government sells flour because it needs resources. Over the past 150 years, the high land premium policy can be said to have fed the entire population and brought success to Hong Kong. Hong Kong has a low tax regime, so he opposes the imposition of heavy tax by the Government. Meanwhile, people are lashing out on whatever the Government did

CHAIRMAN (in Cantonese): Mr Abraham SHEK, regarding the debate on political economics, I suggest you two to discuss this on other occasions. Mr LEUNG, I believe your viewpoints

(Mr LEUNG Kwok-hung rose to speak)

CHAIRMAN (in Cantonese): Mr LEUNG, you two should not use the speaking time of this Council to debate on political economics. I now call upon the Secretary for Transport and Housing to speak.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Chairman, before giving a concrete response to the two CSAs moved by Mr Abraham SHEK to clauses 8 and 10, I wish to point out that the Government is very determined in promoting "flour". Our current target is to provide sufficient land for an annual production of 20 000 units for the market.

Furthermore, I must honestly say that no matter when a government policy is announced, there is always a piece of land being sold by auction before the announcement is made. Whenever the Government chooses to make an announcement, there is always a piece of land being sold by auction before that date. Therefore, we cannot say that the Government is unfair.

Regarding the two CSAs, I want to reiterate that we do not agree with the justifications given by Mr SHEK. Regarding the computation of the holding period for which the two companies (which are associated corporations) acquired a property, I have actually briefly touched on this issue earlier. Concerning the computation of the holding period for which associated corporations acquired a property, the Bill proposed that the transfer of properties between associated corporations should be exempted from the special stamp duty (SSD). Under the Bill, when Company B — we call one of the associated corporations "Company B" — disposes a property acquired from an associated corporation, Company A, the date on which the property was transferred from Company A to Company B would be regarded as the date of acquisition by Company B. Transfer of properties between associated corporations is exempted under the Bill, but since the property concerned is disposed and acquired under the relevant instruments, the date on which Company B acquired the property is still applicable to the calculation of the SSD. In general, this principle applies to the Bill and other exemptions as proposed in the CSAs moved by the Administration. I think Mr Paul CHAN might have to pay attention to this point as well. I believe accountants should also attach importance to consistency and uniformity. When we deal with exemptions in this regard and any others under the Bill, the same method has been used to compute the holding period. For this reason, we do not agree with Mr SHEK's proposal and hope that Mr CHAN will re-consider his support to this CSA.

As for Mr SHEK's proposed CSA that the transfer of bare sites within 24 months would be exempted from the payment of SSD, we cannot agree either. He opines that if exemption is not granted to such transfer, land supply will be affected. In fact, as I have stated clearly earlier, it is not our intention to impose the SSD on the sale of first-hand residential properties. Both the Bill and our CSAs have clearly reflected that under normal circumstances, the SSD will not have any bearing on first-hand residential properties. As for the present CSAs, we are confident that they have basically dealt with the situations relating to bare sites. The only exception where the SSD will be imposed is, where a developer

acquires (but not from the Government) a bare site and sells or transfers it to another developer within 24 months before any residential building is erected on the site.

Therefore, we have carefully considered the proposed exemption under this circumstance. Considering that proposals have been made in the Bill to provide exemption for the transfer of properties (which include bare sites) between associated corporations, and we cannot rule out the possibility that the sale or transfer of bare sites might involve speculation, coupled with the fact that such exemptions might create loopholes, we therefore do not consider it appropriate to provide the relevant exemptions. We think that so long as the provisions are clear, developers can exercise flexibilities in regulating their commercial policies to adapt to the Bill without affecting the supply of residential properties. We should not use the Bill to adapt them instead.

Thank you, Chairman.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Mr Abraham SHEK, you may now move your amendments. We have proceeded to page 18 of the script.

MR ABRAHAM SHEK (in Cantonese): Chairman, I wish to claim a division. Sorry, Chairman, I was not in the Chamber just now.

CHAIRMAN (in Cantonese): Mr Abraham SHEK, you should now move your amendments. Please refer to page 18 of the script.

MR ABRAHAM SHEK: OK. Chairman, I move a further amendment to clause 8 to amend subsection (2) of the proposed section 29CA in the Bill, and a further amendment to clause 10 to amend subsection (2) of the proposed section 29DA in the Bill.

Proposed amendments

Clause 8 (see Annex II)

Clause 10 (see Annex II)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by Mr Abraham SHEK be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr Abraham SHEK rose to claim a division.

CHAIRMAN (in Cantonese): Mr Abraham SHEK has claimed a division. The division bell will ring for three minutes.

MR ABRAHAM SHEK (in Cantonese): Chairman, just now I have to answer the call of nature.

CHAIRMAN (in Cantonese): The Committee is now voting on the amendments moved by Mr Abraham SHEK, which are about exempting the levying of special stamp duty on the sale or transfer of bare sites.

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

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

Functional Constituencies:

Mr Abraham SHEK and Mr Paul TSE voted for the amendments.

Dr Raymond HO, Dr Margaret NG, Mr CHEUNG Man-kwong, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Ms Miriam LAU, Ms LI Fung-ying, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Dr LAM Tai-fai, Mr Paul CHAN, Mr CHAN Kin-por, Dr LEUNG Ka-lau, Mr CHEUNG Kwok-che, Mr IP Wai-ming, Mr IP Kwok-him and Dr PAN Pey-chyou voted against the amendments.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Mr CHAN Kam-lam, Mr LEUNG Yiu-chung, Mr LAU Kong-wah, Ms Emily LAU, Mr Frederick FUNG, Ms Audrey EU, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr CHEUNG Hok-ming, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Mr CHAN Hak-kan, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr Alan LEONG, Mr LEUNG Kwok-hung and Miss Tanya CHAN voted against the amendments.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 23 were present, two were in favour of the amendments and 21 against them; while among the Members returned by geographical constituencies through direct elections, 23 were present and 22 were against the amendments. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendments were negatived.

CHAIRMAN (in Cantonese): Mr Abraham SHEK, you may now move your other amendments to clauses 8 and 10.

MR ABRAHAM SHEK: Chairman, I move the amendment to clause 8 to add subsection (11) to the proposed section 29CA in the Bill, and the amendment to clause 10 to add subsection (13B) to the proposed section 29DA in the Bill.

Proposed amendments

Clause 8 (see Annex II)

Clause 10 (see Annex II)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by Mr Abraham SHEK be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr Abraham SHEK rose to claim a division.

CHAIRMAN (in Cantonese): Mr Abraham SHEK has claimed a division. The division bell will ring for three minutes.

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

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

Functional Constituencies:

Dr Raymond HO, Mr Abraham SHEK, Ms LI Fung-ying, Mr Paul CHAN, Dr LEUNG Ka-lau and Mr Paul TSE voted for the amendments.

Dr Margaret NG, Mr CHEUNG Man-kwong, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Ms Miriam LAU, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Dr LAM Tai-fai, Mr CHAN Kin-por, Mr CHEUNG Kwok-che, Mr IP Wai-ming, Mr IP Kwok-him and Dr PAN Pey-chyou voted against the amendments.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Mr CHAN Kam-lam, Mr LEUNG Yiu-chung, Mr LAU Kong-wah, Ms Emily LAU, Mr Frederick FUNG, Ms Audrey EU, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr CHEUNG Hok-ming, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Mr CHAN Hak-kan, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr Alan LEONG, Mr LEUNG Kwok-hung and Miss Tanya CHAN voted for the amendments.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 23 were present, six were in favour of the amendments and 17 against them; while among the Members returned by geographical constituencies through direct elections, 23 were present and 22 were against the amendments. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendments were negatived.

CLERK (in Cantonese): Clauses 8 and 10 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clauses 8 and 10 as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clause 6A

Section 29A amended
(Interpretation and
application of Part IIIA)

New clause 11A

Section 44 amended
(Relief in case of gift to
exempted institution).

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Chairman, I move the Second Reading of new clauses 6A and 11A. The

amendments are set out in the paper circularized to Members. Both clauses 6A and 11A are technical amendments.

Thank you, Chairman.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clauses 6A and 11A be read the Second time.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That new clauses 6A and 11A be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clauses 6A and 11A.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Chairman, I move that new clauses 6A and 11A be added to the Bill.

measure to deal with the current exceptional circumstances, both should be subject to the same sunset clause.

As regards the expiry date, the intention is that the SSD shall cease to be chargeable after the expiry date irrespective of the date of acquisition or disposal but this should not affect any charge to the SSD which has already arisen or crystallized on or before the expiry date. Also, payment deferral should continue to be available after the expiry date.

The Administration says that the SSD is needed as an extraordinary measure under the current extraordinary circumstances in Hong Kong to address short-term speculation in residential units. As the name "special" suggests, one would expect these exceptional circumstances to disappear and evaporate into the air in the not-too-distant future for our sake because the high property price would somehow go down with the success of this SSD. In such a case, the SSD should cease to apply.

One major problem with the SSD is that it will severely reduce the flexibility of homeowners and genuine investors in the disposal or transfer of their properties. What is more, a lot of innocent private homeowners, who have not in any way participated in any speculation, may be caught by the measure. An owner could be forced to sell his unit due to financial difficulties (such as losing his job or unexpected losses in his business) or changes in family circumstances, and so on. I understand that there are some 1.5 million homeowners in Hong Kong and they will be affected although the Government has kindly agreed to the recommendation of the Bills Committee to grant a number of exceptions but those are limited. Yet the Administration has refused to make provision for exemption or relief in the above circumstances.

Chairman, although the SSD is not imposed as a tax for revenue purpose, the Bill does not provide a date for the cessation of the SSD, nor is a mechanism provided for its review by the Legislative Council. As it now stands, the Bill will incorporate the SSD as a permanent feature of the Stamp Duty Ordinance.

The SSD has already given rise to a lot of concerns among homeowners, investors, estate agents, the legal profession and the banking and financial community, quite apart from the developers. The imposition of the SSD without a sunset clause is unfair to homeowners and genuine investors; it will undermine

Hong Kong's reputation as a free-market economy, and it will ultimately have an adverse effect and impact on the important sector of our economy.

The Administration and some of my Honourable colleagues say that a sunset clause will create a wrong signal and add volatility to the market. However, as I mentioned earlier, the biggest driving force to change market expectation depends on demand and supply, rather than a sunset clause. If there is a sunset clause, it can dampen the rise in property prices. So, it should be introduced. If the Government really wishes to provide the market with a positive outlook and sentiment, it should handle the issue via steady supply of land and flats and the resumption of the Home Ownership Scheme (HOS).

Earlier, the Secretary has explained that any form of subsidized housing is not to control the rising property prices. That may be so, and it is a fact. But somehow, the Secretary has forgotten that there are other people who are actually not qualified to purchase flats in the private market. They also have a right to purchase home and that is where the HOS comes in. The HOS market and the private market are two separate markets and the Government should take heed of this. It should also look into the aspect of how to improve the secondary HOS market. At the moment, the Government encourages the HOS transactions in the secondary market by imposing a premium. Chairman, that actually has put the HOS secondary market into the private sector market which is the most unhealthy. This is something which the Government should stop doing. The Government should actually only encourage people who are qualified to buy secondary HOS flats to buy from the secondary HOS market, and not the people outside who can afford to buy from the private market.

Although the Administration has indicated that it will review the SSD once every 24 months or earlier after the enactment of the Bill, or as circumstances require, as presently drafted, the Administration is under no compulsion to do so, nor can the Legislative Council compel the Administration to do so. There are many such cases and earlier, Margaret has actually given a very good example. Moreover, what are the circumstances that will trigger the promised review exercise? A 30% plunge in property prices? A fall in the number of property transactions within 24 months to pre-2008 levels? Or another global financial catastrophe? Since the Administration has not provided an objective standard for the review exercise, I am afraid the Administration will break its promise. Just as in many previous policies, that which is not explicitly mentioned is equivalent to being non-existent. Thus, the SSD would become a "standing

stamp duty" instead of a "special stamp duty". So, would it not be better for the Legislative Council to be conferred with the power to take on the supervisory role rather than the Administration?

In my view, it would not be right for the Legislative Council to allow the Bill to go through without providing for a mechanism whereby the Administration must review the SSD and put forward its recommendation to the Legislative Council, failing which the SSD will cease to apply. The Legislative Council will be assured of a review and the decision to continue or not to continue with the SSD will rest with Legislative Council. This means that the Legislative Council, instead of the Administration, will administer the authorities in enforcing the legislation. By so doing, the Legislative Council is doing nothing more than performing its function of monitoring the Government, which is an authority bestowed upon us by the Basic Law.

I am therefore proposing a sunset date of say, 18 months from 20 November 2010, by which date the SSD will cease to apply. That is, the SSD will cease to apply at midnight on 19 May 2012, being 18 months after the SSD came into effect, and that Legislative Council will have the power to amend the sunset date by resolution.

Chairman, from time to time, our Honourable colleagues say that they feel powerless to challenge the Administration's decisions. This is the opportunity you have been asking for. If you vote against it, you are rejecting this right that you should have. They also say that they do not receive due respect from the Government — surely, yes, you have because you are voting with them — and their recommendations are usually left neglected. This, I stand to be neglected today and I am very proud of it. Today, a prime chance is given to every Honourable Member: just cast a vote to support this sunset clause and have the dignity of the Legislative Council reinforced.

MR ABRAHAM SHEK (in Cantonese): Chairman, many Members who spoke just now have made a point about this sunset clause giving speculators a clear message so that they knew when the sunset clause would expire and hence, they stood ready to "make money". Chairman, if they have carefully examined my proposed sunset clause, they would know that this will not happen. They said that the Government and certain political parties or groupings criticized my proposed sunset clause because they were afraid that speculators would re-emerge in the market.

Chairman, the special stamp duty (SSD) under discussion today is introduced through the power we conferred to the Government. Why can we not reclaim this power and ask for the provision of a sunset clause so that we can decide when the SSD will be cancelled or otherwise? Why should we simply trust the Government? Is it because of the Government's threat that speculators have such a tendency? Given the clear provisions under my proposed sunset clause, will the speculators still take a chance even though they know for sure that the Legislative Council is not to be manipulated? No gambler will do so, Chairman. Of course, Mr CHAN Kam-lam supports the Government, me too. But sometimes we must stand up. Chairman, 1.5 million homeowners are affected you do not support the developers you need not be afraid, I am not asking you to support the developers. Whenever the developers say something, certain members of your party will always say they are wrong. Chairman, it should not be so. I do not need their support, but they have to account for their actions to the 1.5 million homeowners. Why do they need to pay an extra 15%? They are not speculators. Chairman, if the Government intends to target the speculators, specific measures should be adopted to catch the speculators, and not the 1.5 million homeowners.

Chairman, 2012 is around the corner. I implore homeowners who will vote in the elections to see clearly for themselves whether these Members really represent you. Are Members who support the Government today really afraid of the re-emergence of speculators? Chairman, if we are afraid of ghosts even before night falls, we can hardly do anything.

I do not mind if they use this as an argument, and I have never written any letter to enlist their support for me today. I will neither give the pro-establishment camp nor the opposition a hard time. But as I said just now, I am happy to see political parties supporting the Government. I would also like to see mutual co-operation for this is a good thing. But Members should not, out of their dislike for real estate developers, make the 1.5 million homeowners liable for paying the SSD if their properties are sold within 24 months. That is why the price of bread has been increasing.

As I mentioned yesterday and just now, the Financial Secretary said he did not know why property prices kept rising. Chairman, the reason is with the implementation of the SSD, 15% will invariably be added to the transaction price, how then will property prices not keep on rising? With the number of property

transactions being so small and land supply so scarce, but market demand so substantial, this problem has resulted.

Therefore, Chairman, I do not care if other Members will support me or not. I am obliged to tell Members that an important issue is at stake. Many Members have talked about the Legislative Council reclaiming its power. They have an opportunity to do so now. This is not a question they can dismiss lightly by saying, "We will just support the Government this time and wait until the next time". You cannot adopt such a stance on the road to democracy. On the road to democracy, one must take a step forward, no matter how small it is. *(The buzzer sounded)*

CHAIRMAN (in Cantonese): Your speaking time is up.

MR ABRAHAM SHEK (in Cantonese): Thank you, Chairman.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 13A be read the second time.

DR MARGARET NG (in Cantonese): Chairman, when I speak on the resumption of Second Reading of the Bill, I have already said that I would support Mr Abraham SHEK's amendment to add a sunset clause. Why does the Secretary oppose to the provision of a sunset clause? It is because the Administration is worried that it will send a wrong message to the public and speculators that the Government lacks the determination to combat speculation in the property market.

Chairman, I want to reiterate a clearer message. We support Mr Abraham SHEK's amendment not because we side with the interest of property developers. We want to point out particularly that by virtue of the special stamp duty (SSD), members of the public are effectively required to pay more money. As such, given that the SSD is introduced for a special reason, that is, it is intended to achieve a specific objective and not to increase government revenue, it should be reviewed once the said objective has not been achieved or effectiveness not seen. That is the first reason.

Chairman, more importantly, the second reason is that — as I have also mentioned upon resumption of Second Reading of the Bill — during the course of deliberation of the Bills Committee on Stamp Duty (Amendment) (No. 2) Bill 2010, we found that there were many problems with the Bill. But given the tight time frame, we considered that the Bill, with its retrospective effect, should be enacted as soon as possible.

What is our greatest worry? That is the part on exemptions. Chairman, as many Honourable Members have mentioned, some owners must "dispose" of their properties within 24 months, not because they want to make profit through speculation, but because they are compelled to do so for other reasons. Under such circumstances, can exemptions be given?

We have also cited some examples, such as when an owner suddenly fell ill or if he was critically ill, he was then compelled to sell his only assets (that is, his property) so that he could have the money for treatment. If he did not sell his property, he would have no other financial means to treat his illness. Why can exemption not be provided under such circumstances?

When a financial crisis happened in a family, even though the owner did not want to sell his property If the owner did not sell his property, the family would be seriously affected in various aspects, such as the schooling of his children, or serious financial difficulties would be created for the whole family. Even though he did not intend to do so, he must sell his property for various reasons. Originally, he could have resolved the financial difficulties when he sold his property, but he was forced to live as a beggar or receive Comprehensive Social Security Assistance payments. In fact, we have raised similar cases many times before.

Exemption is also granted in the cases of nomination of other persons to take up the assignment of the property (commonly known as "addition of names"). No speculation is involved as only "names" are added. However, under the Bill, "addition of names" is also within the definition of "disposal". On our request, the Government finally agreed that exemption would be granted for "addition of names" among parents and children. While no exemption was provided under the Bill for "addition of names" among siblings, we also managed to have the Government's agreement that exemption from the SSD would also apply in such cases.

Nonetheless, many issues are left unresolved as the Government has refused to take on board our views. In the early course of deliberation on the Bill, Ms Audrey EU had already requested the Government to consider whether an appeal mechanism could be provided under the SSD regime so that exemptions would be granted to *bona fide* sellers who can prove that they are not speculators but have legitimate reasons for selling their properties (for example, they are compelled to do so). In fact, we are not seeking very broad exemptions because the discretion is ultimately held by the Government. We can even accept the proposal that concrete evidence must be provided by sellers before exemptions can be granted. However, an appeal mechanism must be established so that the relevant parties can access a channel for granting exemptions. Nonetheless, due to various reasons, the Administration has refused to establish the said mechanism.

Chairman, we can hardly argue with the Government. Can the Administration introduce such an appeal mechanism? Regarding tax issues we encounter in our work, I know a similar appeal mechanism is available for resolution. Under such an appeal mechanism, it is unlikely that appeals from the applicants will be granted easily. But if the Government insists that it cannot be done, there is no way we can force the Government to do so.

After the enactment of the Bill, unforeseen consequences can in fact occur, or even create immense difficulties for the owners. I consider that the burden of such difficulties should not be placed on the owners. Hence, I implore the Government to rethink its stance about establishing an appeal mechanism or amending the relevant provisions of the Bill.

Chairman, if no sunset clause is provided in the Bill, then I am very sorry for I have no confidence at all that the Government will take the initiative to amend or review the relevant legislation. I think many Honourable colleagues likewise have no confidence in the Government.

Hence, by the mandatory effect of the sunset clause, the Government will be motivated to conduct its review. Then, how does the sunset clause operate? If difficulties are indeed caused to many people during the period of 18 months (results should be evident within that period of time) or near its expiry, the Government must do two things in order to gain the support of Legislative Council Members for the continued implementation of the SSD: Firstly, it must demonstrate to us the actual effect of the SSD in stabilizing the property market;

and secondly, it must introduce legislative amendments to provide exemptions to persons facing difficulties. I consider that positive and proactive effect is served by the proposed sunset clause.

Chairman, I have made such a clear explanation because I hope we can convince the Secretary that no wrong message will be sent and our reasons for proposing the sunset clause are clearly understood.

Thank you, Chairman.

MR LEUNG KWOK-HUNG (in Cantonese): Chairman, the sunset clause is of course important because it is related to our political system. The Government merely introduced the Bill to us and its responsibility ends after the Bill has been passed with sufficient votes because it does not need the support of a ruling party in the parliament. Unlike a president, the Government does not partake in separation of powers with the parliament. Hence, the Government simply has no responsibility from the perspective of the design of the system.

Certainly, it will not be practical to include a sunset clause in each and every Bill presented to this Council. But if the issue at stake is highly controversial, it is of course what must be done. That is why we must resort to this provision under the present political system to safeguard the persons affected in many controversial matters or when we have no confidence in the Government. Hence, theoretically, I think I should support Mr Abraham SHEK because a man must adhere to his principles and be rational, rather than support every proposal coming from the Government.

I recall that a sunset clause had once been proposed by Dr Margaret NG in this Council. On that occasion, the Court had ruled against the Government, and Donald TSANG had told the media previously in a highly confident manner that, "Once I said something, the executive order is just as good as legislation. Don't you think so? Wait until we will settle this matter in Court." The Government was subsequently defeated. Afterwards, he begged for mercy by saying that, "There is no time and we must legislate as soon as possible. Otherwise, Andrew LI will bash on me until I am black and blue all over." He begged for an extension. Therefore, I recall that a Council meeting was held even in August in that session. On that occasion, the Government was sternly unrighteous, not sternly righteous. All in all, at that time, Mr LAU Kong-wah had left — I am

not sure if he was already a Member of the Executive Council then, I think probably not — and he said no amendment would be allowed for any provision and no amendment would be allowed to be carried. Given his stance and the absence of sufficient votes, Dr Margaret NG could do nothing but resort to the justice as mentioned by Mr Abraham SHEK. Whenever the Government is compelled to do something by others or because of its own reasons, the Legislative Council is certainly duty-bound to say: You are the one who do this, or we have made you do this. Although you must be guilty and you must have original sin, you should do something good and confess. You have brought this on yourself, and we, Members of the Legislative Council, will hear your confession. It is alright. If you have sinned, it is alright, isn't it? Confess while you can. We have 18 months to see how things go, to see whether you have made good your wrongdoings. If things have not improved, there is no reason to make innocent persons suffer because of your own problems, or compel this Council to follow your game.

Similarly, it is the same story with the replacement mechanism. Do you dare propose a "moonrise clause" so that the matter will be discussed whenever the moon rises? This is

CHAIRMAN (in Cantonese): Mr LEUNG, please revert to the subject matter under discussion.

MR LEUNG KWOK-HUNG (in Cantonese): Yes, I am expounding on the theories, the legal theories, because Mr Abraham SHEK has challenged us with the question of whether we dare support him. Of course, I dare support him. I think with my brain, not my butt.

The matter is quite simple, Chairman, I therefore implore all Members to support Mr Abraham SHEK. In fact, in the final analysis, the crux is whether the Legislative Council can properly perform its gate-keeping role, and not whether a sunset clause has been provided. By adding the sunset clause, it only means that some of us may have doubts about the actions taken by the Government, and the consequence will be revealed soon; or that after discussion at the Legislative Council, we endorse the Government's proposal even though we have our doubts; or that given the time constraint, we have compelled the Government to give us an undertaking. Why not gladly oblige then? I sense

that the Chairman has become impatient on this point, probably because I have digressed. But the question of whether I have digressed or not really depends on whether you understand the things I am talking about, right? Some people would even have questions about Einstein's theories: Why did you say these things? It was out of the syllabus. There was nothing about it in the syllabus of the Hong Kong Certificate of Education Examination It was not right

CHAIRMAN (in Cantonese): Mr LEUNG, whether you have digressed or not is a matter of the Chairman's judgment.

MR LEUNG KWOK-HUNG (in Cantonese): I know. I will not underestimate your ability of understanding. With the level of your understanding, you of course know that I have a point in saying all these, right?

Therefore, Mr Abraham SHEK has a point about the things he said today. I almost forget that Mrs FAN had tried to stop me talking on that day, but I insisted on talking about the sunset clause here. Mr SHEK, how did you vote then? Because you also

MR ABRAHAM SHEK (in Cantonese): I object that you

MR LEUNG KWOK-HUNG (in Cantonese): Or was that your supernatural call again? As a matter of fact, I am a fair person, so please do not challenge me. My brain is still here, and not elsewhere. Therefore, do not underestimate other people. I act according to logic.

Chairman, of course, the action taken by Mr Abraham SHEK is perhaps premised on his special interest. But we should learn to think in this way: Even if the devil is right about something, one must follow. It is just that we should not reject an opinion merely on account of the speaker. *Ad hominem* is prevalent in this Council. Like you, I have also been utterly defeated. I am now alone. Counting together, my political party used to have three votes, and even now, I still have one vote. We should not act in such a way, right? I think this is right. That is why Mr SHEK is using his old trick. He would

often say, "The interest of 1.5 million small owners is involved. If you want to secure the votes of electors, do you dare go against their wish?" He has revealed another secret of this Council, that is, some people do not have to do so. You are trying to scare me off, right? My original sin lies in my wish to secure the votes of electors.

Therefore, I implore all Nonetheless, logic comes naturally because back then when Mrs FAN was the President, he also opposed the sunset clause. Therefore, I hope my Honourable colleagues or people who are watching this debate will ponder on this: If a man without principles wins the whole world, what will be the consequence ultimately? Therefore, I hope more Members will support Mr Abraham SHEK's amendment. Mr SHEK, I know you are the devil. But the devil may be right once in a while when he sneezes or responds to a natural call. The situation is reversed exactly. Therefore, I hope the unnatural call of Mr Abraham SHEK will naturally be supported by others.

MS MIRIAM LAU (in Cantonese): Chairman, I am compelled to say a few words because the memory of the sunset clause is still vivid in my mind. A few years ago during the debate of the Interception of Communications and Surveillance Ordinance (ICSO), Mr LEUNG Kwok-hung had also spoken about it. Back then, he mentioned the term "sunset clause" so often in his speech that he got terribly mixed up in his theme. But it seems that his speech is much more coherent today.

Chairman, as far as the sunset clause is concerned, I hope Honourable colleagues will not say, "I support the sunset clause regardless of the subject matter under discussion as I think we should be in control, and that is why I will support the sunset clause presently proposed", or make a decision on whether they support the sunset clause according to their stance on real estate developers. We used to refer to the term "sunset clause" as "日落條款" in Chinese, but I have heard many colleagues use the term "落日條款" today. Perhaps the Chairman will decide which translation is more appropriate. Nonetheless, no matter by what name it is called in Chinese, we should decide our voting preference by considering the merits of the sunset clause *per se*.

As I have said just now on the resumption of Second Reading of the Bill, I really have the urge to support Mr Abraham SHEK when considering the matter. The reason is neither that I support sunset clauses categorically so as to reclaim

the control of the Legislative Council, nor I oppose sunset clauses categorically just as I had voted against the sunset clause proposed for the ICSO. The reason is that, as I have said just now on the resumption of Second Reading debate of the Bill, I find the special stamp duty (SSD) highly unsatisfactory. First, it is an extremely draconian policy as a 15% tax is mandatorily imposed, and no appeal mechanism has been provided. Back then, I also considered that an appeal mechanism should be provided, or else it was tantamount to robbing other people's money. Of course, the Government is not robbing the people's money in most cases, but we cannot discount the existence of some special circumstances. For example, as I have pointed out during the resumption of Second Reading debate of the Bill, some owners may need to dispose of their flats due to health reasons or financial hardship, and if they do so within two years, they will be penalized by the SSD. The situation is very unfair for this kind of persons.

I have also said that the SSD was ineffectual because its impact was only felt in the first month and the effect was minimal both in terms of property prices and the market. Nonetheless, I have also pointed out that the SSD is not totally ineffective under the extreme conditions of a rampant market and spiralling property prices because I am worried that the existing dire situation which is uncontrollable even with the implementation of SSD will further deteriorate if it is cancelled. I am really worried about such a possibility because there were many confirmor transactions before the implementation of the SSD and property prices were pushed up further whenever such cases happened. This is an undeniable fact. Given the confusing and rampant state of the market now, it is inappropriate to cancel the SSD all of a sudden.

However, I must hold the Government responsible for monitoring the property market closely because it is ever-changing. On retrospect, we can see that no signs would foretell a fall of property prices in the market. Nobody can tell when property prices will come down. If there are any special conditions in the external market or in Hong Kong internally, the property market will reverse instantly.

A few years ago, I was still actively involved in legal conveyance work. We often joked about the property market being changed even within the short span of a trip to the toilet because property prices could spiral or plunge all of a sudden and the situation was reversed. While that might be slightly exaggerating, nobody can predict the rising or falling trend of the property

market. Hence, while I am not against the SSD in principle, I hope it will be cancelled as soon as possible. The SSD should be cancelled once it is no longer needed because it is a punitive measure which can give rise to unfairness.

However, when it comes to setting an expiry date, I am sorry because even up to this moment, there is no way I can predict when it should be cancelled, say 18 months, 24 months or whenever. Nobody can tell when the property market will reverse, or perhaps it will happen next week. The Government is duty-bound to monitor the market. Once any reversal or adverse conditions happen in the market, amendments should be introduced by the Government instantly and expeditiously so that the continued need of this draconian policy will be reviewed immediately.

Of course, some Honourable colleagues said they had no confidence in the Government. But I think if there is in fact a reversal in the market and the Government still takes no action, it should be held accountable. I think the Government dares not remain unresponsive. I am confident that the Government dares not remain unresponsive because millions of owners will be affected once there are fluctuations in the market. The Government cannot bear the consequence of procrastination. Hence, at least on this occasion, I will put my trust on the Government, and not support the proposal of setting an expiry date because I honestly do not know whether this date is too late or too soon. The only thing I know is that once the market is affected by external conditions such as interest rate hikes, another financial tsunami or financial turmoil, and so on, the entire situation can be reversed in just a couple of months.

Hence, as there is no way I can predict future market conditions through a crystal ball, I cannot support the proposal of setting an expiry date of 18 months because once this date is set, the Government can just sit still and do nothing by claiming that it would have to wait 18 months before any measures can be taken because this is the date set by Members. However, I think the Government should closely monitor the market so that timely actions can be taken to cancel the SSD once it is no longer needed.

Thank you, Chairman.

CHAIRMAN (in Cantonese): Regarding the Chinese term of sunset clause, we have indeed referred to it as "日落條款" in the past. But I think "落日" is also

acceptable because the famous Chinese poet, LI Bai, wrote in one of his poems the line, "浮雲游子意，落日故人情" (which translated as "I shall think of you in a floating cloud; So in the sunset think of me"¹). I think both terms are acceptable so long as the meaning is clearly understood.

Does any other Member wish to speak?

(No Member indicated a wish to speak)

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese):
Chairman, by virtue of the CSA proposed by Mr Abraham SHEK in relation to the sunset clause and extension mechanism, all amendments introduced by the Stamp Duty (Amendment) (No. 2) Bill 2010 shall expire at midnight on 19 May 2012, or the Legislative Council may by resolution specify a date to substitute the expiry date of 19 May 2012.

As I have just said, according to the provision proposed by Mr Abraham SHEK, the sunset clause and extension mechanism do not only apply to the special stamp duty (SSD), but also the Bill's proposal to cancel the arrangements for the deferral of payment of stamp duty chargeable for sale of residential properties valued at \$20 million or below. For the above reason, the Administration considers the relevant provision unacceptable.

The sunset clause and extension mechanism will undermine the effectiveness of the SSD because speculators would know or speculate on the time frame when the SSD lapses. Given that we cannot pre-determine a date when the SSD is deemed no longer necessary — as clearly expounded by Ms Miriam LAU just now — and the relevant provision will easily give rise to certain expectation such that it will send a wrong message and add volatility to the property market, we implore Members not to support the CSA proposed by Mr Abraham SHEK in relation to the sunset clause and extension mechanism.

In fact, Mr Ronny TONG has also given us a vivid explanation just now. By doing so, we will provide a date to the speculators and invite them to get ready. He has also explained the matter clearly.

¹ The poem was translated by Witter BYNNER.

Just now, some Members expressed concerns that the SSD would affect general users or buyers. I think we should consider the matter from an overall point of view. First, we have already set a time limit of 24 months. For general users or homeowners, they would need to spend time on furnishing, and so on, after they acquired a property. Hence, they are not likely to resell the property within 24 months. Second, in respect of exemptions, we have taken on board the views of Members and proposed as far as possible additional exemptions in the Bill that are measurable in an objective manner and with certainty through express provisions. As aptly put in an English idiom, the only two things that are certain in life are death and taxes. Hence, if we cannot ensure certainty or objectivity in this regard, the effectiveness of the SSD will be seriously undermined. Of course, we have heard the views of Members and will review the continued need of the SSD from time to time such that when it is considered no longer necessary, we will amend the legislation according to the procedures of the Legislative Council.

I would like to reaffirm our undertaking that after the enactment of the Bill, we will timely review the SSD once every 24 months, or as circumstances require. We believe that when the time comes, the legislative process will be conducted and concluded in a smooth and timely manner with the support of Members.

I so submit. Thank you, Chairman.

MR ABRAHAM SHEK (in Cantonese): Chairman, thanks to the Secretary for her reply and explanation about the stance of the Government. On this occasion, I am grateful that the Government has agreed to change its stance and conduct a review once every 24 months. Had I not proposed this sunset clause, Chairman, the Government will not concede by agreeing to conduct a review once every 24 months or less.

Chairman, I think this is a good thing that the Government is willing to do something after listening to our views. But what I would like to say is that, for most of the time, the Government must be compelled to take actions. Why is that so? It is because Government officials, particularly as we noticed during discussions at meetings of Panels or Bills Committees, are often cut off from the real world, Chairman. If they formulate a policy without consulting the industry about the problems it faces, substantial impact can result. Chairman, regarding

this sunset clause, as I have said just now, this policy will have very serious consequences for many people. Chairman, the special stamp duty (SSD) could affect each and every existing and future owner. Sometimes, when a person acquires a property, he just has no idea whether he may need to dispose of it someday.

Chairman, as the Chairman of the Liberal Party Ms Miriam LAU said just now, while she believed in the free market, she also felt confused by different signs in the market and it seemed that no definite direction was forthcoming. Let me tell Ms LAU, regarding this question, she just explained that if a date was set, it would be just like what Mr Ronny TONG I understand what Mr Ronny TONG meant because very often, when there were views he did not want to hear, he would state his own position and left the Chamber. That is Mr Ronny TONG's characteristic. Members who have sat in this Chamber for some years will definitely know that. But Ms LAU's speech was different. Whenever she speaks, her views are always balanced and measured. That is why she is the Chairman of the House Committee.

Chairman, she just said that she could not accept setting a date, say 18 May, because that was quite impossible. But the crux is that my proposed sunset clause is intended to return the power to the Legislative Council. Mr LEUNG was right when he said just now that it was a constitutional issue. We want to return the power to the Legislative Council so that we will decide how to safeguard the interests of the people. This is not an issue about real estate developers.

Chairman, in the past few years, more than 200 000 property transactions were recorded annually, including less than 12 000 transactions of new flats. Chairman, the remaining 185 000 transactions were all second-hand properties. These 185 000 second-hand properties are circulating in the market and many people may get involved in switching flats, buying new flats or switching second-hand flats in the secondary market.

Chairman, as far as real estate developers are concerned, it does not matter if the 15% SSD is levied or not. But regarding the present problem, I am not I am also an owner and I have children. I am also aware of the current situation in Hong Kong. By combating the speculators through this indirect measure, all 7 million people of Hong Kong are dragged in. In fact, the

Government does not have to use this method to catch the thieves. That is not how our legislation works. Why must this "across-the-board" approach be adopted in this legislation such that the SSD is imposed for all who acquired their properties within two years?

My sunset clause is actually very simple, that is, the power should best be vested with the Legislative Council. We all know that there are now 60 Members of the Legislative Council, and the number will increase to 70 in future. We should have trust on the Legislative Council that it has the ability and qualification to determine whether the relevant provisions should continue to operate or not. In this regard, Chairman, I have already explained myself many times, and I do not want to repeat anymore. Many thanks to Members for playing along with me in the last few hours, and please accept my apologies.

However, this matter is very important for the property market in Hong Kong as a whole, particularly if the sunset clause can be enacted, it will serve to safeguard small owners because they are also affected by the SSD. Imagine the situation where they could have the opportunity to buy a flat, but cannot do so. As Dr Margaret NG has just said, when they needed the money for medical treatment, they were prevented to do so due to the SSD. That could create problems in the community.

Chairman, I very much hope that the Government Although my CSA will not be passed today, in fact I have never thought it could, I just want to stand here, state the views from my conscience and oppose the stance of the Government for the very first time. However, I am not totally unsupportive of the Bill. I support the Bill, but just want to make it better.

Chairman, in this respect, I would like to thank Honourable Members. I ask not for their support as they can decide for themselves whether they would support my CSA, I just ask them to have a clear understanding about its contents before making a decision. They need not worry just because a date is fixed as the date is flexible and can be extended for another year. It is not a fixated point of time.

Chairman, thank you very much.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That new clause 13A be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr Abraham SHEK rose to claim a division.

CHAIRMAN (in Cantonese): Mr Abraham SHEK has claimed a division. The division bell will ring for three minutes.

CHAIRMAN (in Cantonese): I am of the opinion that it is unlikely that all the business on the Agenda can be finished by midnight today. Therefore, I will suspend the meeting at about 10.00 pm until 2.30 pm tomorrow.

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

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

Functional Constituencies:

Dr Raymond HO, Dr Philip WONG, Mr Abraham SHEK, Prof Patrick LAU, Mr CHEUNG Kwok-che and Mr Paul TSE voted for the motion.

Dr Margaret NG, Mr CHEUNG Man-kwong, Mr WONG Yung-kan, Mr LAU Wong-fat, Ms Miriam LAU, Ms LI Fung-ying, Dr Joseph LEE, Mr WONG

Ting-kwong, Dr LAM Tai-fai, Mr Paul CHAN, Mr CHAN Kin-por, Mr IP Wai-ming, Mr IP Kwok-him, Dr PAN Pey-chyou and Dr Samson TAM voted against the motion.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr LEUNG Yiu-chung, Ms Audrey EU, Ms Cyd HO, Mr Alan LEONG, Mr LEUNG Kwok-hung and Miss Tanya CHAN voted for the motion.

Mr Albert HO, Mr Fred LI, Mr James TO, Mr CHAN Kam-lam, Mr LAU Kong-wah, Ms Emily LAU, Mr TAM Yiu-chung, Mr Frederick FUNG, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr CHEUNG Hok-ming, Mr KAM Nai-wai, Mr CHAN Hak-kan, Mr WONG Sing-chi and Mr WONG Kwok-kin voted against the motion.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 21 were present, six were in favour of the motion and 15 against it; while among the Members returned by geographical constituencies through direct elections, 23 were present, seven were in favour of the motion and 15 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.

CLERK (in Cantonese): Long title.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Chairman, I move the amendment to the long title, which is merely related to the drafting aspect of the provision. Thank you, Chairman.

Proposed amendment

Long title (see Annex II)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the amendment to the long title moved by the Secretary for Transport and Housing be passed.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bills

PRESIDENT (in Cantonese): Bill: Third Reading.

STAMP DUTY (AMENDMENT) (NO. 2) BILL 2010

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese):
President, the

Stamp Duty (Amendment) (No. 2) Bill 2010

has passed through Committee with amendments. I move that this Bill be read the Third time and do pass.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Stamp Duty (Amendment) (No. 2) Bill 2010 be read the Third time and do pass.

Does any Member wish to speak?

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Stamp Duty (Amendment) (No. 2) Bill 2010.

MEMBERS' MOTIONS

PRESIDENT (in Cantonese): Members' motions. Two motions with no legislative effect. I have accepted the recommendations of the House Committee: that is, the movers of motions each may speak, including reply, for up to 15 minutes, and have another five minutes to speak on the amendments; the movers of amendments each may speak for up to 10 minutes; and other Members each may speak for up to seven minutes. I am obliged to direct any Member speaking in excess of the specified time to discontinue.

PRESIDENT (in Cantonese): First motion: Expeditiously implementing the formulation of standard working hours.

Members who wish to speak in the debate on the motion will please press the "Request to speak" button.

I now call upon Mr IP Wai-ming to speak and move the motion.

EXPEDITIOUSLY IMPLEMENTING THE FORMULATION OF STANDARD WORKING HOURS

MR IP WAI-MING (in Cantonese): President, I move that the motion, as printed on the Agenda, be passed.

President, long working hours is nothing new to many employees in Hong Kong. As a common saying goes, "There is always time to start working but not a time to go off duty". It gives people the impression that this phenomenon is more than natural. No wonder Hong Kong has been in the first few ranks in the international community in terms of overtime work over the years. We may have been adapted to this pattern. But does it mean that we should adopt an ostrich approach and turn a blind eye to the problem? In our views, with the implementation of statutory minimum wage, the demand of wage earners for legislating for standard working hours has become imminent.

During the debate on legislating for minimum wage, we had pointed out that disputes arisen from the implementation of minimum wage should not be

attributed to the Minimum Wage Ordinance but the fragmentary and incomplete labour laws in Hong Kong. In the course of advocating legislating for minimum wage, we had pointed out that it was inevitable for the authorities to address the issue on legislating for standard working hours at the same time. Had minimum wage and standard working hours been implemented simultaneously, there would not have been disputes about "meal break pay" and the computation of hours worked regarding rest days. I think the Government is also aware of this point, and that is why the Chief Executive raised the need to conduct a study on standard working hours in his Policy Address last year. However, how long do we need to examine the issue? When will the Government announce the timetable for implementation? As such, I move the motion today, hoping to take this opportunity to urge the SAR Government to, having regard to the well-being of employees at large, speed up the pace of the study and draw up a clear timetable for implementing standard working hours.

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

In fact, standard working hours have been implemented in certain countries and regions for many years. Despite the differences in the prevailing social situation and living standard, we may still learn and draw reference from their experience. Let us look at the examples in the neighbouring regions. In Singapore, the working hours of employees is set at eight hours a day and 44 hours a week, and pay for overtime work is calculated at 1.5 times of the normal pay. As for Taiwan, the standard working hours is set at eight hours a day, with the total working hours in a fortnight being set at 84 hours. The number of hours of overtime work permitted is capped at four hours a day and 46 hours a month. The pay for overtime work ranges from one third to two thirds higher than the normal pay. In special cases, employees may receive double pay. In our view, disregarding whether such operation mode is applicable in Hong Kong, the arrangement will at the very least offer some kind of protection to employees.

However, Deputy President, when we look at the situation in Hong Kong, we will notice that overtime work is very common among employees, both high-income and low-income earners, in Hong Kong. The problem has been worsening in the lack of regulating policies and legislation. According to the proposals of the International Labour Organization, the working hours of

employees should be 40 hours a week on average. However, we all know that the weekly working hours of employees in Hong Kong far exceed this level. According to the findings in the 2010 Report on Annual Earnings and Hours Survey, the working hours of certain sectors are obviously on the high side. For instance, the medium weekly working hours of employees in the catering industry exceed 50 hours, and that of employees in Chinese restaurants even reach 60 hours. The medium weekly working hours for employees in the security services sector is as high as 66 hours. Medical practitioners of the Hospital Authority (HA) often complain about working for more than 60 hours a week. Yet concerning the overtime work related to the HA or professionals, I will leave it to Dr PAN Pey-chyou to explain in detail shortly.

In this connection, have the authorities ever examined the causes of the long hours of work in these industries? What supporting measures can be implemented to safeguard the employees' rights and interests, as well as their entitled occupational health? In reality, the cases of many employees in Hong Kong, who have signed the employment contract with their employers, are comparable to signing a deed to sell their life, giving up all their invaluable time.

Deputy President, long working hours does not only affect individuals but also society as a whole, exerting impact on the stable development of society in some measure. First, when an employee has to work overtime every day, his or her family members will be the ones to be directly affected. According to a relevant survey conducted by the Hong Kong Federation of Trade Unions (FTU) some time ago, over 40% of primary students interviewed could dine with their fathers for less than four times a week. More than 80% of the fathers of students interviewed could not come home to have dinner with their children because of overtime work or night-shift duties. More than 70% of students interviewed went out with their fathers two times or less in a week. And 60% of students interviewed hoped their father could come home earlier. The long hours of work have directly deprived many employees of their time to stay with their children, which will adversely affect the all-round development of children. Apart from parent-child relationship, the relationship between husbands and wives in certain dual-income families is detached due to the lack of time for communication, and in some cases, it may lead to divorce.

The cases of married employees are undesirable, what about single employees? Since they have to work some 10 hours a day, going out to work early in the morning and returning home late at night, how will they have time to

date and fall in love? How can they respond to the Chief Executive's proposal of raising three children? The Women's Affairs Committee of the Hong Kong Clerical and Professional Employees General Union under the FTU had interviewed some 500 female clerical employees at an average age of 34. A high percentage of respondents, 97%, agreed that work pressure and long hours of work had seriously affected the quality of their family life. Among the respondents, only 45% had formed a core family and one fourth of them were still single. According to some female employees, the work pressure from long hours of work had hindered their development of personal interest and social life. Due to this problem, they have to lead a dull and unbalanced life, and this is one of the reasons that they cannot form their own family.

At the same time, the constant long hours of work will pose a threat to the physical and mental well-being of employees. Some time ago, a female cleaning worker broke down and plunged to death because she could not bear the constant work pressure. Moreover, some professional drivers do not get enough sleep and are so tired because of long working hours that eventually result in traffic accidents. Actually, these examples are only the tip of an iceberg. Injuries and deaths resulted from long hours of work are not uncommon, and this cannot be concluded in a few words.

Deputy President, early this year, a survey on occupational health of grass-roots workers was conducted by an organization. It is found that nearly 80% of the respondents suffered from at least one of the following symptoms: insomnia, increased irritability and loss of appetite. One of causes is constant long hours of work, accounting for 28.4%. It is evident that long working hours will affect the mental state of workers. In terms of physical health, 70% of respondents indicated that constant long hours of work and repetitive working procedures are the main causes of repetitive strain injuries. Moreover, over 60% of the respondents indicated that they had not sought medical consultation for treatment of repetitive strain injuries. Why? Among them, 13% pointed out that they had missed the opportunities of receiving various medical treatment because of long hours of work.

Regrettably, the formulation of standard working hours is still under study in Hong Kong now. Last December, the authorities stated in the reply to my question that the study would proceed on multiple fronts, which included understanding the relevant experiences of other places, gathering information about the hours of work of the working population and in different industries, and

communicating with the stakeholders, and so on. However, we do not know the stage and progress of the study the Government has made so far. In the entire course of study, the public obviously do not have adequate understanding of the work involved and society has not had extensive discussion in this respect. Hence, I propose in my motion the establishment of a "study group on legislating for standard working hours" comprising representatives of the Government, employees and employers and the setting of a timetable. In addition to this, I propose that the authorities should proactively consult the views of the relevant stakeholders and regularly report to and discuss with the Panel on Manpower of the Legislative Council and the Labour Advisory Board, and increase the public's knowledge and understanding of standard working hours through various forms of publicity and education, so as to enhance the transparency and speed up the progress of the study.

With regard to the detailed arrangements, we consider that the authorities should examine the views of various groups and sectors. For instance, the FTU proposes adopting the standard of eight hours a day or 44 hours a week to ensure a balance of work and family life of employees. Moreover, we urge the authorities to recommend employers to give 30 minutes rest for every four consecutive hours of work, so that employees will not be overtired because of long hours of work. Employers should provide overtime compensation to employees working more than 44 hours a week at a rate of 1.5 times of their salaries. Moreover, we request stringent enforcement of the requirements on the provision of rest days, statutory holidays and paid annual leave to prevent employers from asking employees to take leave on these holidays as compensation of their overtime work. On the other hand, the authorities have to amend the Employment Ordinance to include all public holidays other than Sundays as statutory holidays, so as to provide a standardized criterion for the computation of hours worked. The authorities should also formulate family-friendly policy.

I think some colleagues of the Legislative Council may not necessarily agree with the proposals I put forth just now. It does not matter, for we only wish to take this opportunity to stimulate the discussion of the issue by various sectors and members of the society and to arrive at a consensus. I do not hope that the Government will, in announcing the findings of the study, claim that there are many obstacles and difficulties in implementing standard working hours and it will stay put and do nothing. This is the least scenario I would like to see.

Deputy President, the quality of living of wage earners is deteriorating as the hours of work get longer. The only meaning of their life is to work and work again. This will have an adverse impact on society on a whole. Moreover, the legislation on standard working hours has not been enacted in Hong Kong and comprehensive protection measures for employees have not yet been put in place, and Hong Kong is lagged behind its neighbouring regions in this respect. In the long run, this is not conducive to the economic development of Hong Kong, and worse still, it will undermine the competitiveness of Hong Kong. Hence, I hope that the debate today can arouse our serious concern of the problem on hours of work and urge the Government to conduct a study seriously and listen to the views of various sectors; it should not waste further time, so that the implementation of standard working hours is nowhere in sight.

Deputy President, I so submit.

Mr IP Wai-ming moved the following motion: (Translation)

"That after many years of striving by the labour sector, the Minimum Wage Ordinance formally came into force this year, marking a great step forward for labour rights and interests; yet, minimum wage and standard working hours must complement each other in order to be able to maximize the effect of protecting grassroots workers and facilitating Hong Kong's economic development; in this connection, this Council urges the SAR Government to, having regard to the well-being of employees at large, spare no efforts in making preparations for enacting legislation on standard working hours and expeditiously implement the relevant tasks, including:

- (a) to set a deadline and timetable for conducting studies on regulating working hours;
- (b) to establish a 'study group on legislating for standard working hours' comprising representatives of the Government, employees and employers;
- (c) to regularly hold discussions in the Panel on Manpower of the Legislative Council, and report to the Labour Advisory Board on the progress, so as to strengthen the Legislative Council's function of monitoring the Government on the one hand, and increase the

transparency of the relevant work on the other, with a view to enabling the public and the labour sector to know the progress of the studies;

- (d) to proactively ascertain the views of the trade unions of various industries and the relevant stakeholders on standard working hours; and
- (e) through various forms of publicity and education, to increase the public's knowledge and understanding of standard working hours."

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

DEPUTY PRESIDENT (in Cantonese): Mr WONG Sing-chi 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 Mr WONG Sing-chi to speak and move the amendment to the motion.

MR WONG SING-CHI (in Cantonese): Deputy President, today, Mr IP Wai-ming puts forth a motion on standard working hours, but I wonder if Members have the opportunity to enjoy standard working hours. I think the chance is slim as the meeting is still going on and will continue. Certainly, Directors of Bureaux and senior officials do not have standard working hours too. This is indeed unhealthy.

The question on standard working hours has been discussed repeatedly in the Legislative Council. In the past two years, discussions on labour policies, both inside and outside this Council, had been focused on issues related to minimum wage, and the aspiration of employees on standard working hours had more often than not been glossed over. However, the Democratic Party considers that we should definitely insist on striving for legislating for standard working hours, so as to safeguard the labour rights of millions of wage earners.

Regarding the motion of Mr IP Wai-ming and the amendment I proposed on behalf of the Democratic Party, Members may consider the wordings familiar and may query the need to debate this issue in this Chamber. Many people may think that the question has been discussed for a long time and the Government has done nothing about it, so further discussion will be futile. However, this is not the case now. It is a different scenario now. Some time ago, the proposal of legislating for standard working hours might have been downplayed by the implementation of minimum wage. Now that the implementation of minimum wage has been finalized, should we not resume the discussion on standard working hours?

Please allow me to recap certain incidents that had occurred in this Chamber in the past two years. It may not be comprehensive, but I hope we may go over them again. In October 2009, at the Chief Executive's Question and Answer Session, the Chief Executive mentioned in a reply to a Member's question that the Government had to settle the issue on minimum wage first and then renewed the study on standard working hours. In December 2009, at the debate on new occupational culture in the Legislative Council, the Democratic Party stated that the implementation of standard working hours was a prerequisite for the successful promotion of new occupational culture to enable millions of employees to enjoy a work-life balance. In June 2010, at the debate on the motion on standard working hours proposed by Dr LEUNG Ka-lau, I said that with the enactment of the legislation on minimum wage, the authorities should start focusing on the discussion of a significant policy involving standard working hours and be accountable to wage earners.

Today, a different scenario has emerged. Since the Legislative Council passed the Minimum Wage Bill by a majority of votes last July, it is the first time a debate on the important question on legislating for standard working hours is held in the Legislative Council. With the passage of the legislation on minimum wage, the authorities should have no more worries or excuses not to speed up the study on legislating for standard working hours to benefit employees at large. Since the formulation of standard working hours will have positive impact on work-life balance, the Democratic Party hopes that Members will make good use of the motion today to discuss the issue in great depth and put forth specific proposals to the Government.

Deputy President, the Democratic Party has mentioned repeatedly that a desirable lifestyle should include a balanced distribution of time among work, rest and activities, so as to achieve a balanced development in various aspects. At the same time, the formulation of standard working hours has become a prevailing international trend. As early as 1930, the International Labour Organization had formulated the international convention on hours of work, which was supported by a number of member states. At present, many countries and regions, including the neighbouring regions of Hong Kong, have signed and implemented the provisions of the conventions. Hence, we consider that the SAR Government should speed up the legislative work on standard working hours, which should brook no delay.

Concerning the original motion of Mr IP Wai-ming, the Democratic Party will vote for it, for the proposals in the original motion are definitely worthy of the Government's consideration. However, on the basis of the original motion, the Democratic Party would like to put forth some relatively specific statements and proposals on the cause and outcome and the scope of study of the Government, and the extension of the policy, and so on. As such, I will propose the amendment shortly and hope Members will support it.

At the beginning of the motion, Mr IP mentioned "That after many years of striving by the labour sector, the Minimum Wage Ordinance formally came into force this year, marking a great step forward for labour rights and interests". Undoubtedly, in the long road for striving for the enactment of the Minimum Wage Ordinance, the labour sector has actually put in arduous efforts for the impressive achievement. We must recognize this. Without their perseverance over the years, I am afraid grass-roots employees would not have enjoyed the protection of minimum wage by now. However, in the long road to striving for the legislation for minimum wage, the labour sector has not been fighting a lone war. Members of society, including pressure groups in the community, political parties, Members, a large number of civil organizations, family members of the disadvantaged and grass-roots residents, and so on, have put forth a lot of views in formulating and amending the Minimum Wage Bill. Hence, the Democratic Party considers that apart from giving due credit to the labour sector, we should also recognize the contribution made by various sectors of society on legislating for minimum wage.

On the next battlefield of labour rights, which involves the striving for legislating for standard working hours, the labour sector still has to join hands with various sectors of society to strive for the rights and benefits of grass-roots employees. Hence, the Democratic Party will give its full support and mobilize civil organizations to join in. With regard to the specific measures on formulating standard working hours, the Democratic Party considers that apart from setting a deadline and timetable for the study on regulating working hours, "due compensation for overtime work" should also be included in the scope of the study. When the executive authorities introduced the Minimum Wage Bill into the Legislative Council two years ago, it failed to address the issue on legislating for the regulation of standard working hours simultaneously, and it had aroused a great controversy on whether employees should be paid for meal breaks and rest days. The issue has stirred great controversies.

Moreover, the Labour Department has delayed in issuing guidelines on minimum wage. Though legislation on minimum wage was passed last July and the legislation has to be implemented in May this year, the guidelines have not been made available, causing great confusion. Worse still, in times of blunders in handling the issue, the problems were passed to employers and employees. The departments concerned should not dodge the blame in this respect. Actually, the authorities should have learned a lesson from this experience. In formulating standard working hours, the authorities should incorporate the hours of work and the due compensation for overtime work into the scope of study, so as to avoid, as far as possible, any disputes in future.

Surely, in formulating the specific measures on standard working hours, various proposals have been raised by Members basing on different justifications and figures. At this stage, the Democratic Party will remain open-minded. I think the authorities should do some brainstorming at the initial stage to gauge different views, which will provide the factors for consideration for the study.

Deputy President, finally, I urge the Government to implement family-friendly policies, which are closely related to the objectives of standard working hours. Family-friendly policies will alleviate the pressure in daily life arising from various problems at work and facilitate the public to establish correct values of life. The Democratic Party urges the Government to implement comprehensive measures to bring the function of family to full play, so that

family members can support each other and overcome the difficulties they may encounter in life.

First, the authorities should introduce family impact assessment, and review the impact of public policies and administrative measures on different types of families. Second, the authorities should attend to the special needs of certain unique or special families, such as cross-border families, single-parent families, families with second marriage and families in poverty, and step up the support for these families. Third, it should introduce paternity leave and offer higher incentives to encourage employers to implement family-friendly employment policies, so that employees can give due regard to their families and at work. Fourth, it is hoped that the authorities will designate a family day to implore all sectors to attach importance to the value of family. I believe by adopting the work-life balance mode mentioned above, it will not only alleviate the work pressure of employees, but will also achieve the objectives of enhancing productivity and quality of work. More so, it will reduce disputes between employers and employees. Eventually, both employers and employees will benefit.

I so submit. Thank you, Deputy President.

DEPUTY PRESIDENT (in Cantonese): Mr WONG, please move your amendment.

MR WONG SING-CHI (in Cantonese): Deputy President, I move the amendment to Mr IP Wai-ming's motion.

Mr WONG Sing-chi moved the following amendment: (Translation)

"To delete "after many years of striving by the labour sector" after "That" and substitute with "minimum wage and standard working hours are the legitimate rights and interests that the Hong Kong labour sector has been requesting to implement for many years; while after many years of striving by the various social sectors"; to delete "formally came" after "Minimum Wage Ordinance" and substitute with "has formally come"; to delete ";" after "labour rights and interests" and substitute with ","; to add

"and giving due compensation for overtime work" after "regulating working hours"; to delete "and" after "on standard working hours;"; and to add "; and (f) to formulate and implement family-friendly policies, which are closely related to the objectives of standard working hours, so as to promote work-life balance" immediately before the full stop."

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr WONG Sing-chi to Mr IP Wai-ming's motion, be passed.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Deputy President, first of all, I thank Mr IP Wai-ming for moving a debate on "standard working hours" tonight and Mr WONG Sing-chi for moving an amendment.

I agree with Mr IP Wai-ming that, as pointed out in his motion, statutory minimum wage has marked a great step forward for labour rights and interests, and it is also an important milestone for the development of labour rights and interests. The full implementation of statutory minimum wage on 1 May 2011 is the outcome of negotiation, mutual understanding and compromises of employers, employees and the Government. The initial operation of the statutory minimum wage has been smooth and stable so far. And yet, this is just the beginning. We will keep a close watch on its implementation, especially its implication on the labour market, small and medium enterprises as well as the economy. Besides, we will also continue to deepen the implementation of minimum wage; proactively engage in promotion and marketing and visit the workplaces of different low-salaried industries on our own initiatives, with a view to safeguarding labour rights and interests, and rendering full support to needy employers and employees.

In fact, we have learnt from the introduction of statutory minimum wage that all far-reaching labour policies must be thoroughly discussed by employers, employees and people from all walks of life in the first place. A policy can be successfully developed and implemented only with their consensus. I wish to stress that the issues involving standard working hours are more complicated than those of minimum wage, and have a broader implication on employees. At present, people in the community are divergent on the formulation of standard

working hours in Hong Kong. Therefore, we must be pretty cautious and avoid jumping to premature conclusions.

After the Chief Executive undertook in his Policy Address delivered in October to study into the issue of standard working hours, the Labour Department has proceeded with the relevant policy study. The priority task of the Government is to gain a deeper understanding of the issue through policy study, so as to get a good grasp of the different operation modes of standard working hour. During the policy study, we will look into the regime and experience of other places in regulating working hours, whereas the Census and Statistics Department will assist in collecting data on the number of working hours of the working population and various industries in Hong Kong, such as the agreed working hours and overtime hours. This would facilitate thorough analysis. We hope that a good policy study will lay a favourable foundation for the future discussion of this topic, thereby enhancing the knowledge of people from different sectors and the stakeholders about this topic and facilitating their expression of views.

According to our preliminary study on the regulation of working hours in other places, we found that the practice varies with different places. The policy objectives and measures implemented for the regulation of working hours are often closely related to the social and economic developments as well as cultural background of an individual place. For instance, while the regulation of working hours in other places mainly aims to safeguard occupational safety and employee's health, some hope that the policies on working hours and other relevant issues may help them achieve a balance in living and work. We have to make reference to the experiences of these places in the light of Hong Kong's economic and social conditions and the characteristics of the industries. Given that industries may have different modes of operation under different social environment, and the impact of standard working hours also varies with different industries, thus the study must take into consideration the differences of various industries. Furthermore, since statutory minimum wage has just come into operation, we must take into account its actual impact on the operation of enterprises, employment condition, as well as working hours and modes.

Given the complexities of the issue of standard working hours, careful analysis and study is warranted and hasty conclusions must be absolutely avoided. We appreciate Members' concern on standard working hours and the

Government has attached great importance to the views expressed by different sectors. We will promptly conduct policy study which is scheduled for completion by the middle of next year, and report to the Legislative Council Panel on Manpower and the Labour Advisory Board in due course. It is therefore too premature to establish a "study group on legislating for standard working hours" at this stage.

On the other hand, Mr WONG Sing-chi stated in his amendment that family-friendly policies can help promote work-life balance. I cannot agree with him more. In fact, the Government has also been actively promoting and launching family-friendly employment policies, which have brought positive impact to the promotion of work-life balance. I will further elaborate on this point later.

It has been the established policy of the Government to improve employees' interests and benefits in an orderly manner in the light of Hong Kong's socio-economic development and on the premise of reasonably balancing the interests of employers and employees. I will uphold this important principle and work in the interests of the entire society, and consider the far-reaching issue of standard working hours in a pragmatic and objective manner.

Deputy President, I so submit. After listening to Members' views, I will make a more detailed response. Thank you, Deputy President.

MR VINCENT FANG (in Cantonese): Deputy President, I think Mr IP Wai-ming is very courageous to put forth a motion on "Expediently implementing the formulation of standard working hours" at this time. Why? For the problems triggered by the implementation of minimum wage, which has just come into effect, have not surfaced completely, yet Mr IP dares to propose this motion. Perhaps he thinks enterprises in Hong Kong and people with low competitiveness have not suffered enough, and he has to put salt on their wounds.

Why can he be so courageous? There is no reason other than the following two. First, the Hong Kong Federation of Trade Unions (FTU) has successfully strived for the implementation of minimum wage and it wants to make another achievement. Second, colleagues from the FTU are only concerned about questions involving the welfare and rights of wage earners, but

for other issues like economic development, business environment, competitiveness, opportunity for young people to move up the social ladder and wealth accumulation of the public, and even the harmony of society; they are not gravely concerned about all these issues.

Deputy President, though minimum wage has been implemented for less than two months, we all notice the problems brought about by this controversial legislation. Even Secretary Matthew CHEUNG has to admit that the structure of low-pay industries has changed significantly. The most obvious example is that many people, particularly young people, have changed jobs and work as security guards. Members should not underestimate the far-reaching chain reactions brought by this change. This will give rise to issues like the re-employment of people with low competitiveness, the lopsided phenomena in the labour market, the recruitment difficulties in certain industries, the dwindling of certain trades in Hong Kong, the adaptation of enterprises in the transition period and the possibility of successive closures of enterprises, and so on. These are the most imminent issues that we should address at present.

At the beginning of the discussion on minimum wage, the Liberal Party supported the implementation of minimum wage by trades, so as to take into consideration the needs of various industries, work types, as well as demand and supply. Hence, on the question today, I absolutely oppose adopting the "across-the-broad" approach in formulating standard working hours. I can only accept setting the maximum working hours by trades. For certain work types, excessively long working hours will pose danger, but for other work types, the implementation of standard working hours will cause problem of "earning the same pay no matter you do the work or not", and this phenomenon of "sharing the same pot of rice irrespective of the effort made" should not be allowed to happen again. Nowadays, the world is concerned about "work more to earn more" and "reward according to ability and contribution made". The success of Hong Kong, as well as countries and cities with greatest economic growth around the world, relies on this essential element.

Recently, I read an article by Prof Francis LUI of the School of Business and Management of The Hong Kong University of Science and Technology, and I very much agree with him. He said to the effect that, "The effectiveness of working hours may vary substantially for different types of work. Take academic researches as an example. During the stage of seeking breakthrough

and before new findings can be found, researchers usually spend several days and nights without sleep to think over the issue. If you impose the maximum working hours on them and break their line of thought, they will kick you out. However, for other types of work, prolonged working hours may cause physical fatigue, resulting in diminishing efficiency and even danger. Pilot is a case in point." (End of quote) As for efficiency-intensive trade, I think doctors and nurses also belong to this category.

Prof LUI went on, and I quote to the effect that, "the implementation of standard working hours across-the-board, made on the pretext of safeguarding the welfare of workers, will have the actual effect of damaging productive activities arbitrarily with the mindset of planned economy Some economically illiterate politicians put forth hasty proposals to intervene in the labour market. It is comparable to a barbarous bull running recklessly in a china shop, breaking loads of china. The public will easily and quickly know the consequences of their act and put the blame on them." (End of quote) However, if this barbarous bull is allowed to wreck the economic achievements and competitiveness of Hong Kong, the cost of reconstruction will be too expensive.

Deputy President, I understand that colleagues have to be responsible to their electors. However, "how can a family be established in the absence of a country?" By the same token, how will there be jobs, as well as stable and reasonable income in the absence of sound economy and enterprises? At present, Hong Kong is facing problems of the lack of direction in taking development forward, the lack of impetus for sustainable development in economy and the pressure of being caught up by the neighbouring regions due to the weakening of our competitive edge. Various sectors, including the political sector, business sector, labour sector and professional sector, should pull together their experience and strengths to formulate plans and strategies to lead Hong Kong to overcome these difficulties and ensure sustainable development in Hong Kong. Only by doing so will it bring genuine benefits to all the people of Hong Kong, and what we have done will create a better environment for our descendents.

I so submit. Thank you, Deputy President.

MR CHEUNG KWOK-CHE (in Cantonese): Deputy President, last Sunday was Father's Day. I believe many children would take this good opportunity to show

their filial love for their father and thank them for their hard work. Indeed, parents in Hong Kong work much harder than those in other developed countries or regions.

According to the information of the Census and Statistics Department last year, the number of wage earners in Hong Kong who worked 45 hours or above per week reached 2.05 million, while the number of employees who worked 55 hours or above was 780 000. The median number of working hours was 48 hours, higher than that two years ago, which was only 45 hours. The problem of long working hours in Hong Kong is obviously worsening.

If we look around the world, all the developed countries or regions have introduced legislation to regulate employees' working hours. With the exception of France, the most carefree country in the world, which has set the standard working hours at 35 hours, most countries have set the standard in the range of 40 to 44 hours. These include the United States, Japan, Finland, South Korea and Singapore, whereas those in Britain and Ireland are 48 hours.

Maybe you would say, the median number of working hours in Hong Kong is only 48 hours, the situation is not too bad. Why should we introduce legislation to impose all kinds of restraints which will interfere with the free economy in Hong Kong? However, please think about this. Forty-eight hours is only a median figure, which means half of the employees work more than 48 hours. Furthermore, as I have just mentioned, nearly 800 000 people worked more than 55 hours.

Besides, since the vast majority of employees in Hong Kong are not protected by standard working hours, employers can make no scruple to force their employees to work overtime. We know that in countries where there are standard working hours, such as Finland, the United States and Britain, if employees work longer than the standard working hours, the reward for their overtime work is 1.5 times of their normal wages. If Hong Kong has introduced legislation to regulate standard working hours, employers will have to pay a considerable price for getting forced labour from their employees.

I still remember that when Secretary Matthew CHEUNG attended the opening ceremony of the new site of Hong Kong Social Workers' General Union, he emphasized that one of the considerations in the study on the implementation

of standard working hours was to draw reference from overseas experience. Deputy President, I hope the Secretary can tell us, what is the present progress of the study? Actually what other factors are under consideration?

I understand that if we legislate for standard working hours, employers' business cost may inevitably rise. However, shortening the employees' working hours may also increase their productivity. This is not my one-sided view. Some employers also share the same view, since long working hours does not stand for efficiency. If the staff work long hours with reluctance and are unable to look after their families, their working performance is bound to be compromised.

Furthermore, besides our job, family is also highly important in our lives. I dare not say that the increasingly complicated family or teenage problems in Hong Kong are all related to parents' long working hours, but frankly speaking, if parents do not have time to look after their children, problems will inevitably arise and their relationship with their children will become more distant. In Chinese society, filial piety tops all virtues. However, in order to make a living, parents barely have time to see their children, so it is not easy for children to show filial piety to their parents.

In my opinion, the setting of standard working hours will not only directly affect employees and employers but also benefit the whole society. When families are in harmony and people enjoy better physical and mental health, government expenditure in various areas, such as social welfare and healthcare, may also be reduced. In the long run, the Government may even have the chance to offer tax cut because expenses have been saved, thus also benefiting the business sector. If we weigh the gains and losses, there are more advantages than disadvantages after all.

Of course, some people may reflect that individual wage earners wish to increase their income by having longer working hours. However, even if standard working hours are set, the situation will only be fairer than the present because employers can make compensation through overtime pay. Then the staff's income will be higher than that before the introduction of the legislation. Yet now a number of employers make their staff work overtime by force. Even if there is overtime pay, it is rather inhumane to these employees because we cannot rule out the possibility that some employees would rather earn less to get

more time to stay with their families. Such precious time can never be made up by money. As a result, it is only by setting standard working hours that employees' rights can be safeguarded to avoid favouring employers one-sidedly.

Deputy President, of course I understand that setting standard working hours will certainly increase the business cost, especially when the minimum wage has just been endorsed, which has already overburdened some small and medium enterprises and led to a number of controversial issues. If standard working hours are introduced in a rush, there will also be bigger impacts on society. It is exactly because of this reason that I consider that the Government should all the more make the decision expeditiously and draw up a timetable so that the Legislative Council and community groups can have more time for discussion. If the legislation on standard working hours can have a soft landing, we will be able to avoid repeating the situation of the minimum wage legislation and reduce unnecessary labour disputes.

Deputy President, I so submit.

DR RAYMOND HO (in Cantonese): Deputy President, last October, the Chief Executive stated in the Policy Address that with the Minimum Wage Ordinance (MWO) enacted, some suggested it was time to embark on a policy study on standard working hours. However, he also pointed out that the Government must handle this complex and controversial issue with care to strike a balance between the interests of various sectors.

I think we all agree that the issue of standard working hours is no less complex than minimum wage, or even more so. As the resulting controversies might further aggravate the already tense labour relations in the community as a result of the implementation of the MWO, the issue must be handled with care.

Earlier, detailed arrangements with regard to the implementation of the MWO, such as the calculation of rest day pay and meal break, have created tensions in labour relations as a result of different interpretations held by employers and employees. It is hoped that with the implementation of the MWO, labour relationship will become normalize through a gradual adaptation and run-in process. However, under the existing tense labour relations, it may not be the right time to strive for the early implementation of standard working

hours. Given the disharmony in labour relations, the resulting controversies will surely add oil to fire, and it will not be conducive to Hong Kong's development.

Faced with competition from our neighbours, Hong Kong must strive to improve the terms of employment of employees while maintaining our competitiveness. Otherwise, the changes will only increase the operating costs of local enterprises, especially small and medium enterprises, to the detriment of Hong Kong's economic development. In the long run, it may also create serious negative impact on the local labour market because employees who supposedly may benefit from the implementation of standard working hours may lose their jobs.

On the other hand, in stipulating standard working hours, its enforcement in individual trades and industries should be taken into account. Each trade or industry has its own characteristics, and it may not be suitable to stipulate standard working hours for some trades. For example, in the engineering profession to which I belong, our work flow is closely related to the implementation progress of the relevant works contracts. As such, it might be difficult to implement standard working hours. In fact, the same consideration applies to many other professions. Hence, the relevant authorities should conduct comprehensive study on the enforcement of standard working hours in different trades and industries.

Although standard working hours has been implemented in many countries, given the uniqueness of each country in terms of its systems, economic conditions and social demands, we must carefully study their experience in the stipulation of standard working hours and draw a comparison with our own conditions. Then, the issue must go through detailed and in-depth discussion in the community so as to gauge the demand of the people before a final decision can be made.

Given the far-reaching consequences of the stipulation of standard working hours, the relevant authorities should, apart from undertaking in-depth study on countries where similar systems have already been established, conduct exchanges with different stakeholders to ensure that the relevant discussions will not be partial to the interest of a particular side.

Deputy President, I consider that at this stage, the relevant authorities should handle issues relating to the implementation of minimum wage as a

priority in order to rebuild the trust between employers and employees. It is only under a relation of mutual trust between employers and employees that discussion on the stipulation of standard working hours can be taken forward meaningfully. We should adopt a gradual approach which takes into account our economic environment and social development to improve the working conditions of local employees in an orderly manner. I so submit. Thank you, Deputy President.

MR LEE CHEUK-YAN (in Cantonese): Deputy President, I would like to start with a more philosophical question. May I ask, after all, what is the purpose of life? Perhaps let me first teach in English. Yet I do not need to teach anything, because you all know this word is "work", and this word is "live". After all, do we "work to live" or "live to work"?

Today's motion debate is really very important, and this is actually a basic concept. Do you live for the sake of work, or do you work in order to enjoy your life? If you work to live, then your purpose in working is to survive and live. However, if you live to work, then you have only one purpose in your life, that is, work. After all, why do we work? I wish to use the answer to this question to reply to Mr Vincent FANG's question, because just now he asked what would happen to the economic development and what would happen to social harmony if we implement standard working hours. Frankly speaking, I do not understand how it has anything to do with social harmony. If we implement standard working hours, society will only be more harmonious. Yet he queried how would there be any economic development, whether small and medium enterprises would be able to handle the matter and whether there would actually be any more job opportunities. In fact, the whole concept which he talked about is not people-oriented. If we are people-oriented, what is the purpose of economic development? Economic development is actually for the betterment of mankind. If economic development is eventually so twisted and distorted that it is not for the betterment of mankind and people become the slaves of economic development instead, I have to ask, is this the society that we wish to see?

Just now he also mentioned Prof Francis LUI and said this is like a rhino bumping into a china shop. Yet I would like to say, china shops are owned only by the richest. Ordinary people do not have china. They have nothing at home except pottery. As there is only pottery, the pottery owners would not mind if

any rhino bumps into a china shop. However, I am not targeting against the rich. What I want to say is, we must work out a way which can strike a balance in society. We cannot let it happen that whenever we talk about labour interests and workers' welfare, there will be the mention of economic development, that there must be economic development, and that economic development must not be sacrificed. However, we have not asked fundamental question: what is the purpose of economic development? If people live like slaves, why do we need to have economic development?

I guess that life in a primitive society may be even better. It is better in an agricultural society. People go out to work at sunrise and return home at sunset. That is what life should be like. At night people can just sing folk songs and call it a day. What has happened now? I want to ask, how come mankind has degraded to such a state? How come we cannot give back to wage earners their personal lives? The ultimate aim of standard working hours is to give back to wage earners their personal lives. Please think about it. At present, the working hours are as long as 12 to 14 hours a day. People work six days a week. As employees have to work every day, they neither have time to see their families nor have time to stay with their children, thus giving rise to complaints from their family members. The Government advocates parenting, but how can they engage in parenting? If they work 12 hours a day, how will they be able to engage in parenting? They have no way to engage in parenting. When their children have grown up, they are already in their sixties or seventies. Only then will they know what they have lost. That is, they have never accompanied their children to spend their childhood. So I would like to ask, is this the kind of life that we want to give to wage earners? If we do not want wage earners to live this way, and instead, we want to let them enjoy a life which people deserve, we should implement standard working hours. It is as simple as that.

What the Government says now is rather meaningless. The Government promotes the family-friendly policy, but it is just paying lip service. What is the purpose of the publicity work? It merely makes an appeal. After talking, it does nothing. The Government has the right to legislate for standard working hours, but it did not do so. Yet it keeps using Announcements of Public Interest (APIs) on television to appeal to the public to be family-friendly. I do not think it carries any sense at all. I hope the Secretary will tell me, what effects do these APIs achieve? Why do we have to spend money on the APIs, are we promoting for Henry TANG or are we promoting for family-friendly culture? I believe the

effect in giving publicity to Henry TANG is bigger than that in promoting the family-friendly culture because people have no idea what the family-friendly work he is going to undertake.

Hence, if the Government has the right to legislate and the right to submit Bills, it should take the responsibility to submit a Bill to tackle standard working hours. However, as the Secretary has said earlier, now the Government is only conducting a study and will complete the study as soon as possible. After the Government has completed the study next year, when will it submit the results? Will it introduce any legislation? Will there be a clear conclusion in the study that it will introduce legislation? I have no idea. I hope he will tell us later whether the conclusion of the study will include legislation. If it is not included and we have to wait until the next term of Government, I wonder how many years we will have to wait. We opine that workers in Hong Kong should live a decent human life. When will this basic right ever be established?

Deputy President, I would like to talk about one more thing. At present, owing to the absence of standard working hours, actually many people work overtime without compensation. Overtime work without compensation is, to a certain degree, tantamount to allowing employers to dine and dash. Employees are supposed to stop work at six, but employers require them to work until nine. In fact, according to some statistics, overtime work without compensation requested by employers within a year in 2008 in Hong Kong totaled 250 million hours; 250 million hours of overtime work without compensation is equivalent to \$240 million. So where did the \$240 million go? It went into the employers' pocket. It was not paid to the employees (*The buzzer sounded*)

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

MR LEE CHEUK-YAN (in Cantonese): Hence, Deputy President, we wish to legislate for standard working hours as soon as possible.

MR PAUL CHAN (in Cantonese): Deputy President, I speak in support of the motion proposed by Mr IP Wai-ming and the amendment by Mr WONG Sing-chi.

I remember that a year ago, Dr LEUNG Ka-lau, who sits next to me, proposed the motion on legislating for standard working hours, and I helped him solicit votes to get the motion passed. At that time I shared with the Honourable colleagues a joke circulated in the accountancy profession. The story goes that one day in the small hours, a young man finished work in Central. After walking a few steps in weariness, he met a robber. The robber pointed a knife at him and asked, "Do you want your money or your life?" Languidly, this young man took out a business card from his wallet and told the robber that he worked for a certain large international accountancy firm. He had no money, and he had worked to such an extent that he barely had a life.

(THE PRESIDENT resumed the Chair)

This joke, though amusing, is actually saddening. Yet in reality, the situations which I sometimes hear in the trade are rather miserable. For instance, there is a young married female accountant. During our chat, I asked her why she chose not to have any babies. She said that as her job was very busy and she was not in very good health, she was afraid that she would miscarry after getting pregnant. Recently, something happened in an accountancy firm. There was a young man who worked very long hours. He worked until two to three or even three to four in the small hours almost every day. After he returned home, took a shower and rested for a short while, he would have to hurry back to the office before 9 am. He kept working day and night. That was the case even on Saturday and Sunday. Moreover, this situation did not last for a short period of one or two months. Rather, it lasted months after months. Eventually, one day when this young man was working in the office, he suddenly took all the documents home. He did not go back to work the following day. In the following month or so, he did not go to work either, and he could not be reached by phone. Finally, the accountancy firm sent someone to pay a visit to his home. Only then did they learn that the young man had developed a mental problem. They could only get back all the documents through his family.

Another story happened to a young friend of mine. His situation was much worse. He often has to take business trips, since nowadays there are frequent business contacts between Hong Kong and the Mainland. One day, feeling a terrible back pain, he was unable to move and was sent to the hospital

for treatment. He had to rest for a month or so, and he lost more than 10 pounds.

President, are these stories individual cases? Unfortunately, they are not. Since listed companies have to announce their performances within a certain period and starting from this year, this period is shortened by a month, it is necessary to complete all the work in time before the deadline. Otherwise everyone will be affected. There are deadlines for handling deals and IPOs, and if the work cannot be completed on time, other people will be dragged into trouble.

President, there is one more type of situation. That is, in order to solicit more business, the service charge will be lowered. With continuous reduction in charge, consequently the money lost will be shifted to the colleagues at the lower levels. In the end, the most junior staff will suffer most.

President, if we have legislated for standard working hours, people would know that working beyond the standard working hours shall be compensated appropriately, that working will be prohibited if it has reached a certain time limit, and that employees must be allowed to take leave after working for a long period. In that case, such a situation will not arise.

President, apart from these objective circumstances, some young people also mentioned that their bosses thought they had suffered the same hardship when they were young. They said that after going through these hard times, they would be able to enjoy the clear blue sky. They would be able to act as partners and enjoy the good lives which they have got today. However, these young people said to me, "Mr CHAN, this is the attitude of a 'mother-in-law'." I do not mean to degrade the role of "mother-in-law". There is not any element of discrimination either. What I want to say is, the "mother-in-law" whom I see today is vastly different from the "mother-in-law" in the outmoded Cantonese movies. She has to pay regard to the relationship with her daughter-in-law. Otherwise, her son will stand on his wife's side and may not come back to visit her. Hence, the bosses really need to adjust their attitude, especially when nowadays young people will take account of their living standard apart from pursuing their career and making money.

As Mr LEE Cheuk-yan has just said, after all, do we work to live, or do we live to work? Here I would like to bring up a point. After all, what is the meaning of life? Apart from making money, I believe that you, including everyone in society — when you pass him the microphone, he will tell you that actually apart from making money, there are many other important things, such as husband-wife relationship, parent-child relationship, family relationship, and our health, which we all treasure. We all know about these.

We know that Hong Kong society is very prosperous and advanced, but is prosperity and advancement only about economic prosperity? Does advancement simply mean making money and having economic prosperity? I hope that one day, when Hong Kong people talk about advancement, they can proudly say that besides economic prosperity, we also give due regard to health, family and culture. We have our moral conscience. We attach importance to the living standard and also care about other people, particularly those who are in a more disadvantaged position than us.

Thank you, President.

DR PAN PEY-CHYOU (in Cantonese): President, the issues that the labour sector is concerned about mostly have a greater impact on blue-collar and grass-roots workers. However, the subject which we discuss today will affect all wage earners. No matter whether they are engaged in professional industries, whether they act as supervisors or are under supervision, and whether they are senior or junior staff, all will be affected. Here I would like to focus on those in professional management grades and the clerical staff, since they are most affected by long working hours.

First, I would like to bring up some figures. In March this year the Census and Statistics Department (C&SD) published the statistics on working hours in various industries in 2010. Having looked at the relevant statistics, I was a bit puzzled. Taking 44 hours as the standard working hours per week, the percentage of staff working less than 44 hours a week in various industries is as follows: 92% in financing and insurance; 80% in professional, scientific and technical activities; 68% in administrative and support services activities, and 76% in education and public administration.

The figures for blue-collar workers varied greatly: 28% in construction; 22% in estate management, security and cleaning services; 30% in retail, and 19% in restaurants.

Besides, the C&SD conducted other surveys, one of which was a survey on the staff's median weekly working hours from February to April this year. Let us look at the situation in different industries. The median weekly working hours in retail as well as accommodation and food services were 51 hours. As for financing and insurance, real estate as well as professional and business services (that means the more professional white-collar industries), the median weekly working hours were 45 hours.

On the surface, these figures seem to indicate that long working hours is only a problem of blue-collar workers, but if we look at the surveys conducted by the various industries themselves, we will find a vastly different situation. For instance, regarding kindergarten teachers, last year The Hong Kong Institute of Education conducted a survey on the working hours of kindergarten teachers and found that their average number of working hours per week was 53.5 hours. One fourth of the respondents even worked more than 61 hours.

Concerning doctors in public hospitals, several doctor groups (including that of our Honourable colleague Dr LEUNG Ka-lau) conducted a joint survey this year, interviewing 700 public doctors. It was found that their average number of working hours per week was 65 hours. Most surprisingly, 3% of the doctors interviewed even worked more than 100 hours per week.

What about the situation of reporters? The Hong Kong Journalists Association (HKJA) has also conducted a survey this year, interviewing some 700 journalists. The survey revealed that 62% of the reporters intended to switch over to another profession (not another "job", but another "profession"). In fact, some had already switched to another profession. The HKJA asked them the reasons for changing to another profession. 50% of them pointed out that the working hours were too long. To our knowledge, reporters work 10 to 13 hours a day. That is why reporters are described as having "feet made of iron, eyes of a stallion and a magical stomach".

As for accountants, Mr Paul CHAN has just stated clearly that their work is subject to seasonality. The peak season usually lasts three to six months. As

pointed out by some accountants, their daily working time is from eight in the morning to 12 at midnight.

Having looked at the surveys conducted by the above industries, you will find that the reality is greatly different from what was reflected by the Government's statistics. Why is that the case? How come the long working hours of white-collar professionals are not reflected by the statistics? We do not know the reason. It is highly possible that white-collar professionals' interpretation of working hours is different from that of blue-collar workers. Nevertheless, we must admit that this is a very important and serious problem.

I have come across some cases where young lawyers often have to work overtime overnight, working from nine in the morning until four or five in the small hours. After taking a short break in the office, they start working again for 10 hours till the afternoon, working a total of 34 hours.

I have also met a number of executives. Their supervisors or the organizations to which they belong assigned a "BlackBerry" mobile to each one of them, requiring them to reply to their email at any time round the clock. I have also met elementary management staff of public organizations. Their seniors distributed pagers to them, requesting them to stay on call round the clock for 365 days a year. Someone asked their supervisor what if they were taking a trip, hiking or swimming. Their supervisor replied that if he did not answer the call, he would have to give an explanation, and if the reason was not plausible, he would be punished.

Is such a work pattern not tantamount to slavery? Such a work pattern is absolutely unreasonable. Long working hours entail a lot of demerits. As cited by Mr Paul CHAN earlier, for instance, it is detrimental to wage earners' health. It will ruin their relationship with their families (for example, children, spouse and family members). It will undermine their relationship with friends, depriving them of the chance to participate in social activities. It will diminish their chance of further studies, making them unable to seek enhancement, and it will impair their overall living standard.

As far as the organizations are concerned, such a work pattern is also unhealthy because the organizations will lose efficiency. Working such long

hours, their staff will easily become burnt-out, being totally exhausted by their work. Another possibility is that they will switch over to another profession, as in the case of journalists. As such, the organizations and employers will lose their valuable staff members.

Hence, we hope the Government can implement standard working hours as early as possible.

MS LI FUNG-YING (in Cantonese): President, in October last year, the Chief Executive indicated in the Policy Address that he would request the Labour and Welfare Bureau to commence a study on standard working hours. Some six months have passed since last October, but so far the Government still has not reported the details of the study. The Secretary for Labour and Welfare, Mr Matthew CHEUNG, has only said vaguely in public that the Government was sincere in promoting standard working hours. Now it was collecting the relevant data, and hopefully the study would be completed in about a year. President, regarding such a labour policy which is of great significance to social development, we hope that during the study period, the Government can enhance the transparency, report the progress of the study regularly, widely listen to the views of different groups in society and put forward specific proposals on setting standard working hours so as to practically resolve the employees' problem of having excessively long working hours over a long period of time.

President, in June last year, this Council held a motion debate on legislating for standard working hours. The amendment proposed by me was also passed then. The wording of my amendment is as follows (I quote): "That, as Hong Kong is an economically developed city, yet most employees still need to work long hours, adversely affecting their personal health and family life and giving rise to many social problems, this Council urges the Government to legislate for 'standard working hours' according to the people-oriented principle to ensure a work-rest balance for employees." (End of quote) Hence, I consider that the Government's study should not focus on whether legislation should be introduced to set standard working hours. Rather, it should focus on how to set the standard working hours. Neither the debate today nor the Government's study should digress from this principle.

President, I hope the Labour and Welfare Bureau will not work behind closed doors and unilaterally draw up the report for implementing standard working hours. In fact, all important labour policies can have effective interaction under the existing framework. Under the existing tripartite framework comprising employers, employees and the Government, we have the Labour Advisory Board. At the central level, there is also the Panel on Manpower in this Council. I think such frameworks can interact with the Government's study to perfect the study results. On the proposal in the original motion and the amendment on setting up a "study group on legislating for standard working hours" comprising representatives of the Government, employees and employers, I maintain an open mind. A dedicated study group may effectively push forward the report on setting standard working hours, but it may also give rise to another situation where internal strife among members representing different stakeholders in the group will delay the drawing up of the report.

President, we hope that the Government will complete the report on the implementation of standard working hours as soon as possible. At the same time, we also hope that there will be full consultation and high transparency during the course of drawing up the report. I believe these two requirements are not difficult to attain. The key simply lies with the Government's attitude. The Secretary has indicated that it will take about a year to complete the relevant study. If it is counted from the time the Chief Executive made the announcement in October last year, the Secretary will have to submit the report in March next year. However, I do not hope that this report will lack extensive consultation. Thus I suggest that the Secretary should first submit an interim report in early September this year to gauge public views. After collecting the views, the Secretary will still have six months' time to make a consolidated analysis and put forward practicable proposals on how to formulate standard working hours.

President, from the controversy caused by the implementation of the minimum wage, we have clearly noticed the necessity of setting standard working hours. During the debate on the minimum wage last month, I already pointed out in my speech that if the legislation on standard working hours could be implemented concurrently with the minimum wage, the disputes over the calculation of paid meal time and working hours on rest days would not have taken place. Nevertheless, now my biggest concern is that the Chief Executive has brought up the study on standard working hours in last year's Policy Address,

but the current-term Government does not have much time left in its term. How to make the next-term Government complete the legislation on standard working hours is, I believe, a problem commonly faced by people who care about labour interests.

I sincerely hope that people who care about labour interests will continue to fight together. President, I speak in support of the original motion and the amendment. Thank you.

PRESIDENT (in Cantonese): Two Members have indicated their wish to speak. I will suspend the meeting after they have spoken.

MR LEUNG YIU-CHUNG (in Cantonese): President, 14 years have passed since the reunification. During these 14 years, one of the significant changes is certainly the designation of the Labour Day as a statutory holiday by the Special Administrative Region (SAR) Government. This is a big step forward.

Yet, in the past 14 years, the happiest and the most encouraging Labour Day was the Labour Day of last month, because last month our grass-roots workers could enjoy the minimum wage protection, which was indeed difficult to come by.

Of course, this was deliberately arranged by Secretary Matthew CHEUNG, because he appointed the commencement date of the minimum wage to be 1 May. In this regard, I know what his intention was. He hoped we could see the fruits of hard work on the Labour Day.

However, it is a pity that in these 14 years, although the SAR Government has affirmed the existence of the Labour Day, regrettably it has never commended or seriously looked at the meaning and purpose of the Labour Day. The meaning of the Labour Day does not lie with the minimum wage, rather, it bears the most important kind of spirit, which is the "spirit of three eights". What does the "spirit of three eights" mean? It means eight hours of work, eight hours of rest and eight hours of doing things of personal interest, including studies and personal hobbies. Yet regrettably, the SAR Government has never given any recognition in this regard. What a pity this is.

As we can see, every year the officials of the SAR Government would simply drink a toast on the stage to wish everybody joy and happiness in celebration of the Labour Day, but they did not say what its spirit was. Why? Because they dared not face such a spirit. The SAR Government is never willing to take a look at the after-effects of long periods of work on employees. A number of Honourable colleagues have mentioned this earlier, and I do not want to repeat the points made.

Yet I would like to remind the SAR Government again about the spirit of the Labour Day. We cannot merely hold a celebration for fun. Rather, we have to look back at the incident where a group of workers, more than 200 workers were aimlessly shot. We have to remember the goal for which they fought, that is, eight hours of work, eight hours of rest and eight hours of engaging in activities of personal interest. However, so far we are still unable to achieve it. Thus I consider it a great pity.

As mentioned by Mr LEE Cheuk-yan in his speech just now, after all, do we live to work, or do we work to live? I think both are necessary.

In real life, if we do not work, we will be unable to survive because in the capitalist society, if we do not work, we will not get any wages. If we do not get any wages, we will have no money to buy any meals. This is the reality. So we must work to live.

At the same time, however, if we live only for the sake of work, I do not think it will do. Since we are humans, our lives need diversification, and diversification requires personal lives. Only then can we continue to exist. Otherwise, we will only dry up and die. What kind of dryness is this? It is a lack of various elements including spiritual life, culture and arts. If we work for a long period without such elements, we will be no different from a walking corpse, having only flesh but no spirit. There is not any spirit, and there is not any soul either.

Hence, I hope the Secretary would understand that even grass-roots workers need to live with a soul. They cannot just live with a body. Having such long hours of work, we will only have a body without a soul. How can we live like that?

Moreover, the Secretary keeps disseminating to the media another concept which Mr LEE Cheuk-yan also mentioned just now, that is, parent-child education. There is not only parent-child education but also another item, which is skill enhancement.

Please think about it. Working such long hours, how can workers enhance their skills and meet the requirement? There was a TVB programme which impressed me deeply. Actually I have said it quite a number of times before. That is, there was a worker in the catering trade. When did he undergo skill enhancement? It was after he stopped work at night. At what time did he stop work? At 1 am or 2 am. Only then did he go to school. He attended the lesson until 4 am or 5 am. Then he returned home to sleep. After he woke up at around 10 am he would go to work. President, this was not a human being. He was a robot. Now how miserable men are. They have been degraded to robots. How do they live every day? After they wake up, they start to work. After they start to work, they just keep working. After they stop work, they return home to sleep. As such, how can they be regarded as humans?

Let me temporarily put aside the health issue and discuss how men should live. Can that be called a life? That is indeed unacceptable. Thus, on this point, I hope we will pay more attention.

Moreover, health is also very important. Today we keep saying that medical costs are high. One of the reasons is that too many people get tired, and tiredness will cause people to develop many illnesses and lose their health.

Nowadays we advocate the culture of slow eating and that sort of things. It sounds wonderful, but to grass-roots workers, it is a luxury. Slow eating? What the heck is this? They do not even have time to sit down to take a rest. How will they bother to talk about slow eating? What is this actually about? What is the meaning behind this kind of stuff? It is a desire for a healthy life. Yet how will they be healthy? Working such long hours in weariness, it is impossible for them to be healthy.

I often encourage my colleagues to go jogging and do exercise with me, but some workers said to me, "Mr LEUNG Yiu-chung, I wish to jog with you too, but at that time I am sweeping the floor." I go jogging along the promenade in Tsim Sha Tsui East around 6 am. These workers are with me, but at that time they are

sweeping the floor, which is a very hard job. As we know, long hours of work will exhaust us both mentally and physically, inflicting serious damage to our health. Thus we cannot just sit back and ignore this point.

In the past, people kept saying that harmonious labour relations would increase the costs. Actually these words were just excuses. Today the minimum wage has already been implemented, but we did not see a large number of people getting unemployed. At that time Mr TUNG told me that if the minimum wage or standard working hours were in place, a lot of people would certainly lose their jobs. However, after a month or so, did such a phenomenon arise? It did not.

After the implementation of minimum wage, such a phenomenon did not arise. Instead, the Secretary now keeps saying that the number of vacancies is continuously increasing. Hence, we cannot use such excuses again to stall and delay legislation in this regard.

MR RONNY TONG (in Cantonese): President, please allow me to speak before the meeting is suspended today so that I would not have to keep these issues in mind when I go home tonight.

President, it is now 10.06 pm. As I returned to my office at half past seven this morning, I have worked for a total of 15 hours in around 20 minutes' time. I believe that many Honourable colleagues are in similar situations. According to my rough calculation, we work 60 to 70 hours a week on average. This is inevitable as we are Members of this Council. Therefore, I have deep feelings when we discuss about standard working hours in this Council every year. It is a pity that, even if the Government will enact the legislation in the near future, I believe that Members would not be benefited. This does not mean that we will not make our best efforts to promote this legislation as we believe that it will not only meet the needs of the community but also tally with the core values of our society.

Mr Vincent FANG has just said that we should not take standard working hours into consideration under the present social and economic circumstances. Evidently, Mr FANG has already gone home to spend time with his family.

Unlike us, he may not have deep feelings about standard working hours. However, many Honourable colleagues, including Mr LEE Cheuk-yan, have mentioned that economic development is not the only target of our society. President, the concept of standard working hours is internationally recognized, and it is the core value of just a single country but the whole world.

President, Article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) has clearly specified that "The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular rest, leisure and reasonable limitation of working hours". Certainly, I need not remind everyone that the ICESCR is respected under the Basic Law. Article 39 of the Basic Law especially stated that the provisions of the ICESCR shall be implemented through the laws of the Hong Kong. Apart from the humanitarian or human rights perspectives, the Government has the constitutional responsibility to promote the enactment of legislation. I hope that the SAR Government will not shirk the responsibility under the pretext that it is not allowed by the business sector or our economic development, and hence the issue should be taken into consideration slowly.

President, many Honourable colleagues have just given a large amount of data and I need not give unnecessary details. Nevertheless, I must make one point, that is, the Oxfam conducted questionnaire surveys in 2005, 2008 and 2010. More than 80% of the respondents in Hong Kong opined that a standard working week should be 48 hours. President, a standard working week of 48 hours highlighted the fact that Hong Kong people are extremely willing to work. In many other more advanced communities — I cannot say more civilized communities; a standard working week is 40 to 45 hours while a standard working week of 48 hours is acceptable to Hong Kong people. I have just mentioned that the working hours of Members of this Council, lawyers and accountants exceed 48 hours. Thus, the standard working hours set in Hong Kong may be more conservative than those in other communities. Hence, I am a little disappointed that none of the members of the business sector or Members present has listened to what I said.

President, it is equally important that, the failure to formulate standard working hours does not mean that our economic development has brought us an

optimum working environment. On the contrary, overtime work actually has various adverse impacts on our economic development. President, we are human beings after all, not machines. Therefore, working long hours will affect the quality of work to a certain extent. Similarly, Members have had continuous discussions until past 10 o'clock — everybody is now looking at the clock, hoping that my seven-minute speech will come to an end soon — not to mention people engaged in other work types.

We have said that many people such as doctors have complained about excessively long working hours. Some doctors have remarked that they sometimes need to work 30 hours non-stop. For these doctors, their performance and the quality of their work after they have worked 20 hours or 20 to 30 hours will be largely different from that when they started working as they were full of energy then. Furthermore, they will easily become ill if their working hours are too long and they are experiencing excessive fatigue. When they become ill, it will be a waste of — even if it is not a waste; it is a use of community resources.

The living environment of families is certainly a very important factor. Mr WONG Sing-chi has just raised this issue. Honestly speaking, the Government has stated that there is an ageing population in Hong Kong and it is hoped that each family will have more than one child. Yet, if each person needs to work dozens of hours, members of the public really do not even have time to have children. Is this a favourable social phenomenon? Absolutely not. The economic development of our society may be extremely uneven and unhealthy. I definitely do not agree that wage earners have to work long hours to ensure the smooth development of our economy simply because there is so much work.

President, we have discussed standard working hours for years. It has been seven years since I became a Member of this Council, and we have discussed this issue almost every year. The Government has told us that it has to consider the matter slowly and carefully year after year. President, I think that we have reached such a stage that standard working hours must be implemented as soon as possible since the minimum wage legislation has already been enacted. Thank you, President.

SUSPENSION OF MEETING

PRESIDENT (in Cantonese): I now adjourn the Council until 2.30 pm tomorrow.

Suspended accordingly at thirteen minutes past Ten o'clock.

Annex I

Legislation Publication Bill

Committee StageAmendments to be moved by the Secretary for Justice

<u>Clause</u>	<u>Amendment Proposed</u>
1(2)	By deleting “This” and substituting “Subject to subsection (3), this”.
1	By adding— “(3) This Part, Part 4 and Division 1, Division 2 (except section 26), Division 4 (except sections 28 and 29) and Division 5 of Part 6 come into operation on the day on which this Ordinance is published in the Gazette.”.
2	By deleting the clause and substituting— “2. Interpretation (1) In this Ordinance— <i>approved website</i> (認可網站) means a website approved under section 3(b);

consolidated copy (編訂文本), in relation to an Ordinance, means a copy of the Ordinance showing its text as amended by all permitted amendments that have taken effect as at a date specified in the copy;

database (資料庫) means the electronic database of the legislation applying in Hong Kong established under section 3(a);

database instrument (資料庫文書) means an Ordinance, the Basic Law, a national law applying in Hong Kong or an item of materials or information referred to in section 4(2)(c);

editorial amendment (編輯修訂) means an amendment to an Ordinance made under section 12;

gazetted copy (刊憲文本), in relation to an Ordinance, means a copy of the Ordinance as originally enacted or made, and published in the Gazette;

official verification mark (官方核證標記) means a symbol, word or statement, or a combination of any of them, specified by the Law Draftsman

on an approved website for the purposes of Part 2;

permitted amendment (許可修訂), in relation to an Ordinance, means—

- (a) an amendment to the Ordinance made by another Ordinance;
- (b) an editorial amendment to the Ordinance; or
- (c) an amendment to the Ordinance made under section 2A(1) of the Laws (Loose-leaf Publication) Ordinance 1990 (51 of 1990);

verified copy (經核證文本)—see section 4A(1).

- (2) In this Ordinance, a reference to a database instrument as at a date specified in a copy or reproduction of a copy of the instrument includes, if a time on that date is specified in the copy or reproduction, a reference to the instrument as at that time on that date.”.

4(1)(a) By deleting “versions” and substituting “copies”.

4(1) By adding—

“(aa) gazetted copies of Ordinances published in the Gazette on or after the date on which this Part comes into operation;

(ab) the Basic Law;”.

4(2)(a) By adding “and” at the end.

4(2) By deleting paragraph (b).

4(2)(c) By deleting “legislation,”.

New By adding—

“4A. Status of verified copies of database instruments

(1) A copy of a database instrument—

(a) that is published on or printed directly from an approved website; and

(b) that bears an official verification mark, is a verified copy of the instrument.

(2) A verified copy of a database instrument is presumed, unless the contrary is proved, to correctly state the instrument as at the date

specified in the copy.”.

5 to 9 By deleting the clauses.

10 By deleting subclauses (2) to (6) and substituting—

“(2) A document purporting to be a verified copy of a database instrument is presumed, unless the contrary is proved, to be a verified copy of the instrument.”.

New By adding immediately after clause 10—

“Part 2A

Reproduction of Verified Copies of Database Instruments

10A. Interpretation

In this Part—

official booklet (官方單行本) means a booklet published under section 10B(1);

official storage medium (官方儲存器) means a storage medium published under section 10C(1);

storage medium (儲存器) means a medium—

- (a) in which electronic data relating to verified copies of database instruments

are stored; and

- (b) from which verified copies of database instruments are capable of being reproduced.

10B. Publication of official booklets

- (1) The Secretary for Justice may cause reproductions of verified copies of database instruments to be published in the form of booklets.
- (2) A reproduction of a verified copy of a database instrument contained in an official booklet is presumed, unless the contrary is proved, to correctly state the instrument as at the date specified in the reproduction.

10C. Publication of official storage media

- (1) The Secretary for Justice may cause storage media to be published.
- (2) An electronic or printed reproduction of a verified copy of a database instrument accessed or printed directly from an official storage medium is presumed, unless the contrary is

proved, to correctly state the instrument as at the date specified in the reproduction.

10D. Evidential provisions

- (1) A document purporting to be a reproduction of a verified copy of a database instrument contained in an official booklet is presumed, unless the contrary is proved, to be such a reproduction.
- (2) A document purporting to be an electronic or printed reproduction of a verified copy of a database instrument accessed or printed directly from an official storage medium is presumed, unless the contrary is proved, to be such a reproduction.”.

11 By deleting everything after “may” and substituting—

“—

- (a) give a chapter number to an Ordinance and alter the short title or citation of the Ordinance; and
- (b) in the database, arrange the grouping and sequence of database instruments.”.

12 By deleting the clause and substituting—

“12. Powers to make editorial amendments

The Secretary for Justice may, in an Ordinance—

- (a) replace a reference to the short title or citation of another Ordinance that has been altered under section 11(a), by the altered short title or citation;
- (b) correct a grammatical, clerical or typographical error;
- (c) change the way of referring to or expressing a number, year, date, time, amount of money, quantity or measurement;
- (d) alter the text of a provision to reflect an amendment to the provision deemed to have been made by another provision;
- (e) omit any enacting, expired or spent provision;
- (f) change the sequence of definitions, or of unnumbered items in a list;
- (g) insert, after an item in a list appearing in the text of one official language, the

equivalent of that item in the other official language;

(h) change the format, layout, printing style or any other presentational aspect; and

(i) make an amendment that is consequential on any amendment made under this section (other than this paragraph).”.

14(1) By deleting “An” and substituting “Subject to section 16, an”.

14(3) In the definition of *publication date*, by deleting “version of the Ordinance that has incorporated the amendment” and substituting “copy of the Ordinance showing the amendment in its text”.

17 By deleting paragraphs (a) to (f) and substituting—

“(a) make an alteration to an Ordinance for the purpose of securing uniformity in expression within the Ordinance or with another Ordinance;

(b) alter the form or arrangement of a section of an Ordinance, by transferring words, by combining it in whole or in part with another section or other sections

- of the Ordinance or by dividing it into subsections;
- (c) transfer a saving or transitional provision in an Ordinance to another Ordinance to which that provision relates;
 - (d) organize the provisions of an Ordinance into, and assign numbers and headings to, groups of provisions, without changing the sequence of those provisions;
 - (e) amend the heading of a provision or a group of provisions in an Ordinance to reflect the contents of the provision or the group of provisions;
 - (f) if the name, title, location or address of a department, office, officer or place has changed, make an alteration to that name, title, location or address appearing in an Ordinance to reflect the change;
 - (g) amend an Ordinance to effect the replacement of a reference to a date in the form of a description by the actual calendar date;
 - (h) amend an Ordinance to effect the replacement of a general reference to another Ordinance by—
 - (i) the short title or citation of that other Ordinance;
 - (ii) its number among the Ordinances of the year in

which it was enacted or made; or

(iii) the chapter number given to it under section 11(a);

(i) replace a word or expression in an Ordinance indicating gender or that could be taken to indicate gender by a gender-neutral word or expression;

(j) amend an Ordinance to change the way of referring to a provision; and

(k) make an amendment to an Ordinance that is consequential on any amendment made under this section (other than this paragraph).”.

19 By adding “, 20A” after “20”.

20 By deleting subclauses (1) to (5) and substituting—

“(1) Section 2—

Repeal subsection (2)

Substitute

“(2) The Secretary for Justice may, in the loose-leaf edition—

(a) give a chapter number to an Ordinance and alter the short title or citation of the Ordinance; and

(b) arrange the grouping and sequence of

legislation.”.

(2) Section 2—

Repeal subsection (7).”.

New By adding—

“20A. Sections 2A and 2B added

After section 2—

Add

“2A. Power to make editorial amendments

(1) The Secretary for Justice may, in an Ordinance published in the loose-leaf edition—

- (a) replace a reference to the short title or citation of another Ordinance that has been altered under section 2(2)(a), by the altered short title or citation;
- (b) correct a grammatical, clerical or typographical error;
- (c) change the way of referring to or expressing a number, year, date, time, amount of money, quantity or measurement;
- (d) alter the text of a provision to reflect an amendment to the provision deemed to have been made by another provision;
- (e) omit any enacting, expired or

- spent provision;
- (f) change the sequence of definitions, or of unnumbered items in a list;
 - (g) insert, after an item in a list appearing in the text of one official language, the equivalent of that item in the other official language;
 - (h) change the format, layout, printing style or any other presentational aspect; and
 - (i) make an amendment that is consequential on any amendment made under this subsection (other than this paragraph).
- (2) Subsection (1) does not permit any amendment that would change the legal effect of any Ordinance.
 - (3) An Ordinance amended under subsection (1), as published in the loose-leaf edition, must indicate in a suitable place the fact that it has been amended under subsection (1).

2B. Record of editorial amendments

- (1) The Secretary for Justice must compile a record containing—
 - (a) descriptions of editorial

- amendments made; and
- (b) other information that the Secretary for Justice considers useful to users of the record.
- (2) The record is to be published—
- (a) in the loose-leaf edition; and
- (b) in a form that the Secretary for Justice considers appropriate.
- (3) An Ordinance that is amended under section 2A(1) has effect for all purposes, on and after the effective date of the editorial amendment, as if the amendment had been made by another Ordinance that commenced on that date.
- (4) The effective date of an editorial amendment—
- (a) must not be a date which is earlier than the date on which the record containing a description of the amendment, as specified in subsection (1)(a), is first published under subsection (2); and
- (b) must be specified in the record.
- (5) In this section—

editorial amendment (編輯修訂) means an amendment to an Ordinance made under section 2A(1).”.”.

- 21 By deleting the proposed section 3A(1) and (2) and substituting—
- “(1) The Secretary for Justice may omit a verified Ordinance from the loose-leaf edition.
 - (2) For the purposes of subsection (1), an Ordinance is verified if a consolidated copy of the Ordinance, as published on an approved website, bears an official verification mark.”.
- 21 In the proposed section 3A(3), in the definition of *approved website*, by deleting “section 2” and substituting “section 2(1)”.
- 21 In the proposed section 3A(3), in the definition of *consolidated version*—
- (a) by deleting “*version* (編訂版本)” and substituting “*copy* (編訂文本)”;
 - (b) by deleting “section 2” and substituting “section 2(1)”;
 - (c) in the English text, by deleting the full stop and substituting a semicolon.
- 21 In the proposed section 3A(3), by adding—
- “*official verification mark* (官方核證標記) has the meaning given by section 2(1) of the Legislation Publication

Ordinance (of 2011).”.

Part 6,
heading

By adding “**Repeals and**” before “**Consequential Amendments**”.

28

In the proposed section 13(1)(c), by deleting subparagraphs (i) and (ii) and substituting—

- “(i) the Legislation Publication Ordinance (of 2011); or
- (ii) any other Ordinance providing for the issue of a revised or other edition of the laws of Hong Kong.”.

Annex II

Stamp Duty (Amendment) (No. 2) Bill 2010

Committee Stage

Amendments to be moved by the Secretary for Transport and Housing

<u>Clause</u>	<u>Amendment Proposed</u>
Long title	In the English text, by deleting “with” and substituting “on”.
1(3)	By adding “14(2A), (2B), (2C), (2D) and (2E),” after “and (11),”.
4	By deleting the clause.
5(2)	In the proposed section 15(5), by deleting “(<i>amending section</i>) does not apply in respect of a chargeable agreement for sale within the meaning of section 29A(1) that was entered into before the date of commencement of the amending section” and substituting “does not apply in respect of a chargeable agreement for sale that was entered into before the date of commencement of that section”.
New	By adding— <p style="margin-left: 40px;">“6A. Section 29A amended (Interpretation and application of Part IIIA)</p> <p style="margin-left: 80px;">(1) Section 29A(3A), after “and head 1(1A)”— Add “and (1B)”.</p> <p style="margin-left: 80px;">(2) Section 29A(4), after “head 1(1A)”— Add “and (1B)”.</p>

(3) Section 29A(5), after “Head 1(1A)” —

Add

“and (1B)”.

(4) Section 29A(6), after “head 1(1A)” —

Add

“and (1B)”.

7

By adding—

“(3A) Section 29C(5)(c)(i), Chinese text—

Repeal

“購買人等”

Substitute

“眾購買人的”.

7

By deleting subclause (4).

7(6)

By deleting “and” and substituting “or”.

7(7)

In the proposed section 29C(5AA), by deleting “any residential” and substituting “immovable”.

7(7)

In the proposed section 29C(5AA)(a)—

(a) by adding “(or, only in so far as it relates to special stamp duty, a person who is a parent, spouse, child, brother or sister of the purchaser)” after “child of the purchaser”;

(b) in the Chinese text, by deleting “該物業” (wherever appearing) and substituting “該不動產”.

- 7(7) In the proposed section 29C(5AA)(b), by deleting “for the sale” and substituting “in respect”.
- 7 By deleting subclause (9).
- 8 In the proposed section 29CA, in the heading, by deleting “**Special stamp duty chargeable with**” and substituting “**Further provisions on special stamp duty chargeable on**”.
- 8 In the proposed section 29CA(2), in the Chinese text, by adding “有關” after “取得”.
- 8 In the proposed section 29CA(3), by deleting “acquired” and substituting “disposed of”.
- 8 In the proposed section 29CA, by adding—
- “(3A) For the purposes of subsections (2) and (3), head 1(1B) in the First Schedule does not apply to a chargeable agreement for sale if the residential property disposed of by the vendor under the agreement, or part of the residential property, consists of—
- (a) any building or any part of a building (whether completed or uncompleted), and—
- (i) the building is constructed, or caused to be constructed, by the vendor;
- (ii) the land on which the building is constructed was acquired by the vendor (irrespective of whether or not any building existed on the land before the construction commenced); and
- (iii) the existing building (if any) was demolished, or caused to be

demolished, by the vendor; or

- (b) any land, and—
 - (i) a building existed on the land when the land was acquired by the vendor;
 - (ii) the building was demolished, or caused to be demolished, by the vendor; and
 - (iii) there is no building on the land at the time of disposal by the vendor.”.

8

In the proposed section 29CA(4), by deleting everything after “First Schedule,” and substituting—

“the vendor acquired the residential property on—

- (a) subject to subsections (4A) and (6B)—
 - (i) the date on which the vendor made a chargeable agreement for sale that provided for the conveyance of the property to the vendor; or
 - (ii) (if the chargeable agreement for sale consisted of 2 or more instruments) the date on which the first of those instruments was made; or
- (b) in any other case—
 - (i) the date of the conveyance under which the property was transferred to or vested in the vendor; or
 - (ii) (if the conveyance consisted of 2 or more instruments) the date on which the first of those instruments was made.”.

8

In the proposed section 29CA, by adding—

“(4A) If more than one chargeable agreement for sale was made between the same parties and on the same terms in respect of a residential property, the vendor acquired the property on the date on which the first chargeable agreement for sale referred to in subsection (4)(a) was made.”.

- 8 By deleting the proposed section 29CA(5).
- 8 In the proposed section 29CA(6), by deleting everything after “First Schedule,” and substituting—
- “the vendor disposes of the residential property on, subject to subsections (6A) and (6B)—
- (a) the date on which the vendor makes a chargeable agreement for sale that provides for the conveyance of the property from the vendor; or
 - (b) (if the chargeable agreement for sale consists of 2 or more instruments) the date on which the first of those instruments is made.”.
- 8 In the proposed section 29CA, by adding—
- “(6A) If more than one chargeable agreement for sale is made between the same parties and on the same terms in respect of a residential property, the vendor disposes of the property on the date on which the first chargeable agreement for sale referred to in subsection (6)(a) is made.
- (6B) If a chargeable agreement for sale is made in respect of a residential property, and another chargeable agreement for sale is made in respect of all or any part of the property which is, under section 29C(5), chargeable with stamp duty as if it were a conveyance on sale executed in pursuance of the first-mentioned agreement, the property or that part of the property was acquired, and is disposed of, on—
- (a) (if under that other agreement the purchasers are those referred to in section 29C(5)(c)(i)) the dates specified in section 29DA(9A) as if that other agreement were a conveyance on sale executed in pursuance of a chargeable agreement for sale as referred to in section 29D(4); or

- (b) (if under that other agreement the purchaser is that, or the purchasers are those, referred to in section 29C(5)(c)(ii)) the dates specified in section 29DA(9B) as if that other agreement were a conveyance on sale executed in pursuance of a chargeable agreement for sale as referred to in section 29D(5).”.

8 In the proposed section 29CA(7), by deleting “or child” and substituting “, child, brother or sister”.

8 In the proposed section 29CA(8), by deleting everything after “chargeable agreement for sale” and substituting—

“if—

- (a) the agreement is made pursuant to any decree or order of any court; or

- (b) the residential property in respect of which the agreement is made—

- (i) was transferred to or vested in the vendor by or pursuant to any decree or order of any court;

- (ii) relates solely to the estate of a deceased person;

- (iii) was devised by or otherwise passed on the death of the deceased person under a will, the law of intestacy or right of survivorship to the vendor;

- (iv) relates solely to a bankrupt’s estate;

- (v) relates solely to the property of a company being wound up under section 177(1)(d) of the Companies Ordinance (Cap. 32); or

- (vi) is the subject of a sale by a mortgagee (being a financial institution within the meaning of section 2 of the Inland Revenue Ordinance (Cap. 112)) or a receiver appointed by such a mortgagee.”.

8 In the proposed section 29CA(9), in the English text, by deleting “with a” and substituting “on a”.

9 By adding before subclause (1)—

“(1A) Section 29D(1)—

Repeal

“or issue a stamp certificate in respect of the conveyance on sale”.”.

9 By adding—

“(3A) Section 29D(4)(a), after “head 1(1)”—

Add

“and (if applicable) (1AA)”.”.

9(4) In the proposed section 29D(4)(b)(i), by adding “on sale” after “conveyance”.

9 By adding—

“(4A) Section 29D(5)(a), after “head 1(1)”—

Add

“and (if applicable) (1AA)”.”.

9(5) In the proposed section 29D(5)(b)(i), by adding “on sale” after “conveyance”.

9 By adding—

“(6) Section 29D(6)(c)(ii), after “child of that person”—

Add

“(or, only in so far as it relates to special stamp duty, a

parent, spouse, child, brother or sister of that person)”.’.

10 In the proposed section 29DA, in the heading, by deleting “**Special stamp duty chargeable with**” and substituting “**Further provisions on special stamp duty chargeable on**”.

10 In the proposed section 29DA(1), by adding “on sale” after “under the conveyance”.

10 In the proposed section 29DA(2)—

- (a) by adding “on sale” after “under the conveyance”;
- (b) in the Chinese text, by adding “有關” after “取得”.

10 In the proposed section 29DA(3), by deleting “acquired” and substituting “disposed of”.

10 In the proposed section 29DA, by adding—

“(3A) For the purposes of subsections (2) and (3), head 1(1AA) in the First Schedule does not apply to a conveyance on sale if the residential property disposed of by the transferor under the conveyance on sale, or part of the residential property, consists of—

- (a) any building or any part of a building (whether completed or uncompleted), and—
 - (i) the building is constructed, or caused to be constructed, by the transferor;
 - (ii) the land on which the building is constructed was acquired by the transferor (irrespective of whether or not any building existed on the land before the construction commenced); and

(iii) the existing building (if any) was demolished, or caused to be demolished, by the transferor; or

(b) any land, and—

(i) a building existed on the land when the land was acquired by the transferor;

(ii) the building was demolished, or caused to be demolished, by the transferor; and

(iii) there is no building on the land at the time of disposal by the transferor.”.

10 By deleting the proposed section 29DA(4), (5) and (6).

10 In the proposed section 29DA(7), by deleting everything after “First Schedule,” and substituting—

“the transferor acquired the residential property on—

(a) subject to subsections (7A), (9A) and (9B)—

(i) the date on which the transferor made a chargeable agreement for sale that provided for the conveyance of the property to the transferor; or

(ii) (if the chargeable agreement for sale consisted of 2 or more instruments) the date on which the first of those instruments was made; or

(b) in any other case—

(i) the date of the conveyance under which the property was transferred to or vested in the transferor; or

(ii) (if the conveyance consisted of 2 or more instruments) the date on which the first of those instruments was made.”.

- 10 In the proposed section 29DA, by adding—
- “(7A) If more than one chargeable agreement for sale was made between the same parties and on the same terms in respect of a residential property, the transferor acquired the property on the date on which the first chargeable agreement for sale referred to in subsection (7)(a) was made.”.
- 10 By deleting the proposed section 29DA(8).
- 10 In the proposed section 29DA(9), by deleting everything after “First Schedule,” and substituting—
- “the transferor disposes of the residential property on, subject to subsections (9A) and (9B) and section 29CA(6), (6A) and (6B)—
- (a) the date of the conveyance on sale of the property under which the property is transferred or divested from the transferor; or
- (b) (if the conveyance on sale consists of 2 or more instruments) the date on which the first of those instruments is made.”.
- 10 In the proposed section 29DA, by adding—
- “(9A) In the case of a conveyance on sale of residential property executed in pursuance of a chargeable agreement for sale as referred to in section 29D(4), the person named in the agreement as the purchaser (*that purchaser*)—
- (a) acquired the property on—
- (i) the date on which that purchaser made a chargeable agreement for sale that provided for the conveyance of the property to that purchaser; or
- (ii) (if the chargeable agreement for sale consisted of 2 or more instruments) the date on which the first of those

- instruments was made; and
- (b) disposes of the proportion of the property to be vested in the other person not named in the agreement as a purchaser as referred to in that section on—
 - (i) the date on which the conveyance on sale is executed; or
 - (ii) (if the conveyance on sale consists of 2 or more instruments) the date on which the first of those instruments is made.
- (9B) In the case of a conveyance on sale of residential property executed in pursuance of a chargeable agreement for sale as referred to in section 29D(5), a person named in the agreement as one of the purchasers (*that person*), if the conveyance on sale is not executed in favour of that person—
- (a) acquired that person's proportion of the property on—
 - (i) the date on which that person, together with the other person or persons named in the agreement as a purchaser or purchasers as referred to in that section, made a chargeable agreement for sale that provided for the conveyance of the property to that person and that other person or persons; or
 - (ii) (if the chargeable agreement for sale consisted of 2 or more instruments) the date on which the first of those instruments was made; and
 - (b) disposes of that person's proportion of the property on—
 - (i) the date on which the conveyance on sale is executed; or
 - (ii) (if the conveyance on sale consists of 2 or more instruments) the date on which the first of those instruments is made.”.

10 In the proposed section 29DA(10), by deleting everything after “transferred under the conveyance” and substituting “on sale is a parent, spouse, child, brother or sister of the transferor under the conveyance on sale.”.

10 In the proposed section 29DA(11), by deleting everything after “conveyance on sale” and substituting—

“of residential property if—

- (a) the conveyance on sale is, or is executed pursuant to, any decree or order of any court; or
- (b) the property—
 - (i) was transferred to or vested in the transferor by or pursuant to any decree or order of any court;
 - (ii) relates solely to the estate of a deceased person;
 - (iii) was devised by or otherwise passed on the death of the deceased person under a will, the law of intestacy or right of survivorship to the transferor;
 - (iv) relates solely to a bankrupt’s estate;
 - (v) relates solely to the property of a company being wound up under section 177(1)(d) of the Companies Ordinance (Cap. 32); or
 - (vi) is the subject of a sale by a mortgagee (being a financial institution within the meaning of section 2 of the Inland Revenue Ordinance (Cap. 112)) or a receiver appointed by such a mortgagee.”.

10 In the proposed section 29DA(12)—

- (a) in the English text, by deleting “with a” and substituting “on a”;
- (b) by adding “on sale” after “the conveyance”.

- 10 In the proposed section 29DA, by adding—
- “(13A) Paragraphs (a), (b), (c) and (d) of section 29D(6) also apply for the purposes of this section.”.
- 10 In the proposed section 29DA(14), by adding “on sale” after “the conveyance”.
- New By adding—
- “11A. Section 44 amended (Relief in case of gift to exempted institution)**
- Section 44(1)—
- Repeal**
- “or head”
- Substitute**
- “or (1AA) or ”.”.
- 12 By deleting everything after “Section” and substituting—
- “45(1)—
- Repeal**
- “, 2(1) and 2(3)”
- Substitute**
- “or (1AA) or 2(1) or (3)”.”.
- 14(2) In the proposed head 1(1AA), in Note 1, by deleting “section” and substituting “sections 29D and”.
- 14(2) In the proposed head 1(1AA), in paragraph (a) of Note 2, by adding “on sale” after “the conveyance”.

- 14(2) In the proposed head 1(1AA), in paragraph (b) of Note 2—
- (a) in the English text, by deleting “with” (wherever appearing) and substituting “in respect of”;
 - (b) by adding “on sale” after “the conveyance”.
- 14(2) In the proposed head 1(1AA), by deleting Note 3.
- 14 By adding—
- “(2A) First Schedule, head 1(1A), paragraph (B)—
Repeal
“section 29C(11) and”.
 - (2B) First Schedule, head 1(1A), Note 2, paragraph (a)—
Repeal
“but subject to section 29C(11)”.
 - (2C) First Schedule, head 1(1A), Note 2, paragraph (b)—
Repeal
“, or is endorsed under section 29C(13)(a)”.
 - (2D) First Schedule, head 1(1A), Note 3, paragraph (b)—
Repeal
“, or is endorsed under section 29C(13)(a)”.
 - (2E) First Schedule, head 1(1A), Note 3, paragraph (b)(ii)—
Repeal
“and section 29C(11)”.
- 14(3) In the proposed head 1(1B), in Note 1, by deleting “section” and substituting “sections 29C and”.

- 14(3) In the proposed head 1(1B), in the English text, in paragraph (b) of Note 2, by deleting “with” (wherever appearing) and substituting “in respect of”.
- 14(3) In the proposed head 1(1B), by adding—
- “Note 2A
A nomination made, or a direction given, by a purchaser as referred to in paragraph (h) of the definition of *agreement for sale* in section 29A(1) in favour of one, or more than one, person who is a parent, spouse, child, brother or sister of the purchaser (whether or not also in favour of the purchaser) is not chargeable with special stamp duty”.
- 14(3) In the proposed head 1(1B), in Note 3, by adding “; but a person and a brother or sister of that person are also to be treated as the same person for the purposes of special stamp duty” after “under head 1(1A)”.

Stamp Duty (Amendment) (No. 2) Bill 2010

Committee StageAmendments to be moved by the Honourable Abraham SHEK Lai-him, SBS, J.P.

<u>Clause</u>	<u>Amendment Proposed</u>
8 [NEGATIVED]	<p>In the proposed section 29CA(2), by deleting the full stop and substituting -</p> <p>“, and for the purpose of this section and that head, special stamp duty is not chargeable if a person acquired residential property comprising land without any building erected thereon and disposes of the property before any building is erected on the land, within the 24-month period.”.</p>
8 [NEGATIVED]	<p>In the proposed section 29CA, by adding -</p> <p>“(11) For the purpose of this section and head 1(1B) in the First Schedule, if a person acquired residential property from another person under an instrument on which stamp duty is not chargeable pursuant to section 29H(3) or 45, the date of acquisition of the property by that person shall be deemed to be the date on which the other person had acquired the property.”.</p>
10 [NEGATIVED]	<p>In the proposed section 29DA(2), by deleting the full stop and substituting -</p> <p>“, and for the purpose of this section and that head, special stamp duty is not chargeable if a person acquired residential property comprising land without any building erected thereon and disposes of the property before any building is erected on the land, within the 24-month period.”.</p>
10 [NEGATIVED]	<p>In the proposed section 29DA, by adding -</p> <p>“(13B) For the purpose of this section and head 1(1AA) in the First Schedule, if a person acquired residential property from another person under an instrument on which stamp duty is not chargeable pursuant to section 29H(3) or 45, the date of</p>

acquisition of the property by that person shall be deemed to be the date on which the other person had acquired the property.”.

New
[NEGATIVED]

By adding –

“13A. Section 69 added

Before the First Schedule –

Add

“69. Expiry of Stamp Duty (Amendment) Ordinance 2011

- (1) The amendments to this Ordinance effected by the Stamp Duty (Amendment) Ordinance 2011 (of 2011) shall expire at midnight on 19 May 2012.
- (2) The Legislative Council may by resolution amend subsection (1) by substituting for the date specified therein such date as may be specified in the resolution.”.”.

Appendix I**WRITTEN ANSWER****Written answer by the Secretary for Security to Mr LEE Wing-tat's urgent supplementary question to Question 2**

As regards the application of section 9 of the Fire Services Ordinance (Cap. 95) in requiring property owners to remove the interior alterations in their units, the Director of Fire Services is empowered under section 9 of the Ordinance that, if satisfied of the existence in or on any premises of any fire hazard, he may issue a notice to the relevant party requiring him/her to do such things as specified to abate the fire hazard within the period specified in the notice.

In exercising the above powers conferred under the Ordinance, the Director is required to have sufficient evidence indicating the existence of fire hazard in or on the premises instead of mere suspicion in order to issue the notice. Generally speaking, Fire Services Department (FSD) officers cannot judge from the exterior of the units whether any sub-divided unit works have been carried out inside and whether such works would constitute fire hazard. The FSD also indicates that the Department has not applied section 9 of the Ordinance to issue notice requiring property owners to remove the interior alternations in their units.

Appendix II**WRITTEN ANSWER****Written answer by the Secretary for Financial Services and the Treasury to Mr CHIM Pui-chung's supplementary question to Question 1**

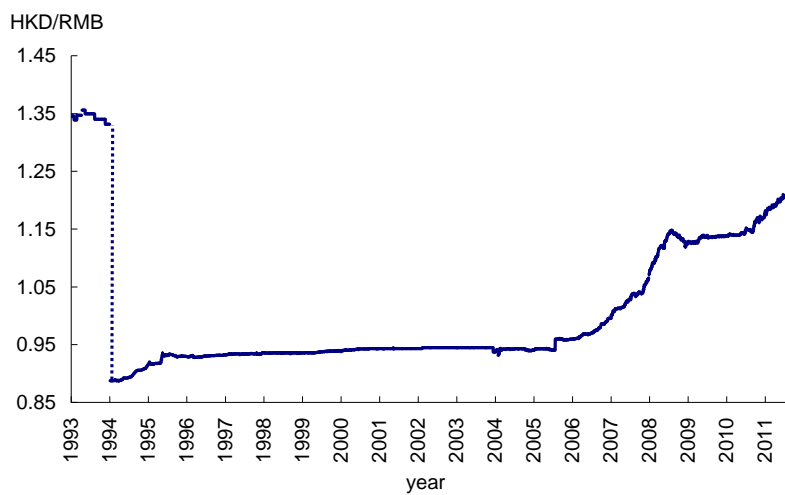
As regards the highest and lowest levels of the Renminbi (RMB) exchange rate against Hong Kong dollar in the past, the People's Bank of China announced the introduction of the managed floating regime for RMB on 1 January 1994 when the RMB/USD exchange rate was adjusted from RMB 5.8245 to RMB 8.7217 per US dollar. Accordingly, the HKD/RMB exchange rate also changed from HKD 1.3317 to HKD 0.8876 per RMB. The RMB/USD exchange rate basically remained unchanged between mid-1995 and June 2005.

The reform of the RMB exchange rate system entered a new phase on 21 July 2005 when it was announced that the RMB exchange rate would be managed with reference to a basket of currencies and would be allowed to change with greater flexibility. The RMB followed an appreciation trend against the US dollar thereafter until the outbreak of the global financial crisis in the third quarter of 2008. The RMB/USD exchange rate remained largely stable between August 2008 and mid-June 2010. Meanwhile, the RMB depreciated temporarily against the HK dollar between September and November 2010 due to a strengthening in the HK dollar against the US dollar, but remained largely unchanged from end-2008 to mid-June 2010.

The People's Bank of China announced the resumption of the reform of the RMB exchange rate system on 19 June 2010, and since then the RMB has returned to its previous appreciation trend against the US dollar. Accordingly, the RMB also appreciated against the HK dollar, exceeding 1.22 as of mid-October 2011. The chart below shows the exchange rate changes since 1994.

WRITTEN ANSWER — *Continued*

HKD/RMB exchange rate



Source: Census and Statistics Department