

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 29 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

THE HONOURABLE LEE CHEUK-YAN

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

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

DR THE HONOURABLE MARGARET NG

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

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

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

THE HONOURABLE LEUNG YIU-CHUNG

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

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

THE HONOURABLE LAU KONG-WAH, J.P.

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

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

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

THE HONOURABLE ANDREW CHENG KAR-FOO

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

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

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

THE HONOURABLE LI FUNG-YING, 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 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

MEMBERS ABSENT:

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

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

PUBLIC OFFICERS ATTENDING:

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

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

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

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

THE HONOURABLE GREGORY SO KAM-LEUNG, J.P.
SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT

CLERKS IN ATTENDANCE:

MS PAULINE NG MAN-WAH, SECRETARY GENERAL

MRS CONSTANCE LI TSOI YEUK-LIN, ASSISTANT SECRETARY
GENERAL

MISS ODELIA LEUNG HING-YEE, ASSISTANT SECRETARY GENERAL

MRS JUSTINA LAM CHENG BO-LING, 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>
Antiquities and Monuments (Declaration of Historical Building) Notice 2011.....	109/2011
Employees Retraining Ordinance (Amendment of Schedule 2) (No. 2) Notice 2011	110/2011

Other Papers

No. 97 — Airport Authority Hong Kong Annual Report 2010/11

Report No. 27/10-11 of the House Committee on Consideration of Subsidiary Legislation and Other Instruments

Report of the Bills Committee on Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Bill

Report of the Bills Committee on Buildings (Amendment) Bill 2010

Report of the Bills Committee on Communications Authority Bill

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

PRESIDENT (in Cantonese): Questions. I have permitted Mr CHAN Hak-kan and Mr CHEUNG Man-kwong to respectively ask an urgent question.

As both urgent questions are related to the issue of scarlet fever, to facilitate follow-up by Members, I will call upon the two Members to respectively raise their urgent question, and the Secretary to respectively give his reply to both questions, before asking Mr CHAN Hak-kan, Mr CHEUNG Man-kwong and other Members to raise supplementary questions in connection

with the two questions. I will adjust the time as appropriate to let Members raise supplementary questions.

First urgent question.

Measures to Control Outbreak of Scarlet Fever

1. **MR CHAN HAK-KAN** (in Cantonese): *President, thank you for giving me permission to ask this urgent question.*

President, the cumulative number of cases of scarlet fever (SF) this year has exceeded 600, nearly three times over the record high of 235 infected cases in 2008, and two fatal SF cases have occurred. An increase in the number of SF cases is also noted in neighbouring Macao and the Pearl River Delta (PRD) Region, reflecting that the epidemic is spreading in the region. At present, the epidemic in Hong Kong has not yet come under control and is posing a threat to the health of children. The Department of Microbiology of the University of Hong Kong (HKU) has earlier on performed a genetic study on the bacterium and discovered the condition of a mutated strain which increases its resistance to antibiotics and transmissibility. In this connection, will the Government inform this Council:

- (a) as the genetic mutation of the SF prevailing in Hong Kong at present has increased the disease's resistance to antibiotics and transmissibility, whether the Government has put in place emergency measures to cope with the spread of SF, such as guidelines on clinical practices and drug utilization, isolation arrangements and early commencement of the summer break for schools, and so on; if it has, of the circumstances under which the Government will implement such arrangements; if not, whether the Government is of the view that the SF epidemic at present is still under control and its impact on the health of the public is limited; and*
- (b) whether there is evidence showing signs of abnormality in the spread of SF in the PRD Region; if there is, whether the Hong Kong SAR Government, the Macao SAR Government and the health authorities of Guangdong Province have held discussions on the spread of SF and have explored immediate measures to deal with the situation?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, SF is a bacterial infection caused by Group A Streptococcus and mostly affects children under 10 years of age. The bacteria can be transmitted through either respiratory droplets or direct contact with infected respiratory secretions. For patients with suspected SF, the penicillin group of antibiotics is the treatment of choice and should be given for at least 10 days for effective treatment.

The Centre for Health Protection (CHP) under the Department of Health (DH) receives case reports of SF under the established statutory notification system. There has been an increase in the number of SF case reports since April this year.

The underlying reasons for the SF upsurge are being examined. The overall epidemiologic and clinical characteristics of SF cases in this outbreak resemble those in the past, although infrequently some cases may have atypical clinical presentation. The case fatality rate so far is not significantly higher than historical or international figures. In any case, we urge the general public to remain vigilant against the disease.

My response to the two parts of the question is as follows:

- (a) The Government is taking a multi-pronged approach to prevent and control SF in the community, as well as to cope with the potential rise in cases in the coming months.

The CHP is closely monitoring the situation and has been publishing online daily updates on the SF situation in Hong Kong. To enhance monitoring of severe SF cases in the community, the CHP has set up an enhanced surveillance mechanism with public and private hospitals for intensive care unit admissions or deaths associated with SF and Group A Streptococcus infection since 24 June 2011.

The Hospital Authority (HA) has devised guidelines on clinical and drug treatment guidelines in association with the CHP. It will monitor the utilization rates of Paediatric Intensive Care Units, remind front-line staff of the infection control measures, and ensure the supply of antibiotics.

In addition, the CHP, the HA and the HKU have been working in collaboration on laboratory testing for the bacterium causing SF, including tests on antimicrobial resistance, serotypes, virulence genes and the new gene fragment reported by the HKU.

At an earlier juncture, the CHP commissioned the Department of Microbiology of the HKU to perform genetic study on the bacterium (Group A Streptococcus) causing SF. A new genetic fragment was discovered in an isolate of Group A Streptococcus from a SF case in Hong Kong. Given the latest epidemiology and laboratory findings, the two relevant Scientific Committees under the CHP are of the view that the relation between this new genetic fragment and the current upsurge in SF requires further scientific investigations. So far, all the isolates detected are sensitive to penicillin.

On the publicity and education front, the CHP has stepped up publicity and health education with regard to SF prevention since June this year. The CHP has maintained close liaison and communication with stakeholders and healthcare workers. Letters have been issued to institutions and schools to promulgate prevention and control measures to prevent any potential spread of SF in schools and institution. Updated situation and information pertaining to clinical diagnosis and management of SF patients have been disseminated through letters to doctors and biweekly publication of Communicable Disease Watch.

For the general public, a new radio Announcement in the Public Interest on SF has been produced to strengthen public education. Health information on SF will be disseminated through various channels, including a designated webpage, posters and leaflets. The CHP has also given press briefings and interviews to update the public on preventive measures. These risk communication activities will go on in the coming weeks.

Regarding school outbreaks, only 7% of all SF cases are associated with school clusters and the number of persons affected in each cluster is small, ranging from two to seven persons. The CHP will

investigate SF outbreaks and give advice on the management of such cases and appropriate control measures. In special circumstances, the CHP may advise individual school with SF case(s) to suspend classes, taking into account the epidemiological assessment.

We expect high SF activity to persist into the summer. The DH has convened an interdepartmental meeting attended by representatives from the Social Welfare Department, Education Bureau, Home Affairs Department, Food and Environmental Hygiene Department, Leisure and Cultural Services Department, Information Services Department and the HA to plan for the preventive strategies in the coming summer holidays. Various government departments will work together to strengthen hygiene measures and publicity on SF at different venues.

- (b) The CHP notes a simultaneous increase of SF cases in Mainland China and Macao, where the condition is a notifiable disease as in Hong Kong. The rise of SF cases in Hong Kong is likely a regional phenomenon. Of the 637 SF cases reported this year, only 10 cases had history of visiting Mainland China during the incubation period. Based on the Cooperation Agreement on Contingency Measures during Public Health Emergency signed between Guangdong, Hong Kong and Macao, the three places regularly exchange statistics and control measures of infectious diseases such as SF, and notify the concerned counterpart for cross-boundary incidents. Health authorities of Guangdong, Hong Kong and Macao have exchanged the surveillance data and the analysis of SF in view of the rising number of cases this year.

PRESIDENT (in Cantonese): Second urgent question.

Preventive Measures to Avoid Further Spread of Scarlet Fever

2. **MR CHEUNG MAN-KWONG** (in Cantonese): *President, there has been a rapid increase in the number of cases of scarlet fever (SF) infection in recent*

months, including the fatal cases of two young children, and a study conducted by the University of Hong Kong has revealed that a mutated strain of the SF bacterium has increased its transmissibility. Some microbiologists have pointed out that such genetic variation of the bacterium may be attributed to the abuse of antibiotics, which is an issue that the Government should address proactively and seriously. In this connection, will the Government inform this Council:

- (a) whether it knows if the SF bacterium with mutated strain has been found in other countries or regions; whether there was a rapid increase in the number of SF infection cases in the neighbouring regions recently; whether cases found in Hong Kong are mainly local infectious cases or imported cases from other regions; whether the authorities have examined if there is a need to boost surveillance measures at entry control points;
- (b) of the respective numbers of cases with complications and even causing death due to contracting SF in each of the past six months; whether the critical cases are caused by the mutated bacterium; whether it has affected treatment method; if so, whether the authorities have provided public and private medical practitioners with the relevant information; and
- (c) what emergency measures have been put in place to prevent the epidemic from worsening; given that most patients are young children and institutional outbreaks have happened in kindergartens, child care centres and primary schools, what measures the authorities have to prevent large-scale outbreaks in schools and organizations holding summer activities; and under what circumstances requests will be initiated for closure of nurseries, kindergartens, child care centres and secondary and primary schools or early commencement of the summer break?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, my response to the three parts of the question is as follows:

- (a) The Centre for Health Protection (CHP) of the Department of Health (DH) has been monitoring SF in Hong Kong and neighbouring areas.

The CHP notes a simultaneous increase of SF cases in Mainland China and Macao, where the condition is a notifiable disease as in Hong Kong. The rise of SF cases in Hong Kong is likely a regional phenomenon. Of the 637 SF cases reported this year, only 10 cases had history of visiting Mainland China during the incubation period. The remaining were local cases.

It should be noted that SF is not a notifiable disease in many neighbouring countries such as Singapore, Australia, New Zealand and Malaysia.

We will maintain vigilance on suspected cases of SF at boundary control points. We may advise travellers to seek medical attention or refer severe cases to hospital.

- (b) As of 28 June, there have been four SF cases with complications and two fatal cases of SF in Hong Kong. Details are set out in the Annex.

Laboratory investigation of the two fatal cases showed that two different strains of Group A Streptococcus were involved (emm type 1 and emm type 12).

The CHP, the Hospital Authority and the University of Hong Kong (HKU) have been working in collaboration on laboratory testing for the bacterium causing SF, including tests on antimicrobial resistance, serotypes, virulence genes and the new gene fragment reported by the HKU. Further studies will be done to characterize the role and prevalence of the new genetic change and to project the outlook of the outbreak over time.

So far, all the Group A Streptococcus isolates detected are sensitive to penicillin, meaning that all antibiotics belonging to the penicillin group or first generation cephalosporins can effectively treat SF.

Local antibiotic resistance surveillance data showed that around 50% to 60% of Group A Streptococcus isolated in 2011 are resistant to erythromycin (which also predicts resistance to azithromycin and

clarithromycin). As a result, antibiotics belonging to the macrolide group (for example, erythromycin) should not be used as empirical treatment for SF. Updated situation and information pertaining to clinical diagnosis and management of SF patients have been disseminated through letters to doctors and biweekly publication of Communicable Disease Watch.

- (c) The majority of SF cases are sporadic. Only 7% of the cases are associated with school clusters and the number of persons affected in each cluster has been small, ranging from two to seven persons. The CHP will investigate SF outbreaks and give advice on the management of such cases and appropriate control measures. In special circumstances, the CHP may advise individual school with SF case(s) to suspend classes, taking into account the epidemiological assessment.

We expect high SF activity to persist into the summer. The DH has convened an interdepartmental meeting attended by representatives from the Social Welfare Department (SWD), Education Bureau, Home Affairs Department, Food and Environmental Hygiene Department (FEHD), Leisure and Cultural Services Department (LCSD), Information Services Department (ISD) and Hospital Authority (HA) to plan for the preventive strategies in the coming summer holidays. Various government departments will work together to strengthen hygiene measures and publicity on SF at different venues.

The CHP has stepped up publicity and health education with regard to SF prevention since June this year. The CHP has maintained close liaison and communication with stakeholders and healthcare workers. Letters have been issued to institutions and schools to promulgate prevention and control measures to prevent any potential spread of SF in schools and institution.

For the general public, a new radio Announcement in the Public Interest on SF has been produced to strengthen public education. Health information on SF will be disseminated through various channels, including a designated webpage, posters and leaflets.

The CHP has also given press briefings and interviews to update the public on preventive measures. These risk communication activities will go on in the coming weeks.

Annex

Cases of SF with complications and fatal SF cases in 2011

<i>Month</i>	<i>Number of SF cases with complications</i>	<i>Number of fatal SF case</i>
Jan 2011	Nil	Nil
Feb 2011	Nil	Nil
Mar 2011	Nil	Nil
Apr 2011	Two cases of Toxic Shock Syndrome, discharged	Nil
May 2011	One case of parapharyngeal abscess, discharged	One fatal case of Toxic Shock Syndrome (female aged seven)
Jun 2011	One case of paraspinal abscess with septicemia, discharged	One fatal case of Toxic Shock Syndrome (male aged five)

MR CHAN HAK-KAN (in Cantonese): *President, now, we should place our focus of surveillance on SF on schools, but two weeks later, it should be shifted to such places as music rooms, tutorial centres and studios where children often attend summer classes, because an outbreak is probable in these places where many children would gather. May I ask the Government whether it will issue health notifications or guidelines to these institutions? Once an SF outbreak occurs in these studios, tutorial centres or music rooms, will the Government ask them to suspend operation in order to protect the health of the children?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): *President, we certainly know that SF is more likely to affect children under 10 years of age, especially those aged two to eight. Therefore, so far as the present situation is*

concerned, all may be affected, be they nurseries, kindergartens or primary schools. We understand that it is imperative to focus on children's usual activities, but families are also an important target. Apart from notifying schools, residential care homes, nurseries and kindergartens, we also hope to arouse the attention of parents through other channels.

This disease is rather special in that it is characterized by a very short incubation period, which may be just one day or two, and its early symptoms are similar to those of colds and coughs. All the patients will exhibit fever and sore throat, but when symptoms, conspicuous or otherwise, are found on the skin, the disease turns out to be not hard to diagnose. Hence if parents and schools notice such conditions in children, they should seek medical consultation as soon as possible and let the children rest at home. Another peculiarity is that, once an antibiotic is prescribed and the patient has taken it for a couple of day, the transmissibility will be reduced significantly. Therefore, it is imperative that any party, be it schools or organizers of summer activities or classes, who have noticed such symptoms in children should tell the parents as soon as possible to seek medical consultation for their children, so as to reduce the risk of infection.

Given that this is a notifiable disease, once we have found a case, the CHP will follow up immediately. If more than one child attending a summer class or an activity exhibits such symptoms, the CHP may, depending on the circumstances, request in due course the taking of certain measures, including class suspension or follow-up on the conditions of other children. I believe the DH will closely monitor the situation, and I hope as well that all the parents and organizers of summer activities will co-operate with the Government by all means.

MR CHEUNG MAN-KWONG (in Cantonese): *President, Prof YUEN Kwok-yung of the HKU said that this year marked the four-yearly peak period for SF, but why had the Government not enhanced publicity to put parents and children on guard prior to the epidemic outbreak? Besides, the reported cases suggest that the number of SF cases soared to 75 in April and hit 100 in May this year, and the annex to the main reply also reveals occurrences of complications and even fatal cases in April and May, but it was not until June that the Government informed the public and stepped up publicity and health education on SF. Is this an indication of neglect and late action on the part of the*

Government? Is the Government lacking in sensitivity and ability to deal with contingencies, resulting in the exacerbation and spreading of SF?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): We note the figures every year. As SF is a notifiable disease, we note the figures every week. The number of cases in question showed an increase mainly in May. Those fatal cases occurred also only in May and June. I remember having said in May that we were concerned about the rising trend of SF, and having at the same time requested the HKU to perform genetic testing on the SF-causing bacterium Group A Streptococcus to identify any genetic variations. The result confirms the occurrence of certain variations. Therefore, so far as the figures are concerned, it was not until May that we noticed an initial rise, but we also informed all sectors in the community at the same time.

Apart from considering increasing public vigilance against this kind of infectious disease, we must ensure that normal social activities, including school activities, are maintained. Hence, we will definitely keep a close watch on the situation and then decide whether or not to take any special measures, such as restricting certain activities. In this regard, the DH will definitely keep a close eye on it.

We believe it is more likely that the peak period commences from the second week of June. We have also noticed that the peak period may last for a longer period of time, especially if genetic variations have occurred. According to the experts, in general, a longer peak period will occur once every four to five years. Given the occurrence of genetic variations, the current peak period may be longer, and the number of cases may continue to rise as well. Therefore, we envisage that the risk and severity of SF in this summer will warrant our concern.

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

MR CHEUNG MAN-KWONG (in Cantonese): *No. Prof YUEN Kwok-yung of the HKU said that this year marked the four-yearly peak period for SF, and indeed 75 cases were found in April. My supplementary question just now is:*

Why was it not until June that the Government launched community-wide publicity? Why was the Government not engaged in any preparation prior to the revelation of a four-yearly peak period?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, the so-called four years means an average of four years, not that there will definitely be a peak period every four years. Members must understand that, in general, there may be a peak period every four to five years, but not necessarily one in the fourth or fifth year. Elections may be held once every four years, but it is not the case for the occurrence of a peak period. Hence, we must define our work in response to the trend, and at the same time properly convey the epidemic status to the public.

DR JOSEPH LEE (in Cantonese): *President, the Secretary said earlier that the peak period for SF would be longer, but right now the summer break is underway. We can all see that, more often than not, children present only cold-like symptoms at the onset of SF, so it is relatively difficult to notice their contraction of the disease. Given our knowledge that a lot of factors have emerged now, and that the nurseries do not have a very long summer break actually, and thus children still have to continue with their classes and attend many summer classes, may I ask the Secretary whether he will, having regard to the situation, establish an effective early warning mechanism, so as to let parents know when the schools may suspend classes and keep them posted of the epidemic status?*

The Secretary mentioned in the main reply that class suspension will be considered in exceptional circumstances, but it is difficult for members of the public to grasp the meaning of "exceptional circumstances". So, can the Secretary systematically develop an early warning mechanism to state the level of the current epidemic, with a view to facilitating parents in making a decision whether to let their children return to school for classes or to let them stay at home?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, parents nowadays love and care about their children very much. Should they learn about an SF outbreak in places where activities are held, they would very likely

have opted right away not to let their children participate in the activities. This point is very important. Moreover, we must cope with the circumstances of different cases. If more than one child is infected at the same time in a school or a summer class, we can be certain that transmissibility has increased and some measures must be taken. The CHP will also decide what actions to take and when to take them, based on the development of the situation.

If complications or deaths occur in children, everybody in the group would inevitably panic in some measure. For instance, despite there being no more fatal cases since the last one, the CHP has meanwhile discussed with the schools and suggested that they should first suspend classes for a week and carry out thorough cleansing before resumption. So, we will make a decision based on different factors. Having said that, Members must also understand that despite our considerable attention to infectious diseases, we should also provide children with appropriate activities, instead of keeping them at home throughout the summer break.

We must strike a balance in this regard. The Government and relevant authorities will keep a close watch on the situation of the schools and the parties concerned, particularly those who will use public places, and intervene where necessary to assist the operators or the management of the places concerned in making appropriate decisions.

MR FRED LI (in Cantonese): *President, I would like to follow up the Government's main reply given to Mr CHEUNG Man-kwong. Just now the Secretary also mentioned that the genes had undergone some variations, and Prof YUEN Kwok-yung also said recently that the most significant cause leading to the genetic variations might be the resistance to erythromycin in 50% to 60% of the bacteria due to the frequent abuse of antibiotics by the agriculture and fishery industries, the public and the medical practitioners.*

Can the Secretary tell me how the Government will reduce the abuse of antibiotics among the public, medical practitioners or the agriculture and fishery industries? The abuse of antibiotics may possibly increase drug resistance, rendering us unable to prescribe proper medication, nor contain the spread of virus and bring the epidemic under control as soon as possible.

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, the causes of drug resistance are numerous, the abuse of certain drugs being probably just one of them. As to why the current SF bacteria have developed resistance to erythromycin, we need to conduct a detailed study before drawing a conclusion.

It must be noted that it is most imperative for medical practitioners to prescribe proper medication, but many infectious diseases, particularly those caused by viruses, do not warrant the prescription of antibiotics right at the onset. Anyway, it is up to the medical practitioners to make their own judgments and decisions. Most importantly, in the meantime we do not want members of the public to rashly buy antibiotics from pharmacies of their own accord. Indeed, some pharmacies sell antibiotics to members of the public in defiance of regulations. We should make greater efforts in this regard.

As regards the agriculture and fishery industries, the AFCD carries out very strict surveillance on the farms in Hong Kong. It knows full well which pesticides the farms use, or which antibiotics they use in raising pigs and chickens, and so on. Hence we believe the present surveillance practice in Hong Kong is rather effective. As for places outside Hong Kong, of course, it should be the governments of those places that are responsible for the monitoring.

We now see an increase of cases throughout the whole region, including the Mainland, Macao and Hong Kong, but it is inconclusive as to whether or not such cases involve the same species, that is, whether or not the DNAs from the three places turned into a new species at the same time. However, after gathering experts from the three places to conduct more studies, we will be able to analyse whether such a scenario has occurred.

In regard to the increase of cases, we have found that the present situation represents simultaneous increases. In other words, it is not that a preceding increase in Hong Kong affected the Mainland afterwards, nor *vice versa*. Therefore, we cannot conclude at this moment as to whether or not the current epidemic has spread from one place to another.

DR PAN PEY-CHYOU (in Cantonese): *President, in connection with the current SF outbreak, I think there are several points to note. First, penicillin and the first generation cephalosporins are effective against the current bacteria.*

This fact reflects that apparently there seems no direct relationship with the abuse of antibiotics in humans. Second, the current outbreak throughout the PRD Region reflects the regional nature of the epidemic. Third, only a few patients in local cases have visited the Mainland.

In my view, the current incident shows that the transmission path for the epidemic bacteria seems to have changed. We used to think that Hong Kong people got infected in the Mainland, but with the ever more frequent interactions between the Mainland and Hong Kong, as well as the increasing number of Mainlanders visiting Hong Kong, would it be more likely that the epidemic outbreak occurred in Hong Kong only because Mainlanders transmitted the bacteria to Hong Kong people after their arrival? SARS is a very good example. At the beginning, someone from the Mainland brought the virus to Hong Kong, and then an outbreak followed. In view of this, do we need to review the mode of transmission of infectious diseases in a different manner? I think

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

DR PAN PEY-CHYOU (in Cantonese): *Yes. May I ask the Government whether it will re-examine the epidemic notification practices in Hong Kong and the Mainland in connection with the path of the current SF outbreak? I am particularly concerned that, with the ever more frequent interactions between Hong Kong and the Mainland, some epidemics which occurred in the inland areas of the Mainland and rarely in Hong Kong in the past would also spread to Hong Kong now. In this connection, will the Government step up communication and notification with the Mainland?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, so far as epidemics are concerned, basically there are no regional or national boundaries. As long as people keep entering and leaving Hong Kong, I believe the risk is always there. Those people entering and leaving Hong Kong are not necessarily only Mainlanders. There are also quite a large number of foreigners visiting Hong Kong.

As regards the bacterium that triggers SF, this type is slightly different from SARS or other viruses because, more often than not, it already exists inside the bodies of Hong Kong people, only to not trigger the disease yet. Hence, the so-called bacteria reservoir still exists, unlike the case of SARS. If there is no place for the reproduction of SARS virus during a SARS outbreak, it cannot continue to spread. Therefore, it requires long-term monitoring to understand why the streptococcal bacteria in the current instance would undergo genetic variation.

Moreover, we maintain very frequent communication with the Mainland in all respects. If necessary, we can basically communicate 24 hours a day, seven days a week. Of course, so far as the present issue is concerned, we will take the bacteria found in the Mainland for a comparison. Where necessary, we will also discuss with the Mainland to see how to deal with the problem. Therefore, notification is not a major issue.

Regarding the kind of disease in the current instance, as there are drugs for radical cure and, above all, some very commonly used firstline antibiotics can be used, we are not particularly concerned about treatment, but rather about the transmission. We note that with a transmissibility stronger than ever before, and a fast transmission speed, it may infect many young children. Therefore, we urge the public to definitely consult a doctor for proper medication without delay if their children feel sick.

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

Members must clearly and precisely raise their questions, so that the Secretary knows how to reply. If Members make lengthy arguments, I cannot grasp your questions. Dr PAN, please repeat your earlier supplementary question.

DR PAN PEY-CHYOU (in Cantonese): *President, I would like to give a brief explanation, because the reasoning here is rather complicated*

PRESIDENT (in Cantonese): What is your earlier supplementary question?

DR PAN PEY-CHYOU (in Cantonese): *I just wish to ask whether the Government will step up communication with the Mainland. He said that there is already a mechanism in place, but whether it will be used or not is critical.*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, of course, we will communicate with the Mainland only when there is something for a substantive discussion. On the issue of SF, we often communicate with the Mainland. We will not just notify them of our infection figures every day, but also inform them of our new findings on gene sequencing. Meanwhile, they are also conducting studies. Once new findings are made, they will inform us as soon as possible.

MR ALBERT HO (in Cantonese): *President, the Secretary said in his earlier reply that the bacterium Group A Streptococcus can be transmitted through droplets or respiratory secretions, but according to Dr WONG Sai Yin Samson, Assistant Professor of the Department of Microbiology of the HKU, experiments proved that such bacteria can survive on a substance for more than a month, and hence he has reasons to infer that this type of bacterium can exist in food, through which it then spreads around.*

Secretary, can you clarify this, because your reply to the first main question earlier is not comprehensive enough to cover the issue of transmission through food? If this type of bacterium can spread through food, can you tell the public how to avoid infection through food?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, this is the very difference between virus and bacterium. In general, viruses reproduce and propagate only in the human body, whereas bacteria can survive even in the natural environment. All in all, those circumstances described by the Members do exist. As for infection, it can be acquired only through contact. In the case of the most common SF, particularly the infection by this type of Streptococcus, the disease is triggered via the respiratory tract. For instance, when breathing,

we exhale a large quantity of bacteria, which may attach to other places together with saliva, nasal mucus, and so on. Then our chance of infection is greatly increased. Even if the bacteria attach to an inanimate object, they can still survive, only to not reproduce plentifully, and thus our chance of infection is relatively low. For each infectious disease, we will let the public know the most common channels and factors of transmission.

The current SF is basically a respiratory tract infectious disease. We are particularly concerned that as children often play together, study together and are in close physical contact, they stand a higher chance of infection. Instead, the chance of infection through food is smaller. I am not saying that there is no such chance, but compared with the infection through human contact or secretions, the chance of infection through food is lower.

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

MR ALBERT HO (in Cantonese): *Although the Secretary said that the chance of transmission through food is not great, he has not yet answered how we can avoid infection through food?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, as far as I know, many food-borne bacteria carry higher risks than those for SF. It is imperative for us to advise everybody to be careful in eating food and refrain from eating unclean food. Regarding SF, as the chance of infection through contact with infected patients is relatively great, it is most preferable to let sick young children stay at home in isolation.

MS AUDREY EU (in Cantonese): *YUEN Kwok-yung told us that the bacterial mutation in the current instance was mainly related to the abuse of antibiotics. President, he even said that the status of abuse had reached a "critical point".*

Many Hong Kong people have to work or cope with examinations. If we suffer from a disease, we would naturally hope to recover as soon as possible.

More often than not, we will take medication according to the doctor's instructions, but how should we interpret the "abuse of antibiotics"? Should we refrain from taking antibiotics right at the onset of illness, or otherwise take them for up to seven days? However, YUEN Kwok-yung said that it is not just unnecessary but also a misunderstanding that one should take them for up to seven days. So, I hope that the Secretary can explain to us today what is meant by the abuse of antibiotics, and what is meant by the critical point? YUEN Kwok-yung said that the Government should take it seriously. Then, what will the Government do to make members of the public understand eventually how to not abuse antibiotics?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, of course, it would be ideal for Prof YUEN to give an explanation, but in general, the abuse of antibiotics refers to use under inappropriate circumstances, including the prescription of antibiotics for diseases not requiring such prescription. For instance, in the cases of common cold and flu, which are mostly caused by viruses, the medical practitioners should observe the patients for some time before deciding whether to prescribe antibiotics or not. However, in exceptional circumstances, for example, where the patient's immunity is relatively weak or he is suffering from other chronic diseases, the doctor would be worried that the patient may have been infected by some other bacteria in addition to the virus. Under such circumstances, the doctor may sometimes prescribe antibiotics. So we should not stick to an old formula forever and require each and every medical practitioner to follow the guidelines. Medical practitioners should prescribe medication that meets the specific needs of the patients. Therefore, I think that the experience and knowledge of the medical practitioners are very important.

As regards the definition of critical point, preferably, it should be the person who made this remark to explain the meaning. The issue of antibiotic resistance exists in Hong Kong, but notably we are in a better situation than some advanced countries. For example, we outperform foreign countries in controlling the so-called MRSA virus, which is most frequently studied in Hong Kong. That said, by no means we should feel complacent about it. We will definitely continue to make greater efforts in this regard, especially in regard to hospitals. Most hospitals, including all public hospitals, have surveillance systems in place to monitor the proper use of antibiotics, as well as the new trends in bacteria and viruses. Our studies in this aspect are quite abundant. Experts

from the DH and the HA will continue to monitor the natural ecology of bacteria and viruses in Hong Kong. In this connection, we will issue guidelines to medical practitioners on the use of antibiotics, which is quite important. We opine that the level achieved by Hong Kong is not low, not in the least. Certainly, the risk is always there that constant changes in the natural ecology bring about new viruses and bacteria, but most importantly, we can be aware of the situation and think up counter-measures as soon as possible.

PRESIDENT (in Cantonese): Last supplementary.

MS STARRY LEE (in Cantonese): *President, as a result of the continual rise in cases of SF infection, as well as the occurrence of fatal cases, parents feel very scared. My daughter is under 10 years old and thus belongs to the high-risk group. Earlier on, her whole body heated up, causing me great fear. So I spent plenty of time trying to understand what SF is and what symptoms this kind of disease exhibits.*

Insofar as children under the age of 10 are concerned, their self-care ability or awareness of precaution is very weak. As Mr CHAN Hak-kan said earlier, in tandem with the imminent launch of summer activities, the future "battlefields" should be places where more children gather, including some places where many activities such as swimming classes and music classes are held, as well as tutorial centres. I have this supplementary question. If parents know that there are infected children in the class or group, they will certainly not let their children attend. However, most of the classes and groups are privately operated. Will the Secretary tell all the parents in Hong Kong through which channel they can know whether any children attending the same class or group as theirs have been infected?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, the CHP under the DH will continue with its publicity and contact all the places where activities for young children will be organized, including schools and nurseries. In fact, many activities are held in these places, but some are held in public places as well, such as those organized by the LCSD or other organizations. We will step up publicity among parents.

Most importantly, parents should take care of their children before all else. If their children suffer from a disease, the parents should, by all means, refrain from letting them participate in any activities because they may affect other people. As regards operators and activity organizers, they should also note that if children participating in the activities are found suffering from a disease, they should give adequate advice to parents, telling them in what circumstances should their children be disallowed from participating in the activities lest the whole event would be affected. I think that it requires co-operation from various parties to tackle the problem. The Government will continue with its publicity and contact those operators who are accessible. Nevertheless, I think that, more often than not, parents must play their part and be vigilant in this regard.

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

MS STARRY LEE (in Cantonese): *President, the Secretary has not answered my supplementary question, which was very clearly put. I asked about privately organized summer activities. In the case of activities organized for young children by schools, I am confident that parents will know the situation, but how can we let parents know whether any young children participating in privately organized summer activities have been infected? The Secretary seems to have said that there is no way to know it. Is this what he meant?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, as I said just now, parents have the responsibility to check the situation with the organizers, but most importantly, it does not mean that once infected, the young children cannot take summer classes. Upon recovery, they can continue to participate in the activities. Therefore, most important of all, if all the young children participating in an activity are healthy, the risk is rather low, but if any of them attends the event despite an illness, other children may be affected. I think we need to understand that we are not saying that children infected with SF today cannot participate in any activities throughout the whole summer break. They can participate in activities as usual, provided that they have taken medication and recovered. Therefore, we have to understand this and not to overly panic. We should deal with the issue in a reasonable way.

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): First question.

Rising Property Prices

1. **MR WONG KWOK-KIN** (in Cantonese): *President, it has been reported that in the recent two years, the Hong Kong property market has been heating up and the cumulative increase in property prices has exceeded 60%, while the prices of some properties have even exceeded the high levels in 1997. Quite a number of members of the public consider that the continuous influx of capital from the Mainland and external sources has led to the continuous increase in property prices, which are already beyond the affordability of the general public. In this connection, will the Government inform this Council:*

- (a) *among the property transactions registered in the past three years, of the respective ratios of transactions involving local buyers to those involving non-local buyers, broken down by flat size, that is, below 40 sq m, 40 sq m to 69.9 sq m, 70 sq m to 99.9 sq m, 100 sq m to 159.9 sq m and 160 sq m or above; given that the Chief Executive earlier indicated at a Question and Answer Session of this Council that only when faced with "a hopeless situation" would the Government consider imposing restrictions on the target buyers of local properties, what specific situation was the "hopeless situation" the Chief Executive was referring to;*
- (b) *whether the authorities have assessed the trend of capital from the Mainland or Mainlanders entering the local property market, as well as its impact on the local community and economy as a result; if they have, of the specific situation; whether they have assessed the additional number of residential sites and flats that have to be provided each year in order to meet the demand for properties in Hong Kong; and*
- (c) *apart from "My Home Purchase Plan", whether the authorities will introduce in the near future other subsidized housing measures to assist the local citizens who wish to buy properties for*

self-occupation in acquiring home ownership by such means; if they will, of the specific measures?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, the Government has been monitoring developments in the private residential property market closely and remains vigilant on the risks of a property bubble. The current property market situation is very unusual. Over the past year or so, the property market was vibrant primarily because of the abundant liquidity and the ultra-low interest rates over a considerable period of time. The Government has repeatedly reminded the public that an environment with abundant liquidity and ultra-low interest rates will not last forever, flat prices will not keep going up forever, and that people should be careful of the potential impact of increases in interest rate on the property market and should carefully assess the risks and their own financial ability when making a home purchase decision. Since last year, the Government has been responding to the situation through the introduction of long, medium and short-term measures in four directions, including 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, with a view to ensuring the healthy and stable development of the property market.

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

- (a) Given that Hong Kong does not have restrictions on the movement of foreign investments, the Land Registry (LR) only records local property transactions which are registered with the LR, but does not have breakdown on the number of transactions by people from outside Hong Kong or Mainlanders, or information on the purpose of their flat purchase.

The Administration has never imposed restriction on any persons in the purchase or transfer of residential properties. The proposal to restrict the purchase of residential properties in Hong Kong by people from outside Hong Kong, including Mainlanders, is a major policy change. When considering this proposal, we have to take into account its impact on the free movement of capital which is a factor of success to the Hong Kong economy, Hong Kong's status as

an international financial centre, the long-term economic development of Hong Kong, market response and implementation problems. As Hong Kong is an externally-oriented economy, we have to be very careful about the possible consequence of imposing specific restriction on investments by people from outside Hong Kong.

- (b) The Administration has not conducted an assessment specifically on the trend of capital from the Mainland or Mainlanders entering the local property market. On the overall demand for housing, our experience showed that the hard figures estimated by any model could not accurately quantify demand, in particular demand in the private residential market which is affected by many factors, including changes in socio-economic environment such as market sentiment, liquidity and interest rate which would have an impact on demand. Also, external factors such as the "quantitative easing" or adjustment measures of other regions and the changes in interest rates have added difficulties for us to project or assess the demand for housing from local and non-local investors. Any estimation will likely be very different from the actual situation.

In the long term, the Government will increase the supply of land in response to market need, with a view to tackling the problem at source. The Government has set the target of making available land for an average of some 20 000 private residential flats per annum in the next 10 years. It is estimated that the housing land available for private residential development in 2011-2012 may generate about 35 000 units.

As regards public housing, the Hong Kong Housing Authority (HA) has a five-year rolling Public Housing Construction Programme (PHCP), with suitable adjustments made annually to the programme to respond to the latest demand and supply situation. In the five-year period of 2011-2012 to 2015-2016, the total forecast production of public rental housing (PRH) is about 75 000 flats, that is, an average of about 15 000 flats per year. The HA estimates that this level of production, together with the recovered flats from the existing stock, will allow the Government to meet its policy

objective of maintaining the average waiting time for general PRH applicants at around three years. At present, the average waiting time for general PRH applicants is two years. Following the upward adjustment of Waiting List Income and Asset Limits on 1 April 2011 by the HA, an additional 25 000 or so non-owner occupied households in the private sector will become eligible for public housing. We will closely monitor how this may increase the pressure for PRH flats, and suitably adjust the PHCP as necessary, in order to maintain the target of average waiting time for general PRH applicants at around three years.

- (c) We need to address housing issues using a macro and holistic approach. The Government recognizes the importance of a stable home. In the long term, the Government will increase the supply of land in response to market need, with a view to tackling the problem at source. In the face of short-term property price fluctuations, a better way is to provide a buffer to facilitate those households which have home purchase plans and the ability to pay mortgages in the long run but cannot immediately afford the down payment, to save up over a period of time for home purchase. The Government will introduce the "My Home Purchase Plan" in collaboration with the Hong Kong Housing Society.

There have been calls for the resumption of the Home Ownership Scheme (HOS) or other forms of subsidy for home purchase in the community. Behind this is the aspiration for more opportunities and choices for the public to purchase affordable homes. As the Financial Secretary has mentioned earlier, the Chief Executive will respond to this issue in this year's policy address.

I have to emphasize that subsidized housing schemes are not measures to suppress flat prices. Nor are they the tools to adjust the property market. Private flat prices are affected by various factors, such as demand and supply of residential units, economic situation, and the movement of interest rates, and so on. Experience showed that the provision of subsidized sale flats could not tackle cyclic problems, and could not mitigate short-term fluctuations in the market. Take the HOS as an example, during 1996 and 1997, a

total of 46 000 subsidized sale flats were launched for sale but private residential property prices increased by more than 50% during the same period. Any form of subsidized home ownership scheme will only serve as a buffer.

The various measures which the Government has taken in the four directions since February 2010 to ensure the healthy and stable development of the property market are appropriate and timely. On housing land supply, the Government has set the target of making available land for an average of some 20 000 private residential flats per annum in the next 10 years. It is estimated that the housing land available for private residential development in 2011-2012 may generate about 35 000 units, which exceeds the 20 000 target announced last year. The effect of the Special Stamp Duty (SSD) has been obvious in curbing short-term speculative activities. Statistics show that there were only 72 subsale cases (that is, confirmor cases) in April 2011 as compared to the monthly average of about 320 cases in the first 11 months of 2010 before the Government announced the introduction of the SSD, which represents a decrease of 78%. In order to further enhance the regulation of the sale of first-hand private residential properties, the Transport and Housing Bureau has set up the Steering Committee on the Regulation of the Sale of First-hand Residential Properties by Legislation (the Steering Committee) to discuss specific issues pertaining to the regulation of the sale of first-hand properties by legislation. The Steering Committee commenced work in November 2010 and will come up with practical recommendations for the consideration of the Transport and Housing Bureau by October 2011. Also, the Hong Kong Monetary Authority introduced new prudential supervisory measures for mortgage lending on 10 June 2011. The maximum loan-to-value (LTV) ratio for residential properties with a value below HK\$7 million remains to be 70% with the maximum loan amount capped at HK\$4.2 million. The maximum LTV ratio for residential properties with a value at HK\$7 million or above is further lowered. We believe the basket of measures will help ensure the stability of the property market.

President, the Government will continue to closely monitor the market, and will take appropriate measures as and when necessary to ensure the healthy and stable development of the property market.

MR WONG KWOK-KIN (in Cantonese): *President, I note with much regret that the reply from the Government is still officialese in the extreme. Obviously, the property market in Hong Kong now is very much affected by foreign capital. This is evident to all. But in parts (a) and (b) of the Secretary's reply, it is clearly stated that the Government has not done any analyses or statistics on the inflow of foreign capital into the local market. Nor is there any monitoring or assessment on the impact of foreign capital on the same. In such circumstances, how can we devise a comprehensive housing policy? With respect to the supply of PRH, there is no sincerity or foresight on the part of the Government and it shows a terrible fear for any possible impact on the property market. The obvious evidence of that is that once there were rumours last week about the possible resumption of production of Home Ownership Scheme (HOS) flats, sales in the second-hand property market and that of small flats started to slow down, and property prices ceased climbing in tandem. But officials came out immediately to blatantly prop up the market. The Director of Housing, Duncan PESCOD, came out immediately and said that it would take seven years for the HOS to resume production, if ever. It was an attempt to ease the impact of the resumption of the production of HOS flats on the property market. This is utterly unfair to those people aspiring to home ownership.*

I would like to ask the Government a further question. I asked clearly in my main question earlier about the Chief Executive indicating at a Question and Answer Session of this Council that only when faced with a "hopeless situation" would the Government consider imposing restrictions on target buyers of local properties. What in fact was the Chief Executive referring to when he talked about a "hopeless situation"? The Secretary did not answer that at all when she gave the reply earlier. I hope the Secretary can explain clearly what is meant by a "hopeless situation".

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, first of all, I must say that I strongly disagree with what Mr WONG Kwok-kin said just now, that we use a public housing policy to prop up the

market. It is entirely incorrect. The public housing policy is so positioned as to target those who cannot afford renting a flat in the private sector market. It is a form of care for these people. According to the logic of Mr WONG, why did we have to raise the income ceiling and asset limit on 1 April so that 25 000 households now living in private buildings can become PRH tenants? Members of the Subsidised Housing Committee — and Mr WONG is also a member of it — agreed during its discussion the other day that this move should be taken. The PRH policy is the cornerstone of our housing policy and it is meant to provide a steady policy for those who cannot afford a home in the private sector and specifically it means that an average waiting time of three years would apply and these people will be allocated a PRH unit. We are now trying to find suitable sites for the production of such units.

However, I think that when the Director spoke on that day in English about a "reality check", he was saying that we had to be practical. There are not many formed sites, that is, readily available sites, baking in the sun for PRH construction. Actually, these sites are not on the Application List and we have been leaving no stones unturned to find land for the production of PRH units. This is because we have to achieve the target of an annual production of 15 000 units. Of course, Members may be aware that it takes three to five years' time to build housing blocks. But we must not forget that at the initial stages of housing production, if the land use has to be changed, such as when some industrial land is to be changed into residential land, or if land zoned for schools is to be changed for housing development, this type of land would have to comply with certain rules and legal procedures. Such kind of preparatory work would take two to three years. So if these procedures are involved, and if we add the time needed, the average time would perhaps be seven years. He was making that explanation based on this situation.

As to the Member's question just now about when measures would be taken to restrict the purchase of local properties by foreigners, including those from the Mainland, I believe the general idea of the Member is that this suggestion has really touched on some of our basic policies and concepts and it would imply some major policy changes. This is because it is actually not as simple as permitting them to buy properties or otherwise. We have to consider whether the move would affect the free flow of capital in and out of Hong Kong. This policy on the free flow of capital is an important factor for our economic success and a cornerstone for our position as an international financial centre.

So if anything is done to undermine this cornerstone, such that it will certainly affect our economic development in the long run, then we cannot overlook the relevant impact. So overall, we would need to consider this matter very carefully. I think that this was what the Chief Executive meant when he made that remark in the Question and Answer Session.

MR PAUL CHAN (in Cantonese): *President, the Government has not collected any data on foreigners or Mainlanders involved in property transactions, nor has it done any assessment on the inflow of capital into the local property market from the Mainland. I am sure Members are very disappointed to hear that because we have conducted many rounds of discussion in this Council on the impact of foreign capital on the property market. May I ask the Government, if it is so insensitive and ignorant, just on what basis it has made the projection that the provision of an average of 20 000 flats a year over the next 10 years would be able to satisfy the market needs? How was that figure arrived at? What is the basis for such computation?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, the number of an annual provision of 20 000 flats is of course not a hard-and-fast target. An example is that in the year 2011-2012, we plan to provide 35 000 units. This number can be considered an overachievement. So we would conduct studies in the light of the circumstances. But we feel that there should be some long-term target so that the market can have some clear-cut

MR PAUL CHAN (in Cantonese): *President, she is beating about the bush, not answering my supplementary question. What is the basis? How was it worked out?*

PRESIDENT (in Cantonese): If the Member thinks that the Secretary has not answered his supplementary question, he should wait until the Secretary has finished her reply. Secretary, please continue.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, I was elaborating and presenting my arguments. First, the figure in question is not a hard-and-fast target. If we review the turnover of property transactions during the past 10 years, we will see that throughout these 10 years past, the annual turnover was about 20 000 newly completed units on average. We have also taken reference of the information found in the planning study for Hong Kong until 2030. And with respect to the demographic structure and population growth of Hong Kong, the average annual increase is roughly consistent with that figure. However, what I wish to elaborate is that this is not a hard-and-fast target and we would adjust it in the light of the practical situation. So the number of flats we would provide this year is 35 000 flats. This is much in excess of the target. This is what I mean precisely. President, I did not beat about the bush. Rather I have given a direct reply to his question.

MR PAUL CHAN (in Cantonese): *If the projections made by the Government have such a sound scientific basis, then why is the market behaving like this?*

PRESIDENT (in Cantonese): Mr CHAN, you should be very clear that this is not a debate session. If you think that the Secretary has not answered your question, you can say so.

MR LEE WING-TAT (in Cantonese): *President, I can tell him in reply that it is a lame target. President, Mr WONG Kwok-kin asked in the main question about what is meant by a "hopeless situation". As a matter of fact, the Chief Executive is now caught in a "hopeless situation". His popularity ratings are even lower than those of TUNG Chee-hwa. Our party chairman has said that he is lame. Actually, he is lame.*

President, I have this supplementary question. The Government says that it is going to solve the housing problem with the My Home Purchase Plan (MHPP), but this plan has yet to be rolled out after a year of discussion. The public demand the resumption of the HOS, but the Government says that it would only make an announcement on that in October. When we demand that restrictions be imposed on Mainlanders buying local properties, the Government

says that this is a great lynchpin that cannot be rocked. Secretary, plainly, it is not going to do any of all these. So Paul, this is a lame target.

May I ask the Secretary on what plans she will take any action? My question is very simple. When the Secretary does not deal with the resumption of HOS and does not impose any restriction on Mainlanders buying local properties, she is not taking any action on these measures which are good for the people. And she cannot take the MHPP forward. The Secretary is really having nothing to do. Then what is she sitting here for?

President, I want to ask her what the things she will do are.

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

MR LEE WING-TAT (in Cantonese): *The Secretary said in reply to the main question of Mr WONG Kwok-kin that the resumption of HOS would be put aside for the time being and it would only be given an account in October; and nothing is done about the MHPP after the idea has been mooted for one year; and she did not reply to the question asked by Mr Paul CHAN earlier on how the figure of 20 000 flats was arrived at. So all this means that nothing is going to be done. Then may I ask her, as she is the Secretary for Transport and Housing, what she is doing at present? With respect to the housing policy, is it true to say that nothing can be done?*

PRESIDENT (in Cantonese): Are you asking the Secretary about the housing policy?

MR LEE WING-TAT (in Cantonese): Yes.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, I said at the very beginning that we are working in four directions

when we formulate measures in the short, medium and long terms. Why can Members not note that in such issues as increasing the supply of land, curbing property speculations, ensuring market transparency, preventing an over-expansion of lending, and so on, we have rolled out measures almost one month after another. So I think Members should look at the macro situation. It does not mean that there are some matching measures — and I hope there can be some — which, like pressing a button, would make property prices rise by 5%, or by 10% when we press another button. Ours is not an economy like this. We are an externally-oriented economy. We are now affected by many conditions which are unusual, including problems like capital and low interest rates. So we will tackle the problems in these four directions. With respect to some specific issues, we have undertaken that an account will be given.

MR FREDERICK FUNG (in Cantonese): *President, according to the third paragraph in part (c) of the main reply, during 1996 and 1997, a total of 46 000 subsidized sale flats were launched for sale, but private residential property prices still rose. With respect to this reply from the Government, I do not know if the Government is really ignorant about the problem faced by the people. There are two questions related to the housing problem. First, property prices are always rising, and if this is not a problem affecting the choices available to ordinary members of the public*

PRESIDENT (in Cantonese): Mr FUNG, please do not make lengthy comments.

MR FREDERICK FUNG (in Cantonese): *Yes, I wish to tell the Secretary, she is really*

PRESIDENT (in Cantonese): Please raise your supplementary question as quickly as possible.

MR FREDERICK FUNG (in Cantonese): *I am imitating the Secretary in presenting my arguments. Second, the public should be able to buy flats. The*

first is that market prices have soared. The second is that the public should be able to buy flats. These two problems can be tackled separately. HOS flats may not be able to bring property prices down, but HOS flats can fulfil the demand of the public for home-ownership. The question is, since the Government cannot curb the rise in property prices by producing HOS flats, then why can HOS flats not be used to fulfil the home-ownership aspirations of the people? The Government says that there is no land, but why does it sell the land in Ho Man Tin and the North Point Estate which used to be PRH land? For those sites on the Application List which have yet to be triggered, why are they not used to produce HOS flats? Why is land for the MHPP not to be used to produce HOS flats? Actually, there are many lands that can be used for this purpose, but why are they not used to produce HOS flats?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): On the two problems mentioned by Mr Frederick FUNG, the first is about the rise in property prices. With respect to this, we are tackling the problem at root and that is, to deal with it by working with the supply of land. This is a simple question of supply and demand in economics. We believe that when supply is increased over a period of time, the people will have many options in buying homes which are affordable and readily available. This is the root of the problem and it must be tackled.

As to the methods to be employed, if short-term market fluctuations still render the people unable to buy homes, then the question of what methods should be employed will induce discussions in society. As to the methods to be used to tackle the problem, we think that in the long run, the people should be able to make mortgage repayments. It is only in the short run that they do not have the downpayment. So we have introduced the MHPP to help them tide over a certain period of time in stable conditions so that they will not have to pay expensive rents or face fluctuations in rent, that is, rental increases every year. They have a stable period of five years during which they can save up money and when they have saved enough for the downpayment, they can buy their first home.

Actually, we have various measures in place to tackle the situation. An example are the property developments of limited-size flats, or an increase in the

supply of small and medium-sized flats. Of the 50 000 flats to be supplied, some 30 000 or 63% are small and medium-sized flats which have an area of 700 sq ft or less. So we are doing a lot in many areas to ensure that the people can have more options in buying their first homes. Of course, the provision of subsidies for home purchase is also an option. We will respond to these specifically in the next policy address.

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

Various Funds Set up by Government

2. **PROF PATRICK LAU** (in Cantonese): *President, each year, a significant amount of funding is earmarked in the Budget for the Government to set up various funds, through which subsidies are granted to individuals and institutions to organize programmes and activities for specific purposes. Regarding the subsidies granted from these funds, will the Government inform this Council:*

- (a) *in the past five years, of the total amount of government funding allocated to the funds set up by it; and the respective percentages of the amount of subsidies granted from these funds in the amount of funding allocated (and the respective actual amounts), as well as the starting dates of accepting applications for subsidies and the deadlines for applications (list by the various funds);*
- (b) *of the channels through which the Government had conducted publicity and encouraged members of the public, organizations or professional institutions to apply for subsidies under the aforesaid funds in the past five years; whether it had assessed their effectiveness; if it had, of the details; if not, the reasons for that; and*
- (c) *whether it has assessed if the rates of subsidies granted in the past five years from various funds were on the low side; if the rates were on the low side, of the reasons for that; whether it has reviewed the*

existing mechanism, so as to improve the operation and utilization of funding of various funds; if it has, of the details; if not, the reasons for that?

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

- (a) From 2006-2007 to 2010-2011, the Government injected about \$37 billion into 16 funds set up for specific purposes. During this five-year period, we also created new or increased existing non-recurrent commitments for eight funds, involving a total of about \$4 billion.

The amount of government injection into individual funds and the actual amounts used by these funds during the above five-year period are listed in Annex I. The commitments created or increased for individual funds and their actual expenditure are listed in Annex II.

Of the 24 funds mentioned above, some (for example, the Emergency Relief Fund) have set application periods with start and end dates only for some individual projects. For those set up as seed money funds, they mainly make use of the investment returns generated from the capital to meet their operational needs. In these cases, the percentage of government injection used does not reflect the utilization of the funds concerned. We have set out the information requested by the Honourable Member in Annex I and Annex II where applicable, including the actual amounts used under the funds as a percentage of government injection for the period from 2006-2007 to 2010-2011.

I wish to point out that a number of funds were established before 2006-2007 and had accumulated balances on 1 April 2006. Therefore, their expenditure for the period from 2006-2007 to 2010-2011 may be higher than the government injection in the same

period. We have provided explanatory notes for the relevant items in the Annexes.

(b) and (c)

My main reply is as follows: Different funds provide different services and serve different target groups. Some of the funds (for example, the Trust Fund for Severe Acute Respiratory Syndrome) no longer receive new applications and therefore have no further promotion plans in hand. The relevant Policy Bureaux, departments or funds mount publicity having regard to their target clients.

Some of the funds (for example, the Hong Kong Paralympians Fund) may invite applications for grants from specific groups only, and therefore have not launched any extensive promotion campaign.

Most of the funds mount general publicity by:

- (1) Distributing leaflets, posters and pamphlets.
- (2) Publishing articles or placing advertisements for publicity and media coverage.
- (3) Introducing the funds in detail and announcing application information on the websites.
- (4) Issuing press releases, answering press enquiries and arranging media interviews.
- (5) Sending circulars and invitation letters to target applicants or clients, such as schools/academic institutions, relevant sectors, trade associations, professional bodies, and so on.
- (6) Organizing seminars, briefings and experience sharing sessions to introduce the operation of the funds and explain details for making application.

The Policy Bureaux/departments responsible for managing the funds or the executive committees/management committees, and so on, of the funds will monitor and review the operation of the funds, including their publicity programmes and utilization.

Of the abovementioned funds, four were set up as seed money funds. As mentioned in part (a) of my main reply, the actual amounts used under such funds as a percentage of the government injection do not reflect their utilization. As for the other funds, in the period from 2006-2007 to 2010-2011, the actual expenditure as a percentage of government injection/commitment was 75% or more for eight funds and 50% or more for another three funds. Three of the funds spent less than 10%, and more details are provided as follows:

- (1) The Pilot Green Transport Fund has only started taking applications in late March 2011.
- (2) The purpose of the Elder Academy Development Foundation is to sustain the long-term development of the Scheme rather than disbursement of its funding within a short period of time. The Labour and Welfare Bureau considers that funding has been expended in tandem with the development of the Scheme.
- (3) The projects supported by the Child Development Fund are launched in batches and they all receive disbursement by instalment over a three-year period. As a result, the actual expenditure of the Fund will be relatively low in the initial years. The Fund's current expenditure does not provide a good basis for assessing its utilization and effectiveness. The Labour and Welfare Bureau expects that when more projects come on stream, the expenditure of the Fund will increase significantly.

Annex I

Specific Purposes Funds
with Injection from the Government's General Revenue Account
from 2006-2007 to 2010-2011⁽¹⁾

	<i>Policy Bureau</i>	<i>Name of Fund</i>	<i>Government Injection in the Period (\$ million)</i> <i>(i)</i>	<i>Actual Amount Used in the Period (\$ million)</i> <i>(ii)</i>	<i>Actual Amount Used as a Percentage of Government Injection in the Period (%)</i> <i>(ii/i)</i>	<i>Application Start Date</i>	<i>Application End Date</i>
1	CEDB	Consumer Legal Action Fund	10	9	91%	1994	Still open for application
2	EDB	Language Fund	1,000	1,245	124% ⁽²⁾	1994 ⁽³⁾	Still open for application ⁽³⁾
3	EDB	HKSAR Government Scholarship Fund	1,000	71 ⁽⁴⁾	N/A ⁽⁵⁾	2008 ⁽⁶⁾	Still open for application ⁽⁶⁾
4	EDB	Research Endowment Fund	18,000	473	N/A ⁽⁵⁾	2009 ⁽³⁾	Still open for application ⁽³⁾
5	ENB	Environment and Conservation Fund	1,000	133 ⁽⁷⁾	13% ⁽⁸⁾	August 1999	Still open for application
6	HAB	Trust Fund in Support of Reconstruction in the Sichuan Earthquake Stricken Areas	9,000	6,123	68%	NGOs might apply for grants from the Fund starting from October 2008	Deadline for NGOs to apply for grants from the Fund was November 2009
7	HAB	Cantonese Opera Development Fund	74	31	42%	1 March 2006 ⁽³⁾	Still open for application ⁽³⁾
8	HAB	Sir David Trench Fund for Recreation-Arts and Sport Development Fund	3,230	270	N/A ⁽⁵⁾	1997 ⁽³⁾	Still open for application ⁽³⁾
9	HAB	Sir David Trench Fund for Recreation — Arts Development Fund	20	17	86%	1993 ⁽³⁾	Still open for application ⁽³⁾

	<i>Policy Bureau</i>	<i>Name of Fund</i>	<i>Government Injection in the Period (\$ million)</i> (i)	<i>Actual Amount Used in the Period (\$ million)</i> (ii)	<i>Actual Amount Used as a Percentage of Government Injection in the Period (%)</i> (ii/i)	<i>Application Start Date</i>	<i>Application End Date</i>
10	HAB	Sir David Trench Fund for Recreation — Hong Kong Athletes Fund	5	4	78%	1997 ⁽³⁾	Still open for application ⁽³⁾
11	LWB	Hong Kong Paralympians Fund	4	21	591% ⁽²⁾	2001 ⁽³⁾	Still open for application ⁽³⁾
12	LWB	Trust Fund for Severe Acute Respiratory Syndrome	50	58	116% ⁽²⁾	8 November 2003	1 Jan 2006 (Ceased to receive new applications but continues to handle review applications)
13	LWB	Emergency Relief Fund	50	30	60%	1962 ⁽³⁾	Still open for application ⁽³⁾
14	LWB	Elder Academy Development Foundation	10	0.9	9%	31 May 2010 ⁽³⁾	Still open for application ⁽³⁾
15	LWB	Pneumoconiosis Ex Gratia Fund	89	59	66%	1993	Still open for application
16	SB	Beat Drugs Fund	3,000	111	N/A ⁽⁵⁾	1996 ⁽³⁾	Still open for application ⁽³⁾

Notes:

- (1) Excluding funds of which expenditure is mainly covered by income from levies.
- (2) The amount used is partly covered by the fund's accumulated balance. The balances of these funds on 31 March 2006 were as follows:

	(\$ million)
Language Fund	1,752
Hong Kong Paralympians Fund	45
Trust Fund for Severe Acute Respiratory Syndrome	26
- (3) Different projects have different start and end dates for applications.
- (4) On the basis of the Fund's financial year ending 31 August.
- (5) The whole or a large part of the fund is seed money. Investment income is used to meet expenditure.
- (6) Participating institutions will set their own start and end dates for scholarship applications.
- (7) The actual amount used in 2010-2011 has not been included as the amount will only be confirmed upon completion of the trustees' report.
- (8) With an injection of \$1 billion in 2008, the total commitment for the Environment and Conservation Fund reached \$932 million as at 31 March 2011. The Finance Committee of the Legislative Council approved on 13 May 2011 a further injection of \$500 million into the Fund to maintain the support for worthwhile projects.

Annex II

Funds under the Government's General Revenue Account
with New or Increased Commitments
from 2006-2007 to 2010-2011

	<i>Policy Bureau</i>	<i>Name of Fund</i>	<i>New or Increased Commitment in the Period (\$ million)</i> (i)	<i>Actual Amount Used in the Period (\$ million)</i> (ii)	<i>Actual Amount Used as a Percentage of the New or Increased Commitment in the Period (%)</i> (ii/i)	<i>Application Start Date</i>	<i>Application End Date</i>
1	CEDB	Mega Events Fund	100	23	23%	July 2009	To be confirmed — application period expects to end in second half of 2011
2	CEDB	SME Export Marketing Fund/SME Development Fund	1,350	1,365	101% ⁽¹⁾	Mid-December 2001	Still open for application
3	CEDB	Film Development Fund	300	134	45%	April 2005	Still open for application
4	ENB	Pilot Green Transport Fund	300	-	0%	30 March 2011	Still open for application
5	FHB	Health and Health Services Research Fund	200	25	13%	February 2003	Still open for application
6	LWB	Partnership Fund for the Disadvantaged	200	93	46%	2005 ⁽²⁾	Still open for application ⁽²⁾
7	LWB	Continuing Education Fund	1,200	2,111	176% ⁽¹⁾	June 2002	Until the Fund is used up
8	LWB	Child Development Fund	300	24	8%	May 2008 ⁽²⁾	Still open for application ⁽²⁾

Notes:

- (1) The amount used is partly covered by the fund's accumulated balance. The balances of these funds on 31 March 2006 were as follows:

	(\$ million)
SME Export Marketing Fund/SME Development Fund	5,109
Continuing Education Fund	4,110

- (2) Each round of application has its own start and end dates.

PROF PATRICK LAU (in Cantonese): *President, thanks to the Secretary for his main reply. In his main reply to parts (b) and (c), he said that the effectiveness and utilization of these funds are assessed and monitored by the Policy Bureaux responsible for managing these funds.*

May I ask the Government whether reports will be published, so that various departments or the Legislative Council will know that when these funds are found to be effective, the Government will continue to earmark in the Budget funding for them, and whether a review will be conducted to find out if it is because of the lack of publicity that some funds have been ineffective? These are what I would like to ask in my supplementary question.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Thanks to the Member for this supplementary question.

Let us take a look at these funds. Of the funds listed in Annex I, some are set up under the relevant Ordinances whereas some are trust funds set up by the relevant trust law. These statutes generally require the funds to submit their annual reports and audited accounts to the Legislative Council. Therefore, a reporting mechanism is in place and there is also transparency in this respect.

The funds listed in Annex II are part of the Government's General Revenue Account. Each year, we submit the estimate to the Legislative Council for scrutiny. So, the Legislative Council knows the amount of expenditure every year.

As I said earlier, the relevant Policy Bureaux and departments are responsible for co-ordinating and monitoring the utilization of the funds. More often than not, the use of these funds is widely discussed at meetings of the Legislative Council committees on the relevant policy matters.

DR SAMSON TAM (in Cantonese): *President, in his reply earlier the Secretary said that in respect of capital management, the Policy Bureaux responsible for managing the funds will monitor the utilization of the funds.*

In fact, each fund is set up as and when necessary. But if a fund is set up simply for the sake of setting it up without putting it to use, this is absolutely not

what Members would hope to see in making the relevant law. In this connection, I think it is good that the Member raised a question on their utilization. I hope that when a Policy Bureau applies for setting up a new fund in future, the Secretary has to find out for how long the funds are intended to last, or else we will never know the actual situation

President, my supplementary question is this: The Secretary stated that with regard to some funds, the percentage of actual expenditure can be calculated and from this, we can work out the duration for which the funds can last. But he said earlier that it is impossible to calculate the percentage in the case of seed money funds because these funds rely on the interest earnings to meet the operational needs. In this connection, may I ask the Secretary what criteria should be adopted to assess the utilization of these several seed money funds?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): What Dr TAM has just said is correct. The investment returns generated by these seed money funds can broadly reflect the resources available for allocation each year.

I believe the utilization of these funds can be assessed on the basis of the expected investment returns of these funds as well as the amount of subsidies allocated under these funds each year. Of course, the situations of these funds vary. Some funds can perhaps be put to use at a very initial stage whereas some may have to take time to make preparations. Basically, we can make reference to such information to assess the utilization of the funds.

MR PAUL TSE (in Cantonese): *President, in the main reply we can see that some funds are set up under the Government, but more funds have been accumulating under various statutory bodies. For example, the Travel Industry Compensation Fund of the Travel Industry Council of Hong Kong (TIC) has accumulated over \$500 million over the last decade or two, but only some \$20 million has been paid out of the fund as compensation, accounting for less than 4%. In theory, who will regulate and monitor these funds which are controlled and participated by the Government, and who will review the need to extend or change the use of these funds and even stop injecting funds into them?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, with regard to the fund mentioned by Mr Paul TSE just now, its funding comes from the levies. Certainly, the fund has its policy objective and that is, it is meant for making compensation. I think the Policy Bureau and the relevant panel can certainly discuss this, such as whether or not the amount of funds accumulated is adequate to meet the needs for compensation in future. I believe these issues will be discussed by the Policy Bureau and the relevant panel.

MR PAUL TSE (in Cantonese): *President, my question*

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

MR PAUL TSE (in Cantonese): *I only cited it as an example, and my question was not confined to the Travel Industry Compensation Fund of the TIC. Rather, I was referring to the general funds financed by government injection. Some may be seed money funds of the Government, or after certain measures have been formulated, the industry or other organizations are allowed to participate*

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

MR PAUL TSE (in Cantonese): *My supplementary question is this: With regard to these funds set up by government funding under non-governmental organizations, is there a mechanism in place for continuous monitoring and review?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, I believe there is. First, insofar as these funds are concerned, they generally have a fairly high degree of transparency. Certainly, the circumstances of the funds vary from one to another. But the industries or stakeholders concerned must be keeping a keen interest in the funds, while the Policy Bureaux will hold discussions with the industries, stakeholders and Members of the Legislative Council from time to time.

MISS TANYA CHAN (in Cantonese): *I would like to ask in particular whether seed money funds or other funds have any items of investment. If so, in respect of the tools of investment, what mechanism has the Government adopted for monitoring the choice of the tools of investment by these funds? With regard to the selected tools of investment, can the authorities enhance their transparency, so that members of the public can understand more clearly what tools of investment are adopted by the Government in its investments?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, in the case of seed money funds, or funds financed by investment returns, they have their own management committees to manage their investments. As regards the scope of investment or tools of investment, the consent of the Government must be sought and in this respect, we do exercise monitoring.

MISS TANYA CHAN (in Cantonese): *My question to the Secretary was whether a more open approach can be adopted. As the Secretary said earlier, the accounts are examined by the Government. Such being the case, is it possible to enhance the transparency in respect of the requirements or criteria?*

PRESIDENT (in Cantonese): Secretary, the Member was asking about transparency.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, I need to go back and check the details of individual cases. It is because the Government should have clear guidelines on investment but with regard to individual funds as referred to by the Member, I need to go back and check, and I will provide the information in writing later for Members' reference. (Appendix I)

PRESIDENT (in Cantonese): Third question.

Principal Officials Under Accountability System Planning to Participate in Elections to Public Office

3. **MR ALAN LEONG** (in Cantonese): *President, the media earlier reported that the Chief Secretary for Administration deployed public resources of the Government to prepare for his Chief Executive electioneering campaign, including the design of a relevant website, which has aroused public concern. In this connection, will the Government inform this Council:*

- (a) *whether the authorities will investigate the aforesaid matter to ascertain if the alleged deployment of public resources by the Chief Secretary for Administration for preparing his Chief Executive electioneering campaign has contravened the Guidelines on Election-related Activities in respect of the Chief Executive Elections, and if the provision of advice by some civil servants on the design of and technical support for the aforesaid website has contravened the Civil Service Code; if they will, of the details; if not, the reasons for that;*
- (b) *as it was reported that the contents of the aforesaid website focused mainly on the Chief Secretary for Administration, and the Internet Professional Association (iProA) was involved in the production of the website, whether the aforesaid website was set up for the Chief Secretary for Administration to discharge his public duties; given that one of the organizations commissioned by the Government to implement the Internet Learning Support Programme (ILSP) is formed by iProA and another organization, if the aforesaid website was set up for the discharge of public duties, whether the ILSP selection board members knew about the involvement of iProA in the production of the aforesaid website; if the website was not set up for the discharge of public duties, whether the Chief Secretary for Administration has made a declaration to the government department responsible for implementing ILSP; and*
- (c) *whether the Government will consider formulating guidelines to explicitly require that principal officials under the accountability system and Executive Council Members who plan to stand for elections to public office must resign at a specified time, so as to avoid the allegation of using public resources to conduct electioneering campaigns and to ensure that elections to public*

office are conducted in a fair, just and open manner; if it will, of the details; if not, the reasons for that?

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

- (a) According to the Guidelines on Election-related Activities in respect of the Chief Executive Elections as well as the rules and guidelines issued by the Civil Service Bureau, officers who are particularly susceptible to accusations of bias, namely Directorate Officers, Administrative Officers, Police Officers and Information Officers, are prohibited from participating in electioneering activities. There is no objection in principle to other civil servants and non-civil service contract staff to participate in electioneering activities in their private capacity provided that it does not give rise to any conflict of interest with their official duties. Officers concerned should also comply with the Civil Service Regulations on outside work. The Civil Service Bureau will normally ask bureaux/departments to remind all staff of the rules on participation in electioneering by re-circulating the relevant guidelines before an election.

Regarding the incident reported by the media earlier, the Chief Secretary for Administration has already issued a statement emphasizing that in the use of government resources he had fully complied with relevant government regulations.

It was alleged in the press report that one civil servant and one non-civil service contract staff had taken part in the design meeting of the website. The Information Services Department (ISD) had already stated that it had not sent any member of its staff to attend the meeting referred to in the press report and it had further investigated if the two public officers had attended the meeting in their private capacity. As mentioned in the statement by the ISD on 27 June, the civil servant had not attended the meeting referred to in the press report, had not heard of the website mentioned, and had not participated in any electioneering activities. Regarding the non-civil service contract staff, the staff had, in a private capacity and outside office hours, exchanged views on issues not related to

official duties. Neither remuneration nor government resources were involved. There was no conflict of interest with the staff's official duties. The ISD is therefore of the view that the staff has not breached any civil service rules or guidelines. The Civil Service Bureau had scrutinized the report submitted by the ISD and endorsed the findings.

- (b) There is only one official website for the Chief Secretary for Administration, that is, <www.cso.gov.hk>. The ISD is the webmaster of the website, providing website design and technical support in relation to the official duties and responsibilities of the Chief Secretary for Administration. The Chief Secretary for Administration had firmly stated earlier that he was not involved in the work relating to the ILSP.
- (c) Section 14 of the Chief Executive Election Ordinance (Cap. 569) stipulates that any person holding an office, whether permanent or temporary in a government department or bureau and employed in the department or bureau, is disqualified from being nominated as a candidate at a Chief Executive election. According to the Code for Officials under the Political Appointment System, politically appointed officials are disqualified from being nominated as a candidate at an election of the Chief Executive. Apart from the above requirements, if any principal official or member of the Executive Council wishes to stand for the election of the Chief Executive, he/she may decide on his/her own when to step down from office. As participation in a Chief Executive election is a personal decision, we believe that there is no need to specify the time by which a prospective candidate should step down from office. Moreover, it is stipulated in section 37 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) that each candidate at an election of the Chief Executive must lodge with the Chief Electoral Officer an election return setting out the candidate's election expenses in the election and all election donations received by or on behalf of the candidate in connection with the election. In view of the above, we consider that there already exist clear and definite provisions to ensure that elections will be held in a fair, just and open manner.

MR ALAN LEONG (in Cantonese): *President, the crux of my question is the intermingling of public and private affairs. Let me quote the statement of the Chief Secretary for Administration on 8 June 2011: "The Chief Secretary for Administration, Mr Henry TANG, issued the following statement with regard to a press report by Apple Daily today (8 June): 'From time to time I gauge the views of various parties on how to make use of information technology to enhance communication with the public, as well as matters involving public perception and personal image. I have to stress that in the use of government resources I have fully complied with relevant government regulations.'" (End of quote).*

President, according to the statement issued by the Chief Secretary for Administration at 7.06 pm on 8 June (on which the incident was reported), it seems that he pointed out very clearly that an official website had been set up. Why did the Government point out in its reply today that the non-civil service contract staff had, in a private capacity and outside office hours, been involved in the relevant activity? Is this not contradictory to the statement of the Chief Secretary for Administration on that day? On that day, the Chief Secretary for Administration said that the staff was on official duties only. But now it is said that the non-civil service contract staff had, in a private capacity and outside office hours, been involved in the relevant activity. Is the relevant activity a kind of official duties or private affairs? Why does the Government consider it not necessary to conduct an investigation on the Chief Secretary for Administration in respect of part (a) of my question?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): *President, the Chief Secretary for Administration has issued a statement and I have indicated in today's reply that according to the ISD's investigation, the non-civil service contract staff had participated in an exchange of views outside office hours, which has not contravened the Civil Service Code. Regarding the website of the Chief Secretary for Administration, I have made it clear that there is only one official website.*

MS CYD HO (in Cantonese): *It remains unknown as to whether or not there is only one official website because the website had already been exposed before it was formally launched. In fact, we have to seek clarification on whether it is an official or personal website. Thus, the Chief Executive has the responsibility to check with the Chief Secretary for Administration whether official or private*

affairs have been involved, whether official and private affairs have been mixed up, and whether public resources have been used for private purpose. Has the Chief Executive discharged his responsibility and followed up the matter with the Chief Secretary for Administration? Has the Chief Executive instructed anyone to follow up the matter with the Chief Secretary for Administration?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, politically appointed officials are required to act in accordance with the Code for Officials under the Political Appointment System. If there is any doubt, the officials concerned should report to and seek instructions from the Chief Executive.

Regarding the question now raised, I have given an unequivocal response that the Chief Secretary for Administration has only one official website. I believe Members are very interested in knowing whether the parties concerned have taken part in any electioneering campaign. I would like to reiterate that, as I have pointed out in part (c) of the main reply, candidates running for the Chief Executive election are required to lodge election returns setting out all necessary information after the election in accordance with relevant election ordinance.

PRESIDENT (in Cantonese): Is your supplementary question not yet answered?

MS CYD HO (in Cantonese): *President, can the Secretary respond to my supplementary question clearly and directly: Has the Chief Executive made enquiries with the Chief Secretary for Administration to find out whether it is an official or personal website, and whether anyone has been instructed by the Chief Executive to make such enquiries with the Chief Secretary for Administration?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, I believe colleagues in the Chief Executive's Office, colleagues in the Chief Secretary for Administration's Office and the relevant leadership are well aware that the Chief Secretary for Administration has only one official website.

MS CYD HO (in Cantonese): *President, I think the Secretary has all along evaded answering my supplementary question.*

DR LAM TAI-FAI (in Cantonese): *President, you are a person with a sense of righteousness. I am sure that you and me as well as those who have a sense of righteousness will not accept or allow anyone, including civil servants, political appointees or Legislative Council Members, to abuse public money and waste public resources in furtherance of personal interests, goals and advantages.*

What I said will certainly include the issue referred to in today's main question concerning whether the Chief Secretary for Administration has made use of public resources for conducting an electioneering campaign. It may also include what I mentioned earlier and that is, whether Mr Alan LEONG of the Civic Party has made use of an old woman Ms CHU to apply for judicial review, thereby delaying the Hong Kong-Zhuhai-Macao Bridge project

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

DR LAM TAI-FAI (in Cantonese): *My supplementary question is as follows. Both Mr Alan LEONG, who asked the main question, and the Chief Secretary for Administration are widely reported by the media as potential candidates of the next Chief Executive election. In fact, Mr Alan LEONG had run in the previous Chief Executive election but lost finally. My supplementary question is: Regarding this issue, has the Government assessed whether Mr LEONG's motive is to discredit or deal a blow to the opponent in order to enhance his image, force and edge? In fact, this is also a preparation for his Chief Executive electioneering campaign in an indirect manner. Has the Government assessed whether he has such motive and whether this is a preparation for the Chief Executive electioneering campaign? If so, have the authorities conducted an investigation and taken follow-up action on this?*

PRESIDENT (in Cantonese): Dr LAM, please sit down. Mr LEE Wing-tat wants to raise a question of point of order.

MR LEE WING-TAT (in Cantonese): *Point of order. It seems that according to the Rules of Procedure, Members are not allowed to impute motives to another Member or official in questions they raise. I wonder if I am correct.*

PRESIDENT (in Cantonese): Dr LAM asked whether the Government has assessed the motive of the Member who asked the main question. Dr LAM's supplementary question does not constitute he imputing improper motives to other Members. However, his supplementary question is irrelevant to the main question. So, Dr LAM, please raise a supplementary question which is related to the main question.

MS EMILY LAU (in Cantonese): *President, the authorities should investigate the matter. If the Secretary or the authorities are reluctant to conduct an investigation, it will only make people feel that they have something to hide.*

The Secretary has highlighted part (c) of the main reply, which explained who are disqualified from participating in the election. Politically appointed officials are one of the categories, which undoubtedly include Secretaries of Departments, Directors of Bureaux and Executive Council Members. The Secretary said that there is no need to specify the time by which they should retire from office as this is a personal decision. However, if they really run in the election in the future, they are required to lodge election returns setting out their election expenses.

President, can the Secretary tell us when expenses incurred will be counted towards expenses in an election campaign? Now everyone thinks that Henry TANG and LEUNG Chun-ying will stand for the election. I am not sure whether Mr Alan LEONG is considered as one of the potential candidates. However, Mr LEONG is not a political appointee. In that case, when should expenses be counted as election expenses? Such information will let us know when election expenses are considered to have been started to be incurred. For instance, we will come to realize that election expenses started to be incurred in 2011 or even September or December 2010 after election returns are lodged at a later date. In that case, should all information such as the identity of the participants in the relevant activities, including whether they are civil servants or non-civil service

contract staff, be declared? Or the declaration requirement is so loose that the public will never know when the candidates have started and ceased incurring election expenses?

PRESIDENT (in Cantonese): Secretary, the question of Honourable Member is: When should election expenses be counted?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, I believe once a person, be he a principal official, Executive Council Member, Legislative Council Member or individual of other person, has decided to stand for the Chief Executive election, should act in accordance with the law and make a comprehensive declaration of election expenses in accordance with the relevant election legislation.

Regarding Ms Emily LAU's question of when expenses are counted towards a candidate's election expenses, it has been clearly stipulated in law that expenses incurred before the election period, during the election period and after the election period are counted. What is a period before the election? For stance, if a candidate decided and declared of his intention to stand in the Chief Executive election on a certain date, he should have made certain preparations before making such a declaration. He will put forth an election platform, telling various sectors of Hong Kong society and the media how he will run in the election and what policies will be implemented if elected when declaring his intention to stand in the election. If the election platform was prepared beforehand, there must be some people who were engaged in the compilation and printing of such materials. The expenses, which are regarded as expenses before the election period, should be declared. In addition, expenses payable during and after the election period should also be declared.

President, it has been clearly provided in the law that all expenses incurred before, during and after the election period should be declared. As to how expenses should be declared in a comprehensive manner, each candidate should make a declaration in accordance with the law on their own initiative. If there is any doubt, they should seek legal advice from their lawyers. Of course, the Registration and Electoral Office and the Electoral Affairs Commission will also make certain clarification on the electoral guidelines to each candidate.

MR CHIM PUI-CHUNG (in Cantonese): *President, can the Secretary confirm that none of the people who are considered to be eligible candidates are actually not yet eligible for running in the election? Given that a candidate needs to secure 150 nominations, who can guarantee at present that he can secure 150 nominations? As the Election Committee (EC) responsible for nominating candidates will be formed on 16 December, can the Government confirm that there is no candidate who is eligible for the election currently? All assertions are just lies. (Laughter)*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): *President, the election of an EC will be conducted in December and the 1 200 elected representatives will formally take office on 1 February next year. Any prospective candidate is required by law to secure the support and nomination of 150 members of the EC before officially becoming a candidate. Under the present circumstances, no one in Hong Kong society has been found to have clearly announced so far his intention to participate in the Chief Executive election.*

MR ALAN LEONG (in Cantonese): *President, I quoted the statement issued by the Chief Secretary for Administration at 7.06 pm on 8 June just now to explain that he has made use of the ISD and his capacity as the Chief Secretary for Administration to claim that he would always consider how to enhance communication with the public. The statement aims at telling the public only one thing and that is, this is a website for official duties and all matters are related to this website. Otherwise, he would not have issued such a statement through this channel.*

If this is the case and according to part (b) of the main reply, only <www.cso.gov.hk> is his official website although it has also pointed out in other part of the main reply that the non-civil service contract staff has, in a private capacity and outside office hours, taken part in activities which seem to be related to a private website, does this matter per se not warrant an investigation? Why did the Chief Secretary for Administration, Mr Henry TANG, issue such a statement on 8 June?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, the statement issued by the Chief Secretary for Administration's Office on 8 June is very clear and we have also pointed it out very clearly in today's reply that the Chief Secretary for Administration's Office has only one official website. Regarding an investigation into the matter, the ISD has conducted an investigation and given a clear account.

PRESIDENT (in Cantonese): Fourth question.

Autotoll Lanes at Cross Harbour Tunnels

4. **MR CHAN KAM-LAM** (in Cantonese): *President, according to the information of the Transport Department (TD), the overall utilization rate in February 2011 of the Autotoll toll collection system (Autotoll) at tolled tunnels and roads was only 47%, and that the Autotoll utilization rate at the Cross Harbour Tunnel (CHT) in Hung Hom was only 39%. Quite a number of drivers have reflected that owing to insufficient provision of Autotoll lanes at the cross harbour tunnels, there are often long vehicle queues and some drivers who have already opened an account with Autotoll are therefore forced to give up using such lanes and switch to using manual toll booths where the queues are shorter, and thus the automatic toll collection system at the tunnels fails to achieve the effect of easing traffic flow. In this connection, will the Government inform this Council:*

- (a) *whether the authorities have conducted a review on the aforesaid situation, including re-assessing the number of Autotoll lanes available at various tunnels; if they have, of the situation;*
- (b) *whether the authorities have conducted a study on how to facilitate the enhancement of the Autotoll utilization rate so that the automatic toll collection system can achieve a greater effect in easing traffic flow; and*
- (c) *given the serious traffic congestion at the CHT in Hung Hom, whether the authorities will first consider increasing the number of Autotoll lanes at the CHT in Hung Hom so as to attract more drivers to use the automatic toll collection system and reduce the frequency*

of long queues appearing at such lanes at present; if they will, of the time of implementation; and whether the authorities will consider converting some of the manual toll collection lanes to Autotoll lanes during rush hours?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, both manual and automatic toll collection lanes are available at all tolled tunnels and roads in the territory for motorists to choose between making toll payment in cash or electronically. Since October 1998, all tolled tunnels and roads have adopted the Autotoll fully automatic toll collection system.

There are currently nine tolled tunnels, namely the CHT, Eastern Harbour Crossing, Western Harbour Crossing, Lion Rock Tunnel, Aberdeen Tunnel, Tseung Kwan O Tunnel, Tate's Cairn Tunnel, Shing Mun Tunnels and Tai Lam Tunnel, and two tolled roads, namely the Lantau Link and Tsing Sha Highway (Sha Tin—Cheung Sha Wan Section) in Hong Kong. All of them are equipped with automatic toll collection system. The distribution and number of automatic toll collection lanes available at various tolled tunnels and roads are generally determined by the traffic flows of these tunnels and roads, and the utilization rates of such lanes.

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

(a) and (b)

According to the information provided by the Autotoll Limited, there are currently 250 000 Autotoll tags in circulation. At present, automatic toll collection lanes account for about 30% to 40% of the total number of toll collection lanes, while the number of vehicles using such lanes accounts for about 40% to 60% of the total traffic flow at various tolled tunnels and roads.

According to the observation by the TD, given the shorter transaction time of an automatic toll collection lane over a manual toll collection lane, automatic lanes can handle five times the traffic flow of manual toll collection lanes. Hence, although the ratio of automatic toll collection lanes is lower than the utilization rate of

such lanes, it is still adequate in meeting the demand of motorists choosing automatic toll payment.

In the case of the CHT, among the 16 toll collection lanes, six or 38% are automatic toll collection lanes (that is, three for Kowloon-bound and three for Hong Kong Island-bound traffic), while the number of vehicles using such lanes accounts for 39% of the total traffic flow, hence the ratio of automatic toll collection lanes at the CHT is comparable to the utilization rate of such lanes.

As regards the CHT, when the traffic inside the tunnel tubes becomes congested, some motorists may see longer queues at automatic toll collection lanes than at manual toll collection lanes. This phenomenon is mainly due to more manual toll collection lanes available for vehicles to spread out into different queues. In reality, automatic toll collection lanes handle a higher amount of traffic flow than manual toll collection lanes. Although at times the queues at manual toll collection lanes appear shorter, the actual journey time using automatic toll collection lanes is shorter than using manual toll collection lanes if the actual transaction time is taken into account. According to a site survey conducted by the CHT operator in June 2011, the travelling time (including waiting time in the queue) from near the footbridge connecting to the Hong Kong Polytechnic University to the toll booths (about 150 m) during morning and evening peak hours was slightly more than 50 seconds for using the manual toll collection lanes, and only about 40 seconds for using the automatic toll collection lanes.

The TD reviews from time to time the utilization rates of automatic toll collection lanes at various tolled tunnels and roads and monitors closely their utilization. If the review findings show that there is a need for increasing the number of automatic toll collection lanes and that such measure would actually be able to improve the traffic flow, and, among other considerations, would not cause inconvenience to users of manual toll collection lanes as a result of a reduction in the number of such lanes, the TD will adjust the number of automatic and manual toll collection lanes respectively. In fact, in response to demand, the number of automatic toll collection lanes at the CHT for

Kowloon-bound and Hong Kong Island-bound traffic was increased from two to three in December 2001 and May 2002 respectively.

It is the Government's policy to provide both manual and automatic toll collection lanes at all tolled tunnels and roads in the territory to allow motorists to choose between making toll payment in cash or electronically according to their needs after taking into account such factors such as the time saving, convenience and cost-effectiveness in using automatic toll collection lanes. The TD will determine the appropriate number of manual and automatic toll collection lanes at various tolled tunnels and roads in the light of their utilization rates and traffic flows so as to provide road users with a choice in toll payment.

- (c) Since the existing number of automatic toll collection lanes at the CHT should be able to meet the demand of motorists choosing to use these lanes, and that it takes a shorter time to use automatic toll collection lanes than manual toll collection lanes at the CHT, increasing the number of automatic toll collection lanes at the CHT may not allow more vehicles to use the tunnel simultaneously or further improve the traffic flow.

The proposal of converting some manual toll collection lanes at the CHT to automatic toll collection lanes during peak hours involves changing the payment mode at certain toll collection lanes at different time periods of a day. This will result in longer waiting time for motorists using manual toll collection lanes. In addition, due to the need to display corresponding road signs and traffic signs at the tunnel area and approach roads to direct motorists to the automatic toll collection lanes, if some manual toll collection lanes are converted to automatic ones or the relevant road signs and traffic signs are changed during peak hours only, motorists may be easily confused resulting in traffic chaos and potential safety risks. Given the above reasons, we are of the view that the proposal may not be able to ease the traffic congestion at the CHT, and has its drawbacks.

Nonetheless, in order to improve the traffic situation at both exits of the CHT, the Government and the tunnel management company have been taking various traffic control measures, such as closing

some of the manual toll collection lanes in the Hong Kong Island-bound direction intermittently during peak hours to alleviate the traffic flow at the automatic toll collection lanes, and to ensure a smooth traffic flow as a whole. Such arrangements not only can improve the traffic flow at the automatic toll collection lanes but also retain certain flexibility to enable tunnel users to freely choose their means to pay tolls. We will closely monitor the traffic situation at the CHT and review the current arrangements from time to time for making appropriate adjustments when necessary.

MR CHAN KAM-LAM (in Cantonese): *President, I believe the information provided by the Secretary in the main reply was provided by her subordinates, and there are a lot of fallacies in logic in it. For instance, two of the automatic toll collection lanes added in 2001 and 2002 were actually bus-only lanes. In other words, ordinary motorists are not allowed to use them. Furthermore, the Secretary has also mentioned that 38% of the toll collection lanes are automatic toll collection lanes, while the number of vehicles using such lanes accounts for 39% of the traffic flow, hence the two are consistent. So, why would the queues at manual toll collection lanes be shorter? This shows that the Government has actually failed to conduct a more in-depth study into tunnel management.*

President, when I asked the Secretary some time ago whether she would consider adopting the Octopus system at the CHT, she gave me a negative reply. However, the present traffic congestion at the CHT has already created a very serious management problem. Will the Secretary consider converting the intermittently closed manual toll collection lanes to automatic toll collection lanes to enhance traffic flow and ease the traffic congestion problem that occurs during peak hours?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): *President, we must observe and act with caution. As I mentioned in the main reply just now, a site survey was completed at the CHT only in June. Given that vehicles enter the CHT in the shape of a fan, this may give the impression that the vehicle queues at manual toll collection lanes are shorter. But actually, even at the peak of peak hours, the time taken at automatic toll collection lanes is still*

more than 10 seconds shorter than that at manual toll collection lanes. Hence, we see that automatic toll collection lanes are also able to achieve a certain effect in terms of, among other things, efficiency and handling the vehicle flow.

As regards a question raised by the Honourable Member some time ago in relation to adopting the Octopus card for toll collection, we have been maintaining communication with the Octopus Cards Limited (OCL) and an open attitude on this proposal at this stage. Of course, when introducing a new toll collection system in future, we will also need to consider whether or not the toll collection efficiency has to be upgraded to make the vehicle flow smoother as well as ascertaining the cost-effectiveness of doing so. As regards the Honourable Member's proposal of converting manual toll collection lanes to automatic toll collection lanes during certain time periods of a day, as I also mentioned in the main reply just now, we must carefully consider this proposal to avoid causing any confusion. At present, motorists may already be familiar with the layout of toll collection lanes, knowing which ones of them are automatic or manual, so if the collection mode is changed during certain periods of the day, not only do we need to change the toll collection booths, we also need to change, among others, the traffic signs on approach roads to inform motorists of the arrangements in advance. We must carefully consider whether doing so will, in general, give rise to misunderstanding among motorists and thus potential risks, and so on. Therefore, we have no such plan at the present stage.

DR SAMSON TAM (in Cantonese): *President, the automatic toll collection system has been introduced for a long time, but its utilization rate is still 38% to 39% only. I consider these figures relatively low. As Members are all aware, Hong Kong has a traffic congestion problem. Improving the toll payment efficiency at tunnels can definitely ease traffic congestion. I think that the Secretary should expeditiously consider the proposal put forward just now by Mr CHAN Kam-lam on the provision of Octopus toll collection lanes. When I took a taxi, I often found that the taxi drivers were very tensed because they really did not know what to do if they queued up at a lane requiring cash payment but found that they were short of cash. Hence, I hold that Octopus technology can help some motorists who do not use automatic toll collection lanes.*

May I ask the Secretary, given that the automatic toll collection system has been in use for a long period but still most of the drivers opt not to use it, whether or not she has conducted an analysis on the system to find out why they opt not to

use it and, after the analysis, whether any ways can be found to raise their ratio of using the automatic toll collection lanes?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): First of all, President, the number of automatic toll collection lanes accounts for about 30% to 40% of the total number of toll collection lanes, while the number of vehicles using such lanes is as high as 40% to 60%, which is higher than the total traffic flow of all toll collection lanes. As regards the question of whether there is a need to introduce other modes of toll collection, such as Octopus, I think that we should continue to discuss with the OCL. Nevertheless, distant technology is not available at the present stage, while Octopus is, after all, a technology involving the "swiping of cards".

We found that different tolls are levied at many tunnels. In other words, not a flat toll is levied on all vehicles. When a driver drives his vehicle to a toll collection booth and tells the toll collector he wishes to pay with Octopus, the toll collector will have to select the type of vehicle for him, such as heavy goods vehicle, taxi or private car. As the tolls levied are different, the selection of payable amount and the "swiping of cards" will still be required. Apparently, the vehicle flow may not be enhanced, only that the choice for consumers in making payment is widened. Notwithstanding this, we still consider that we should continue to maintain an open attitude and discuss with the OCL the most appropriate way to introduce Octopus. Therefore, we will still continue to communicate with the OCL.

As regards the question of whether or not we will encourage more drivers to use automatic toll collection lanes, I consider it most important give drivers choices. Of course, the present mode of automatic toll collection has the merit of great efficiency. But on the other hand, it also has the problem of a monthly fee. Therefore, we think that consumers must be offered certain choices. We hope to be able to strike an appropriate balance by providing automatic toll collection lanes on the one hand and refraining from reducing the choices for motorists on the other. Therefore, both manual and automatic modes will be provided. We will continue to monitor the situation and, if it is found suitable — additional automatic toll collection lanes were provided at different tunnels in the past — we will definitely do so when such opportunities arise.

PRESIDENT (in Cantonese): Is your supplementary question not yet answered?

DR SAMSON TAM (in Cantonese): *President, I meant to ask the Secretary whether or not she had conducted an analysis but, in her response, she reckoned that the monthly fee might pose a problem, but other problems might also*

PRESIDENT (in Cantonese): Dr TAM, you will have to wait for another turn if you have other supplementary questions, as we cannot open a debate at this point.

MR JAMES TO (in Cantonese): *President, may I ask the Government if it has any policy to ensure that the flow of vehicles using the automatic toll collection system is faster than the flow of vehicles which make toll payment in cash? Or is the overall design meant to ensure the maximum number of vehicles to pass through different lanes and the minimum average time taken by each vehicle to pass through the lanes?*

As found by the survey conducted by the authorities, the time taken by vehicles using automatic toll collection lanes is shorter than those using manual toll collection lanes, is there a need to further provide additional automatic toll collection lanes to widen the gap, so as to "penalize" vehicle owners who do not use the automatic toll collection system? Is there such a policy?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, under the present arrangements, it is hoped that the option of automatic toll collection lanes is provided at all tunnels. First, we do not specify which kind of system is to be adopted. Second, we have not set a specific target regarding the number of such lanes to be provided.

As I explained just now and mentioned in the main reply, we must continue to provide motorists the option of making toll payment manually. In fact, automatic toll collection lanes account for only 30% to 40% of the total number of toll collection lanes, while the number of vehicles using such lanes is 40% to 60%. Having said that, this is by no means a hard indicator, and there is no requirement that a certain percentage must be achieved. Nevertheless, if the options opened to motorists as a whole are not affected, and they can make

manual toll payment in cash smoothly, we think that they can have different options. However, the ratio between the numbers of vehicle using different toll collection methods may also affect the efficiency of vehicle flows. Therefore, we will continue to monitor the relevant situation.

MR FRED LI (in Cantonese): *President, I have an Autotoll label; I wonder if the Secretary has one, too. When I drive to the Legislative Council every morning, I would get \$25 in cash ready during the peak hours because the vehicle queues at the two Autotoll toll collection lanes would be much longer than those at the manual toll collection lanes. Given the longer vehicle queues at the two automatic toll collection lanes, I have no alternative but to pay in cash every day.*

May I ask the Secretary whether she has studied using the Eastern Harbour Crossing (EHC) during the peak hours in the morning is far worse than the situation in the CHT? In connection with the study on the CHT, which was mentioned by the Secretary in her reply just now, may I know if the EHC has encountered the problem I mentioned just now and if the Government has studied solutions to the problem?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, the information we have provided is about the CHT because the question raised by Mr CHAN Kam-lam relates to the CHT. However, I believe the relevant theory can apply to the EHC, too. Although the vehicle queues at manual toll collection lanes appear to be shorter, we must bear in mind that the transaction time taken at these lanes should be approximately five times that taken at automatic toll collection lanes. In other words, while the transaction time taken at automatic lanes is two seconds, the time taken at manual toll collection lanes is approximately 10 seconds. After all, the time taken at automatic toll collection lanes is shorter. If I have information about the EHC, I will certainly provide it to Honourable Members. However, the site observation and survey carried out in June were all conducted at the CHT. The study includes, among others, the waiting time for the vehicle queues, the respective time taken at automatic toll collection lanes and manual toll collection lanes. At this stage, we do not have any information on the EHC.

MR FRED LI (in Cantonese): *My supplementary question is: Will the Government conduct a similar survey at the EHC?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, this can be arranged. I will discuss this with the TD.

DR PAN PEY-CHYOU (in Cantonese): *President, I think that using the Autotoll at the tunnels can indeed bring great convenience to motorists. According to my observation, many professional drivers choose not to use the Autotoll mainly because of the monthly fee. In this respect, will the Government exercise its influence to make the tunnel companies and the Autotoll Limited to reach agreements on waiving the monthly fee to facilitate motorists, especially professional drivers, thus enabling more people to enjoy the Autotoll service?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, the Autotoll Limited currently relies mainly on collecting an administrative fee, that is, a monthly fee of \$35, from its clients to maintain its service. Such an administrative fee was determined as early as 1998. It was agreed at that time that both the administrative fee and deposit could be determined by the Autotoll Limited without the need to seek the Government's consent or approval. Of course, we would more than welcome if the Autotoll Limited is willing to lower its fee. Nevertheless, we do not impose such a requirement, whether in the overall arrangement or contracts. Meanwhile, if other modes of toll collection are introduced in the future as a new toll collection option, like we are currently discussing with the OCL the chances of introducing the Octopus, the problem of fees charging must be handled carefully because the Government's consent or approval is not required.

PRESIDENT (in Cantonese): Is your supplementary question not yet answered?

DR PAN PEY-CHYOU (in Cantonese): *No. My supplementary question is: Will the Government attempt to exercise its influence to achieve this because the Octopus Card is now used by members of the public for free?*

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

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, as I explained just now, currently we do not have any tools or means to exert influence because there is simply no need to seek our approval for fees charging at present. If what the so-called influence mentioned by the Honourable Member means is to press for certain things through contracts or other means, it seems that this cannot be achieved by our existing tools.

PRESIDENT (in Cantonese): Last supplementary question.

MR CHAN KAM-LAM (in Cantonese): *President, I have to explain why I have raised this question. It is mainly because the CHT is a government tunnel, and so it is easier to make any changes in management. However, the EHC is still a private tunnel, and therefore it is relatively difficult for any changes to be made. Moreover, it might take a longer time.*

In part (c) of the main reply, the Secretary pointed out that the proposal of converting some of the manual toll collection lanes to automatic toll collection lanes during peak hours would create many problems. Actually, I hope the Government can really realize that the congestion on the approach roads to the Hong Kong Island-bound Autotoll lanes is attributed mainly to stops made by buses, and the congestion thus occurred lends to the appearance of a bottleneck along the tunnel, and as a result, there is congestion at the tunnel entrance in Kowloon. Hence, our proposal is to convert one of the manual toll collection lanes to an automatic toll collection lane, rather than closing some of the manual toll collection lanes intermittently. I hope the Secretary can re-examine this issue in depth and make a decision expeditiously.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, as I also mentioned in the main reply, we will continue to monitor the overall situation because the site survey was completed only in June, and it was found that the time taken by vehicles using automatic toll collection lanes at the peak of peak hours was still more than 10 seconds shorter than those using manual toll collection lanes. Judging from the present situation, it might not be

necessary to provide additional automatic toll collection lanes. However, as Mr CHAN said just now, we will closely monitor the relevant situation and, if necessary and effective, we will certainly do so.

PRESIDENT (in Cantonese): Last oral question.

Broadcast of Legislative Council Meetings by Radio Television Hong Kong

5. **MR IP WAI-MING** (in Cantonese): *President, on Radio 5 of Radio Television Hong Kong (RTHK Radio 5), there are quite a number of programmes (for example, Chinese operas, education and cultural programmes, as well as programmes catering for minority interests, and so on) the target audience of which is the elderly. However, quite a number of elderly people have recently relayed to me that as RTHK Radio 5 needs to broadcast Legislative Council meetings on Wednesdays, the scheduled programmes have to be re-scheduled until after the meetings have been adjourned. Some elderly people have further pointed out that as Legislative Council meetings in the current Session often last for several days, they cannot listen to the scheduled programmes for several consecutive days. In this connection, will the Government inform this Council:*

- (a) *in the past five years, of the total number of hours of RTHK Radio 5 programmes the target audience of which is the elderly; the average audience rating, number of listeners and age profile of listeners of this radio channel; in the past two years, of the total number of hours and audience ratings of broadcasting Legislative Council meetings on RTHK Radio 5;*
- (b) *whether the authorities know if, apart from RTHK, there are other free television and radio channels which at present also broadcast Legislative Council meetings and important meetings of its committees (for example, meetings of the Finance Committee, and so on); how RTHK at present informs its listeners in advance of the changes in programme schedules necessitated by the broadcast of Legislative Council meetings on Wednesdays; and*
- (c) *given that local television and radio stations are developing digital broadcasting, whether the authorities have any plan to establish*

dedicated television and radio channels for the live or relay broadcast of Legislative Council meetings, while at the same time developing digital broadcasting, so that the broadcast of the meetings will not affect elderly people listening to the scheduled programmes; if they have, of the details and the timetable of the plan; if not, the reasons for that?

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, Radio Television Hong Kong (RTHK) started live broadcast of Legislative Council meetings in the 1980s to enable the public to keep track of the meetings in real time. Currently, RTHK Radio 5 broadcasts live Legislative Council meetings held every Wednesday and continued on subsequent days, including the delivery of the Policy Address by the Chief Executive and of the Budget speech by the Financial Secretary. Our reply to the three-part question is as follows:

- (a) RTHK Radio 5 is a dedicated channel for elderly, culture and education programmes. During the five years from 2006 to 2010, the total programme output of Radio 5 amounted to about 34 000 hours, of which some 9 300 hours were programmes on Chinese opera targeted mainly at the elderly audience, and some 5 500 hours were other elderly programmes.

Radio 5 now broadcasts Legislative Council meetings held every Wednesday and continued on subsequent days. In the 2008-2009 and 2009-2010 Legislative Sessions, a total of some 770 hours of Legislative Council meetings were broadcast on Radio 5.

According to a survey conducted by an independent survey company commissioned by RTHK in late 2010, among the total population of about 7 million, 426 000 people had listened to Radio 5 within seven days before they were surveyed. On their age profile, 77% of the listeners were aged 50 or above, 12% between 40 and 49, and 11% below 40. For the audience ratings of the broadcast of Legislative Council meetings, the survey indicated that the average number of listeners during the period of Legislative Council meetings (every half an hour from 11 am to 10 pm on Wednesdays) was 34 000,

whereas the average number of listeners for the same period in other days was 27 090.

- (b) At present, apart from RTHK, no other free television or radio channels broadcast Legislative Council meetings, although two pay television channels broadcast some of the meetings.

Radio 5 will inform listeners in advance of the arrangements relating to the broadcast of a Legislative Council meeting in its programmes on the meeting day and the day before. A notice will also be posted on RTHK's website.

- (c) Upon the launch of digital audio broadcasting (DAB), four DAB programme channels of RTHK will initially simulcast the existing four AM channels to improve reception quality, with gradual enhancement of programme content. RTHK will implement split broadcasting to ensure that the elderly could continue to listen to Radio 5 programmes via the AM channel while one of the DAB channels will be used to broadcast Legislative Council meetings.

The Government currently has no plan to establish dedicated digital television or radio channels for the live or relay broadcast of Legislative Council meetings.

MR IP WAI-MING (in Cantonese): *President, why did I ask this question? Since the beginning of the 2008 Legislative Council Session, there have been 22 meetings that lasted two consecutive days; four meetings that lasted three days and two meetings that lasted four days. Generally speaking, RTHK Radio 5 has to wait until the end of a Legislative Council meeting before resuming the broadcast of the scheduled programmes, so this makes many elderly people who do not want to listen to Legislative Council meetings feel that they have no choice.*

Since the survey conducted by the Government also indicates that many members of the public want to listen to the broadcast of Legislative Council meetings, why does the Government not open a dedicated channel to broadcast Legislative Council meetings?

My supplementary question is related to part (c) of the main question. The Secretary pointed out that four DAB programme channels of RTHK would initially simulcast the existing four AM channels, and split broadcasting would be implemented to ensure that one of the DAB channels would be used to broadcast Legislative Council meetings. May I ask the Secretary if a dedicated DAB, AM or FM channel that does not have to broadcast Legislative Council meetings will be opened for elderly listeners?

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, Mr IP is right because when I looked at the relevant figures, I found that in past Legislative Council Sessions, there were indeed increases in the numbers of occasions on which Legislative Council meetings were broadcast for two consecutive days or more. In 2008-2009, there were seven such occasions, in 2009-2010, there were nine occasions and in the current Legislative Council Session, that is, 2010-2011, as of 23 June, there have been 13 such occasions, so the number of meetings which were broadcast for two consecutive days or more has actually seen an increase.

Just now, I said in my main reply that RTHK would launch DAB at the end of this year. Of the four DAB channels, one of them will provide split broadcasting of Legislative Council meetings to ensure that the elderly can continue to receive the programmes of RTHK Radio 5 through an AM channel. Before the end of this year, we will continue to use the AM channel of RTHK Radio 5 to broadcast Legislative Council meetings. In fact, this arrangement has been in place for many years, so we consider it appropriate because the audience are used to it. Since DAB and split broadcasting will be implemented in the near future, we believe this arrangement is appropriate.

MRS REGINA IP (in Cantonese): *President, like Mr IP Wai-ming, I have also received similar complaints. When I was doing publicity work in the streets, some elderly people complained to me that due to the low efficiency of the Legislative Council, they were prevented from listening to radio programmes and watching television. I believe they were talking about RTHK Radio 5.*

May I ask the Secretary if he has actually conducted any survey to ascertain which programmes the elderly love to tune into the most?

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, concerning which programmes the elderly love the most, I do not have the specific survey information on hand. However, according to what the radio station told us, the elderly prefer Chinese opera programmes. We also noticed that during the hours when Legislative Council meetings are broadcast, it is true that the elderly cannot listen to Chinese opera programmes. For this reason, since 2009, we have extended the hours of the programmes that elderly people prefer in other time slots, for example, in recent years, we have extended the hours of Chinese opera programmes that elderly people like by three to four hours every evening to compensate the number of hours of elderly programmes reduced due to the broadcasting of Legislative Council meetings.

DR PAN PEY-CHYOU (in Cantonese): *President, if we look at it from another angle, is the broadcast of the debates in the Legislative Council really suitable for the elderly to listen to? In recent years, the speeches of Members have become increasingly radical and there were an increasingly number of fiery scenes, so if one meets with such scenes, heated debates and even those remarks verging on insults, one's heart beat would increase and one's blood pressure would rise after listening to them. Frankly speaking, many elderly may have hidden heart ailments, so I am a little bit worried. The Secretary said just now that after the launch of DAB later on, the split broadcasting of AM and DAB channels would be introduced and this seems to be a solution. However, the impression that I have been given is that in the future, DAB would replace the present mode of broadcasting. In the event that the present mode of broadcasting is discontinued, would the situation not revert to the original one? The elderly people do not have many forms of entertainment, so will the Government consider the recreational and health needs of the elderly and open a channel to offer elderly programmes, so that they would not be affected by the debates in the Legislative Council?*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): Thanks to the Honourable Member for his question. In fact, upon

the launch of DAB in the future, we will not replace the original AM or FM radio channels with DAB channels. According to our present plan, the original channels will still be retained. We have no plan to replace these channels.

As I explained earlier, after the launch of DAB, RTHK plans to arrange for the simulcast of the four existing AM channels and the DAB channels. However, in view of the need of the elderly to listen to the programmes they like, during the hours when we broadcast Legislative Council meetings, we will implement split broadcasting. Therefore, after the launch of DAB, the elderly people will still be able to tune into the scheduled programmes of RTHK Radio 5. Hence, they will not be affected in any way. Nor will they be prevented from listening to their programmes due to the broadcast of Legislative Council meetings because it will be assigned to one of the DAB channels.

MR TAM YIU-CHUNG (in Cantonese): *President, while I was serving in the Elderly Commission, in fact, many elderly people had raised this issue with me. They said that there were no programmes for the elderly for them to listen to on Wednesdays. At present, it seems that this situation is deteriorating because sometimes, the meetings could not be concluded on Wednesday, so they had to be extended to Thursday. Moreover, President, the meeting on 13 July may last seven to 10 days on a row and a Legislative Council meeting has to be held in this period.*

Secretary, can you think about how the elderly people can spend this period that lasts seven to 10 days starting from 13 July? What programmes can be arranged for them? I think the Government also has to think of a way. Otherwise, given such a long period of time, the elderly people may not be able to endure it and their psyche and health may be affected.

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): *President, in this regard, RTHK has also received telephone enquiries or complaints and each year, it would receive on average more than a dozen telephone enquiries or complaints. We understand and empathize with this. For this reason, we will launch DAB at the end of this year. In the interim, it is a fact that the Legislative Council will hold a meeting that will last several days in a row. Our survey results indicate that the audience rating for the broadcast*

of Legislative Council meetings is actually also quite high. There are on average 34 000 listeners in every half hour in this time slot, so there is a sizeable audience. In contrast, the number of listeners on other days only stands at 27 000. Therefore, the audience rating for the broadcast of Legislative Council meetings is higher. For this reason, we must balance the needs of listeners in this regard accordingly. However, with the introduction of DAB, I believe this issue can be resolved very soon.

PRESIDENT (in Cantonese): However, the problem faced by the elderly on 13 July cannot be solved.

MR TAM YIU-CHUNG (in Cantonese): *He has not replied as to how the impact of the debate on 13 July that will last a number of days can be addressed? Although some listeners like to listen to such broadcasts, the programmes preferred by the elderly people are different.*

PRESIDENT (in Cantonese): Secretary, is there any contingency measure?

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, the number of channels is limited. We appreciate the need in this regard and will reflect it to RTHK to see if more programmes preferred by the elderly people like can be broadcast in other time slots.

MR IP WAI-MING (in Cantonese): *President, at present, there is no doubt that there are many listeners to the broadcast of Legislative Council meetings. However, some elderly people are compelled to switch to other channels but they are not used to listening to pop music, so they are forced to listen to our meetings. What I mean is that they have no choice. The Secretary said that split broadcasting of DAB channels and AM channels would be implemented at the end of this year and of course. I welcome the fact that in the future, the elderly will have an entire AM channel to themselves for listening to the scheduled programmes. Of course, I am happy about this. However, he only said that this would happen at the end of this year. Can he give us a definite timetable on*

when elderly people can freely choose between the broadcast of Legislative Council meetings and the scheduled programmes of RTHK Radio 5?

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): In fact, in this regard, the staff of RTHK are working very hard with a view to implementing DAB as soon as possible. However, the radio station has not set a definite date for the launch of DAB. Nevertheless, I believe those colleagues will work very hard to provide this service as soon as possible.

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

MRS REGINA IP (in Cantonese): *Deputy President, I wish to follow up one thing. The Secretary said that although no public opinion survey had been conducted, he also knew that elderly people liked to listen to Chinese operas. In view of this, before the launch of DAB at the end of this year, for example, on 13 July (since as many as 1 000 amendments may be proposed on that day), can the meeting of the Legislative Council be broadcast only during the hours when elderly people are asleep — they go to bed very early and perhaps they can fall asleep faster on listening to such broadcasts — while during the hours of entertainment before elderly people go to bed, the programmes they like can be broadcast? Can contingency measures be considered?*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): Deputy President, I wish to seek a clarification. I am not sure if it is the case that the Honourable Member does not want any live broadcast to be made and wants the programmes to be re-scheduled, so that the recorded meetings can be broadcast instead.

MRS REGINA IP (in Cantonese): *What I am asking is whether or not the Legislative Council meetings can be broadcast partially, so that the elderly can listen to entertainment programmes and their favourite programmes before going to bed?*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): Since the 1980s, we have been broadcasting Legislative Council meetings and I also mentioned earlier on that there is actually a large audience, with as many as 34 000 people in every half hour. Therefore, there is a demand for this. In fact, DAB will be introduced soon and with split broadcasting, there will be more choices, so it will be possible to solve this problem.

MR ALBERT CHAN (in Cantonese): *Deputy President, DAB has been discussed for many years and RTHK has tried to broadcast programmes by DAB several years ago. However, the formal launch date still cannot be finalized. In fact, the Government promised many years ago that after the implementation of DAB, it would be possible to increase the number of community radio stations significantly, for example, channels can be opened to cater for minority needs, be it those of the elderly people, the Legislative Council or socially disadvantaged groups and that in addition, after the introduction of digital television, it would also be possible to cater to the broadcasting needs of minority groups and introduce sign language service. In fact, sign language service is provided in many public broadcasting services overseas. However, there is still no plan on this in Hong Kong. Secretary, concerning the needs of minority groups, such as the elderly or the religious groups and socially disadvantaged groups mentioned by me just now, when can dedicated radio stations be made available to them, including digital television and radio stations, and when can sign language service be provided? Is a timetable on the provision of sign language service available?*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): Deputy President, the subject today is the broadcast of Legislative Council meetings and the arrangements relating to RTHK Radio 5. In spite of this, Mr CHAN still asked a question on the participation of the community in broadcasting in the future. In fact, RTHK is also working on the details now and a consultation will be carried out before the end of this year. When carrying out the consultation, the details will be published.

MR ALBERT CHAN (in Cantonese): *On sign language service, sign language service is also available in the channel for the Legislative Council*

DEPUTY PRESIDENT (in Cantonese): The Secretary has already replied that a consultation will be conducted at the end of this year.

MR ALBERT CHAN (in Cantonese): *Deputy President, he has not yet replied on the issue of sign language.*

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

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): Deputy President, I have nothing to add.

MR ALBERT CHAN (in Cantonese): *Is he incapable of even answering when sign language service will be provided?*

DEPUTY PRESIDENT (in Cantonese): Is there any other question? If not

MR ALBERT CHAN (in Cantonese): *Deputy President, sign language is a very basic service, so can the Secretary study this back in his office? How can he say "I have nothing to add" and think that would do? He has now taken the centre stage as a Secretary. Surely he is not so shameless as not to even consider the provision of sign language service?*

DEPUTY PRESIDENT (in Cantonese): Mr CHAN, please sit down. The Secretary has the right to choose how to reply.

MR ALBERT CHAN (in Cantonese): *He is incapable even of giving a reply on the provision of sign language service, so how can he take the centre stage as the Secretary?*

DEPUTY PRESIDENT (in Cantonese): Oral questions end here.

WRITTEN ANSWERS TO QUESTIONS**Statistics on Monthly Household Income and Expenditure**

6. **DR LAM TAI-FAI** (in Chinese): *President, it has been pointed out in the First Quarter Economic Report 2011 that the ratio of mortgage payment for residential properties to median income of households (repayment-income ratio) among members of the public has soared further from 45% in the fourth quarter of 2010 to around 49% in the first quarter of this year. It has been reported that the Financial Secretary has indicated that if banks raise interest rates of mortgage loans by 3% in the future, such ratio will rise to 63%. Regarding the daily living expenses among the general public and the impact of the banks raising interest rates on such expenses, will the Government inform this Council:*

- (a) *of the repayment-income ratio among members of the public in the past three years;*
- (b) *whether it has conducted any survey on the ratio of monthly housing rental expenses to income among the general public; if it has, of the figures in the past three years; if not, the reasons for that;*
- (c) *whether it has conducted any survey on the ratio of monthly expenses on transportation to income among the general public; if it has, of the figures in the past three years; if not, the reasons for that;*
- (d) *whether it has conducted any survey on the ratio of monthly expenses on education to income among the general public; if it has, of the figures in the past three years; if not, the reasons for that;*
- (e) *whether it has conducted any survey on the ratio of monthly expenses on healthcare to income among the general public; if it has, of the figures in the past three years; if not, the reasons for that;*
- (f) *whether it has conducted any survey on the respective ratio of monthly expenses on meals bought away from home and home-cooking to income among the general public; if it has, of the figures in the past three years; if not, the reasons for that;*

- (g) *whether it has conducted any survey on the ratio of monthly expenses on daily necessities such as clothing and footwear, and so on, to income among the general public; if it has, of the figures in the past three years; if not, the reasons for that;*
- (h) *whether it has conducted any survey on the ratio of monthly expenses on basic living necessities of families such as water, electricity and gas, and so on, to income among the general public; if it has, of the figures in the past three years; if not, the reasons for that;*
- (i) *whether it has conducted any survey on the ratio of monthly expenses on entertainment to income among the general public; if it has, of the figures in the past three years; if not, the reasons for that; and*
- (j) *whether it has assessed the impact of the banks raising interest rates of mortgage loans on the aforesaid expenses which are related to the livelihood and needs of the people, and what corresponding measures the authorities have to improve people's livelihood?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Chinese): President, my reply to the question raised by Dr LAM Tai-fai is as follows:

- (a) The repayment-income ratio (affordability ratio) from 2008 onwards according to information compiled by the Rating and Valuation Department is set out in Annex A.
- (b) to (i)

A Household Expenditure Survey is conducted by the Census and Statistics Department once every five years. The latest round was conducted in 2009-2010. The Survey aims at collecting information on expenditure patterns of households for updating the expenditure weights of the Consumer Price Indices. Since the

statistical information on the ratio of household expenditure to household income was not computed in the Survey, the ratios of monthly expenditures on commodities/services mentioned in questions (b) to (i) to income are not available.

The Household Expenditure Survey compiles the average monthly household expenditure on the commodities/services mentioned in questions (b) to (i). The relevant figures for 2004-2005 and 2009-2010 are set out in Annex B.

- (j) The effects of an increase in interest rate on people's livelihood vary among different individuals. For people who need to repay mortgage loans, an interest rate hike will increase their repayment burden, and may entail adjustments to their expenditures on other items. Therefore, people should carefully assess their own capacity in dealing with interest rate changes before applying for mortgage loans. On the other hand, for people who have net savings in the form of bank deposits, an interest rate hike may raise their interest income.

Annex A

The affordability ratio from 2008 onwards

	<i>Affordability ratio*(%)</i>	
2008		
	Q1	38.7
	Q2	35.8
	Q3	34.7
	Q4	31.9
2009		
	Q1	34.1
	Q2	34.4
	Q3	36.6
	Q4	38.4

	<i>Affordability ratio*(%)</i>	
2010		
	Q1	42.3
	Q2	41.6
	Q3	42.2
	Q4	44.6
2011		
	Q1	48.7 [^]

Notes:

* The ratio of mortgage payment for a 45 square-meter flat (assuming 70% loan-to-value ratio and tenor of 20 years) to median income of households (excluding those living in public housing).

[^] The figure is provisional and subject to change.

Annex B

The average monthly household expenditure on the commodities/services mentioned in questions (b) to (i)

	<i>Commodity/service</i>	<i>Average monthly household expenditure (HK\$)</i>	
		<i>2009-2010*</i>	<i>2004-2005</i>
(b)	Housing rent (including rates and Government rent)	6,418	5,123
(c)	Transport	1,792	1,793
(d)	Education	1,027	875
(e)	Medical services	590	432
(f)	Meals bought away from home	3,695	3,078
	Food (other than meals bought away from home)	2,164	1,785
(g)	Clothing and footwear	861	812
(h)	Electricity, gas and water	630	646
(i)	Cinema entertainment	25	21
	Package tours	424	252
	Other entertainment and holiday expenses	56	78
	Others	3,940	3,988
	Overall expenditure	21,623	18,884

Notes:

* In 2009-2010, the household expenditure was lowered by a number of Government's one-off relief measures. Household expenditure figures above refer to the actual expenditure incurred by household upon enjoying various waivers/concessions.

Figures in the above table may not add up to the respective totals due to rounding.

Measures to Relieve Work Pressure on Secondary School Teachers

7. **MRS SOPHIE LEUNG** (in Chinese): *President, regarding the impact of the changes in various education policies including academic structure reform, integrated education and Language Proficiency Assessment for Teachers, and so on, in recent years on the pressure of secondary school teachers, will the Government inform this Council:*

- (a) *whether it knows the difficulties and pressure faced by secondary school teachers relating to teaching and their emotions; what supportive measures and improvement proposals the authorities have in place; whether they will conduct a comprehensive study to find out the current working hours, workload, difficulties encountered in teaching, as well as sources of pressure of secondary school teachers, and to assess the impact of such conditions on teaching quality and students' development; if not, of the reasons;*
- (b) *given that the Government has implemented integrated education to arrange as far as possible students with special educational needs (SEN) (for example, intellectual disabilities, autism and dyslexia, and so on) to study in ordinary schools, teachers have to take care of students with mixed abilities, while also coping with the emotional and behavioural problems of students which affect order in the classroom, whether the authorities will review if the existing assessment mode which still focuses relatively more on examination results is causing greater difficulties for students with SEN in their study, and thus resulting in an obvious gap between their learning abilities and progress and those of ordinary students; whether the authorities will enhance the promotion of multiple intelligence education to allow different students to develop various kinds of potential; what measures the authorities have in place to give further support to teachers in dealing with the gaps in learning abilities and progress among their students so as to improve the teaching quality and effectiveness of learning, as well as to relieve teachers' workload and pressure; and*
- (c) *given that a study has revealed that small class teaching enables teachers to feel more relaxed and enthusiastic in teaching, which will benefit both teaching and learning, but in reply to a question*

raised by a Member of this Council on 1 December last year, the Secretary for Education indicated that "the time is not ripe" for introducing small class teaching and that "the Voluntary Optimization of Class Structure Scheme" must be implemented first to "stabilize the situations in schools", of the factors considered in deciding when "the time is ripe"; apart from the number of students enrolled, of the factors considered in concluding that "the time is not ripe"; of the objective criteria based on which the authorities assess if the time is ripe, and whether they will make public these criteria; whether the authorities have at present carried out any preparatory work (including the adjustments in teacher training, classroom ancillary facilities, teaching mode and the assessment system, and so on) so as to complement the gradual reduction in the number of students per class in secondary schools in future; if they have, of the details?

SECRETARY FOR EDUCATION (in Chinese): President, my reply to the three-part question relating to the Member's concern about the work pressure of teachers is as follows:

- (a) The Education Bureau has all along attached great importance to alleviating teachers' workload and pressure. In this regard, the Education Bureau set up the Committee on Teachers' Work in 2006 to look into teachers' work and related issues. The Committee put forth 18 recommendations to the Education Bureau in 2007, all of which have been accepted and implemented progressively. The Education Bureau also conducted a study on the implementation of the New Senior Secondary (NSS) academic structure upon its formal implementation in 2009. Furthermore, we maintain ongoing communication with the school sector through various channels, including frequent school visits by the District School Development Sections, external school reviews, various small-group discussions, "Teachers' Helpline" telephone counselling services, and meetings with school councils and teachers' unions, and so on, in order to understand the situation of teachers as well as schools and the effectiveness of the support measures provided by the Education Bureau.

We are well aware of the current situation and needs of secondary school teachers, and have implemented a number of support measures to improve their working conditions. For instance, schools have been given additional grants for implementing various education initiatives and greater flexibility in deploying their resources for employing additional staff or hiring services to provide teachers with appropriate support. We have also streamlined the school accountability mechanism and administrative procedures. Moreover, in implementing the curricula and initiatives, such as the NSS academic structure, integrated education, the Liberal Studies curriculum and small class teaching, we have provided additional teaching staff or resources for schools, and offered training courses and professional support to teachers to help them adjust to the changes and obtain a firm grasp of the related topics.

Through the Quality Education Fund (QEF), we encourage schools to make use of information technology in handling administrative work to relieve teachers of their administrative workload. The QEF also helps schools implement a whole-school approach to teacher wellness and create a healthy working environment and a caring school culture. The QEF further introduced this year the priority theme of "Supporting Effective School Management/Teacher Wellness" to promote professionalism and occupational health in the education sector.

Apart from organizing stress management courses for principals and teachers from time to time, the Education Bureau also promotes teacher wellness through various activities and programmes. To help teachers cope with work stress or personal emotional problems, we set up the Teachers' Helpline in 2006 to provide telephone counselling service for teachers. Up to now, the number of cases received by the Helpline has dropped significantly.

To help schools enhance the efficiency of administrative work, we are considering providing additional resources for public sector schools to recruit administrative personnel with relevant expertise and experience. We will launch a pilot scheme in some public sector schools in the 2011-2012 school year with a view to identifying a practicable mode for implementing this measure. In

the light of the results of the pilot scheme, we will consider how best to extend this measure to other public sector schools.

- (b) Assessment is an integral part of the curriculum, learning and teaching, and feedback cycle. In its report entitled *Learning to Learn: The Way Forward in Curriculum Development* published in 2001, the Curriculum Development Council recommended that there should be a change in school assessment practices with assessment for learning as the objective. When taking forward the academic structure and curriculum reforms, the Education Bureau has always encouraged teachers to identify the learning problems of students in the learning and teaching process, particularly those with SEN, with a view to giving quality feedback to students for improvement.

Through professional training, teachers are equipped with the ability to properly deploy different modes of assessment according to students' needs to give feedback on their learning. We have uploaded a set of guidelines, Special Arrangements for School Examination of Students with Special Educational Needs, onto the Education Bureau's website for teachers' reference so that they can adapt their assessment methods as appropriate. Moreover, the Education Bureau has been working closely with the Hong Kong Examinations and Assessment Authority to enhance the adapted arrangements for different assessments so that teachers can cater for students' learning diversity more effectively, which in turn will relieve teachers' pressure.

For schools admitting students with SEN, the Education Bureau provides additional resources, professional support and training for teachers, where appropriate, to enhance the quality of teaching and effectiveness of learning. In addition, the Education Bureau regularly organizes professional development programmes, thematic seminars and workshops for teachers to enhance their capacity to identify, handle and prevent the emotional and behavioural problems of students at an early stage, and to strengthen collaboration among teachers in implementing the Whole School Approach to integrated education.

The Education Bureau is extending the provision of School-based Educational Psychology Service by phases so that more schools can benefit from this comprehensive school-based support service. Through on-site support and training, educational psychologists help teachers adapt their curriculum, teaching and assessment for students in need and advise teachers on effective classroom management and guidance strategies. The number of public sector primary and secondary schools covered by this service is expected to increase to over 500 in the 2011-2012 school year.

- (c) Small class teaching is a method of teaching. International studies have suggested that it is more effective when students are small and its effectiveness tends to wane according to students' age. Therefore, other educationally advanced regions have generally adopted diversified strategies at secondary level to better meet the needs of students and enhance their learning effectiveness.

All along, we have been providing secondary schools with additional resources and teaching staff, having regard to the different needs of students. Schools can deploy flexibly the resources and teaching staff in the Whole School Approach to supporting students, in particular those academically low achievers, and arrange teaching in groups where necessary. The teacher-to-student ratio of public sector secondary schools has gradually improved from 1:18.5 in the 2000-2001 school year to the estimated 1:14.9 in the 2011-2012 school year. Following the implementation of the NSS academic structure, schools have adopted teaching in groups at senior secondary levels, with each group consisting about 20 students on average, according to a survey conducted in late 2010.

In view of the decline in secondary student population, we formulated a series of measures in 2008 to reduce the number of students allocated to each Secondary One class from 38 in the 2008-2009 school year to 34 in the current school year, while further relaxing the criteria for approving classes. Starting from the 2008-2009 school year, the threshold for calculating the number of approved Secondary One classes has been adjusted from 35 students to 30 students per class in two years, that is, schools can operate three classes with a minimum of 61 students and the average class

size may be as low as about 21 students. To further alleviate the impact of the sharp decline in secondary student population on the school sector, we have launched the Optimization of Class Structure Scheme to stabilize the overall situation, including the teaching force. Participating schools are provided with more manpower and additional subsidies to improve the quality of teaching and implement the NSS academic structure.

Implementing small class teaching in secondary schools will entail long-term structural changes which will have a profound effect on the adjustment of teaching mode and the allocation of secondary education funding. When the situation in schools stabilizes and more accurate data on student population are available, we will be happy to continue to explore with the school sector appropriate measures to enhance the quality of teaching and learning in secondary schools.

Investments in Property Market Made by Non-Hong Kong Residents

8. **MR ALBERT HO** (in Chinese): *President, as property prices in Hong Kong continue to surge, there are voices in the community alleging that the mainlanders who came to Hong Kong to speculate have pushed up property prices, while some others demand that purchase of properties in Hong Kong by people outside Hong Kong, including mainlanders should be restricted. The Chief Executive has also stated that "Hong Kong cannot do business with its door shut", the issue of whether it is in breach of the international treaties to restrict the purchase of properties by mainlanders has to be examined, and such restriction will be considered only when the property market is faced with "a hopeless situation". In this connection, will the Government inform this Council:*

- (a) *according to the authorities' information, of the situation of people outside Hong Kong purchasing properties in Hong Kong (including the number of mainlanders who had purchased properties in Hong Kong, and among them, the number of people who did not have to pay property tax because the properties were for self-occupation or not let out) in the past three years;*

- (b) *whether it knows, among the mainlanders' purchase of properties in Hong Kong in the past three years, the number of cases in which mortgage loans were acquired via banks and what the loan-to-value ratios were, as well as the number of cases in which the prices of the properties were paid in one go without the need to apply for mortgage loans from banks; and*
- (c) *whether it knows the measures taken by other places to restrict the purchase of local properties by people from abroad?*

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): President, the Administration has never imposed restriction on any persons over the purchase or transfer of residential properties. The proposal for restricting the purchase of residential properties in Hong Kong by people outside Hong Kong, including mainlanders, is a major policy change. When considering this proposal, we have to take into account its impact on the free movement of capital which is a factor of success to the Hong Kong economy, Hong Kong's status as an international financial centre, the long-term economic development of Hong Kong, market response and implementation problems. As Hong Kong is an externally-oriented economy, we have to be very careful about the possible consequence of imposing specific restriction on investments by people outside Hong Kong.

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

(a) and (b)

While the Land Registry has records on local property transactions, there is no breakdown on the number of transactions by people outside Hong Kong or mainlanders, or information on the purpose of their flat purchase.

The Hong Kong Monetary Authority does not collect data on the source of financing of flat purchasers in Hong Kong (including people outside Hong Kong and mainlanders), such as the number of cases requiring mortgage loans from banks and the particulars of the loans, and the number of cases not requiring mortgage loans from banks.

- (c) We understand that various countries and places have imposed restrictions on the purchase of residential properties by non-local residents. For example, some Mainland cities permit eligible foreign non-residents and residents from Hong Kong, Macao and Taiwan to purchase one residential property only. Singapore does not permit non-local residents to purchase "houses". In Australia, foreign non-residents are not allowed to purchase second-hand flats (but they are allowed to purchase uncompleted flats, and completed first-hand flats which have been left unsold for 12 months or more after completion). Temporary residents and overseas students have to obtain approval if they wish to purchase a flat, and must sell the flat within two years after their departure from Australia. The above examples show that the measures are different from one another, and do not impose an outright ban on foreigners on the purchase of residential properties. Also, those measures have taken into account the actual situation of those places, and cannot be simply copied to other places for implementation.

Increasing Costs for Public Hospital Services

9. **DR LEUNG KA-LAU** (in Chinese): *President, the costs for public hospital services have continued to rise in the past decade and the increase has outpaced that in the number of attendances and the local economic growth. According to the latest figures of the Government's estimates of expenditure for the year 2011-2012, the cost per patient day for general in-patient services, as well as the costs per accident and emergency (A&E) attendance and specialist out-patient attendance will rise to \$3,830, \$830 and \$950 and the percentages of increase will be 4.6%, 3.8% and 5.6% respectively. In this connection, will the Government inform this Council:*

- (a) *of the parameters and formulas adopted by the Government in calculating the cost per patient day for general in-patient services, as well as the costs per A&E attendance and specialist out-patient attendance respectively;*
- (b) *of the actual value of each relevant parameter in part (a) in the past five years;*

- (c) *whether it knows if the public hospitals have independently calculated the aforesaid unit costs; if they have, of the detailed figures for the past five years; if not, the reasons for that; and*
- (d) *given that the Hospital Authority (HA) has also calculated the specialty costs of various services such as liver and bone marrow transplantation, and so on, whether it knows the service items which had been included for calculating the specialty costs by the HA as well as the specialty costs of and numbers of attendances for such services in the past five years?*

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

- (a) The HA adopts a "total cost" accounting approach in calculating its relevant service costs. Broadly speaking, the service costs of the HA include not only the direct service costs of various clinical specialties and expenses of various clinical support services (for example, anaesthesia service, pharmacy, pathology, diagnostic radiology and allied health services), but also the costs of various non-clinical support services and daily expenses of hospitals (for example, meals for patients, utility expenses, repair and maintenance of medical equipment and machinery), some institutional items (for example, insurance costs and information technology support for clinical computer systems), the administrative costs of the HA Head Office, as well as some charges for services provided by government departments to the HA (for example, building maintenance services provided by the Architectural Services Department). The cost of clinical services related to teaching that are provided by staff of universities is not included in the abovementioned service cost of the HA.

The average unit cost of a particular type of service is calculated with reference to the total costs of provision of such service and the corresponding volume of activities.

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- (b) The attendances of the HA's general in-patient services, A&E services and specialist out-patient services in the past five years (2006-2007 to 2010-2011) and their corresponding unit costs are set out in Annex A.
 - (c) The costs of general in-patient services per bed day and the costs of A&E services and specialist out-patient services per attendance of various hospital clusters under the HA in the past five years (2006-2007 to 2010-2011) are set out in Annex B.

Given the varying complexity of conditions of patients and the different diagnostic services, treatments and prescriptions required, the average service costs of general in-patient services, A&E services and specialist out-patient services vary between different hospital clusters. In addition, the case-mix (that is, the mix of patients of different conditions in the cluster) may vary among different hospital clusters due to demographic profile and other factors, including services provided by the cluster. Therefore the service costs will vary between different hospital clusters. For instance, clusters with more patients with more complicated conditions or requiring costly treatment would incur a higher average cost of service. Hence, the average service costs cannot be compared directly between different clusters.

- (d) The HA provides various healthcare services for patients through a multidisciplinary integrated service approach. Organ transplant is an example which requires treatment by different specialties. For instance, liver transplant involves integrated healthcare services provided by different specialties such as medicine, surgery, intensive care and immunology, and the medical cost of each case is about \$1 million.

The numbers of in-patient and day patient discharges and deaths of the major clinical specialties in the past five years (2006-2007 to 2010-2011) and their corresponding average costs are set out in Annex C.

Annex A

Attendances of the HA's general in-patient services, A&E services and specialist out-patient services in 2006-2007 to 2010-2011 and their corresponding unit costs

	2006-2007	2007-2008	2008-2009	2009-2010	2010-2011
Provision of services					
In-patient services					
Number of discharges and deaths (general in-patients)	845 258	878 778	890 479	928 609	961 714*
Number of patient days (general in-patients)	5 220 272	5 324 500	5 293 308	5 314 224	5 442 356*
Average length of stay of in-patients (general in-patients) (days)	6.2	6.0	6.0	5.8	5.7*
Number of day patient discharges and deaths	289 699	325 625	365 222	416 885	459 548*
A&E services					
Number of A&E attendances	2 052 774	2 087 902	2 116 509	2 214 422	2 237 249*
Specialist out-patient services					
Number of specialist out-patient attendances	5 808 178	5 912 383	6 070 631	6 392 410	6 630 190*
Unit cost(\$)					
Cost per in-patients discharged	19,170	19,550	20,230	18,920	19,100 [#]
Cost per day for general in-patients	3,290	3,440	3,650	3,590	3,660 [#]
Cost per A&E attendance	700	750	820	800	800 [#]
Cost per specialist out-patient attendance	740	790	840	880	900 [#]

Notes:

* Provisional figures

Estimate

Annex B

Cost of general in-patient services per bed day and the costs of A&E services and specialist out-patient services per attendance of various hospital clusters under the HA in 2006-2007 to 2010-2011

<i>Hospital Cluster</i>	<i>2006-2007</i>	<i>2007-2008</i>	<i>2008-2009</i>	<i>2009-2010</i>	<i>2010-2011 (Estimate)</i>
	\$	\$	\$	\$	\$
Costs of general in-patient services per bed day					
Hong Kong East	3,380	3,480	3,710	3,710	3,700
Hong Kong West	3,780	3,960	4,240	4,200	4,300
Kowloon Central	3,050	3,140	3,410	3,300	3,480
Kowloon East	3,260	3,530	3,740	3,700	3,730
Kowloon West	3,140	3,320	3,540	3,470	3,520
New Territories East	3,230	3,330	3,520	3,450	3,580
New Territories West	3,450	3,590	3,700	3,590	3,540
HA Overall	3,290	3,440	3,650	3,590	3,660
Costs of A&E services per attendance					
Hong Kong East	730	740	810	850	870
Hong Kong West	680	760	830	790	790
Kowloon Central	740	720	770	780	760
Kowloon East	700	800	860	770	790
Kowloon West	630	710	780	780	790
New Territories East	760	800	890	860	890
New Territories West	680	760	800	730	730
HA Overall	700	750	820	800	800
Costs of specialist out-patient services per attendance					
Hong Kong East	680	740	820	860	880
Hong Kong West	810	820	980	1,090	1,100
Kowloon Central	750	790	840	840	850
Kowloon East	700	740	770	770	800
Kowloon West	720	760	800	850	870
New Territories East	760	830	850	900	950
New Territories West	770	830	850	880	880
HA Overall	740	790	840	880	900

Annex C

Numbers of in-patient and day patient discharges and deaths of the major clinical specialties in 2006-2007 to 2010-2011 and their corresponding average costs

	2006-2007	2007-2008	2008-2009	2009-2010	2010-2011
Number of in-patient and day patient discharges and deaths					
Medicine	483 882	501 456	510 672	545 895	569 844*
Surgery ⁽¹⁾	213 595	222 922	229 187	238 264	249 448*
Obstetrics and gynaecology	115 527	123 715	127 857	128 971	137 016*
Paediatrics ⁽²⁾	98 534	100 611	104 221	109 958	117 596*
Orthopaedics and traumatology	77 798	77 217	78 547	84 805	90 468*
Cost per dischargee (\$)					
Medicine	12,340	12,760	13,180	12,410	12,600 [#]
Surgery ⁽¹⁾	15,150	15,360	15,790	15,380	15,580 [#]
Obstetrics and gynaecology	10,320	10,940	11,230	10,930	10,980 [#]
Paediatrics ⁽²⁾	16,000	16,840	17,060	16,210	15,750 [#]
Orthopaedics and traumatology	23,450	25,410	26,960	24,890	25,120 [#]

Notes:

- (1) Service of surgery includes Cardiothoracic Surgery.
 (2) Service of paediatrics includes service for newborn babies.

* Provisional figures

Estimate

Promoting Development of Chiropractic Practice

10. **MR TAM YIU-CHUNG** (in Chinese): *President, regarding promoting the development of chiropractic practice in Hong Kong and the enhancement of the popularity of chiropractic treatment, will the Government inform this Council whether at present it has any plan to:*

- (a) *step up publicity and promotion of the efficacy of chiropractic treatment on neuromusculoskeletal disorders; if it has, of the details; if not, the reasons for that;*
- (b) *introduce chiropractic services to the out-patient services of the public healthcare system; if it has, of the details; if not, the reasons for that; and*
- (c) *advise or encourage local tertiary institutions to offer chiropractic courses; if it has, of the details; if not, the reasons for that?*

SECRETARY FOR FOOD AND HEALTH (in Chinese): President, at present, 13 types of healthcare professions are subject to regulation under the existing legislation of Hong Kong. The statutory regulation for these healthcare professions is premised on professional self-regulation and is enforced by the regulatory bodies established under the respective legislation. This serves to protect the public from incurring any health risk which may arise from receiving medical care from unqualified healthcare professionals.

While the regulatory systems are established by the respective legislation, the legislation confers upon the professions a very high degree of autonomy and status. The regulatory bodies are empowered to devise their own code of professional conduct or code of ethics for compliance by their members. They have also established disciplinary mechanisms to handle and investigate into complaints lodged by the public, and to exercise disciplinary actions against their members where necessary. The Government plays a monitory role and provides administrative support to these bodies.

The Government considers that chiropractors play a certain role in our healthcare services. The Chiropractors Registration Ordinance (Cap. 428) was enacted as early as in 1993 to provide for the registration of chiropractors, the disciplinary control of the professional activities of registered chiropractors, and for matters related to such registration and disciplinary control. Currently, most chiropractors practising in Hong Kong have received their training in the USA, Australia, Canada and Europe, and hold chiropractic degrees awarded by chiropractic colleges accredited by four overseas accrediting councils for chiropractors. As at 1 May 2011, there were 137 registered chiropractors in Hong Kong.

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

- (a) The efficacy of different kinds of healthcare services varies. The Government encourages the professions to introduce their services to the public as long as there is no violation of their code of professional conduct. To enhance public awareness, relevant professional associations and bodies may also promote their services in the community.
- (b) Existing services provided by public hospitals and health issues handled by relevant allied health professionals already cover those handled by chiropractors. Therefore the Hospital Authority (HA) has no plan to introduce chiropractor service at the moment. The HA will consider new services and facilities in response to the demand of the public for different healthcare services.
- (c) We keep an open mind on training programmes offered by local tertiary institutions for any healthcare disciplines.

The University Grants Committee (UGC) considers proposals from its funded institutions for introducing new publicly-funded programmes in the context of the triennial academic development planning exercise. In the ongoing academic development planning exercise for the 2012-2013 to 2014-2015 triennium, the UGC has not received any application from its funded institutions for starting training programmes on chiropractic. Therefore there is no plan to start publicly-funded programme related to chiropractic in the next triennium.

Application for Driving Licence on the Mainland by Hong Kong Drivers

11. **MR ANDREW LEUNG** (in Chinese): *President, it has been reported that Mainland authorities have recently implemented a new requirement that Hong Kong drivers must produce "Registration Certificates of Temporary Residence for Visitors" issued by security departments when applying for China Driving Licences (CDLs) on the Mainland, but some Hong Kong drivers are unable to apply for CDLs as they do not reside on the Mainland and cannot produce the relevant proof. It has also been reported that in order to make a living, some*

cross-border drivers are forced to seek the help of intermediaries to apply for CDLs using false Mainland address proof, and as such, these drivers will not only be liable to prosecution for using false instruments, their compensations from insurance will also be affected in the event of accidents. In this connection, will the Government inform this Council:

- (a) whether it has compiled statistics on the current number of Hong Kong drivers who are also holders of CDLs and, among them, the number of persons who are engaged in the transport industry for a living; if it has, of the results; if not, the reasons for that;*
- (b) of the number of Hong Kong drivers who have sought assistance from the Hong Kong Government as a result of the aforesaid new requirement; and*
- (c) how the authorities assist those Hong Kong drivers who do not reside on the Mainland in applying for CDLs through legal means?*

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): President, when applying for Mainland driving licences (MDLs), Hong Kong applicants are required to provide the necessary information as stipulated in the relevant Mainland laws and regulations. According to the relevant licensing and law-enforcement agencies in the Mainland, it has been an established practice for years that applicants for MDLs from outside the Mainland (including those from Hong Kong) have to provide residence/temporary residence certification that is approved and issued by the Mainland public security authorities.

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

- (a) Holders of Hong Kong driving licences are not required to declare to the Transport Department whether they are in possession of any driving licence issued by other countries or regions or the relevant information. For those who possess a driving licence issued by other countries or regions and wish to apply for a Hong Kong driving licence through direct issue as provided by the law, they are required to prove that they are in possession of another driving licence that is valid, only at the time of application. They are not required to report to the Transport Department whether the relevant

driving licence is renewed subsequently. As such, the Administration does not have the exact number of Hong Kong drivers holding both Hong Kong and Mainland driving licences. However, based on the information available from applications for Closed Road Permits for cross-boundary vehicles, it is estimated that about 50 000 Hong Kong driving licence holders are also in possession of MDLs. Among them, about 15 000 possess driving licences for cross-boundary commercial vehicles. Since the Transport Department does not have information on the occupations of driving licence holders, it does not know how many of the above drivers are engaged in the transport trade.

- (b) The Administration has no record of request for help from Hong Kong drivers concerning the enforcement of licensing regulations on the Mainland.
- (c) It is the requirement of the relevant Mainland laws and regulations that persons from outside the Mainland have to provide residence/temporary residence certification that is approved and issued by the Mainland public security authorities when applying for MDLs. The Administration has learnt that the cross-boundary transport trade has maintained regular liaison with the relevant Mainland authorities to understand the relevant Mainland laws and regulations. Regarding an earlier report on the requirement to provide proof of residence on the Mainland, the Transport Department has contacted the relevant Mainland authorities and been informed that the requirement had been implemented for years. We shall continue to offer appropriate assistance to the trade with regard to understanding the laws and regulations of the Mainland.

Measures to Tackle Problems of Unemployment and Job Mismatch

12. **MR CHAN KIN-POR** (in Chinese): *President, according to the statistics (provisional figures) of the Census and Statistics Department, the seasonally adjusted unemployment rate increased from 3.4% in January to March to 3.5% in February to April this year, and the underemployment rate for the same period also increased from 1.8% to 1.9%; meanwhile, the non-seasonally adjusted numbers of unemployed and underemployed persons in February to April this*

year were 131 900 and 68 900 respectively. On the other hand, the number of private sector vacancies received by the Labour Department (LD) in May this year was 66 000 in total, representing a 12.3% increase compared to 58 000 in April, and 25 600 of these vacancies came from the five low-paid trades of catering, retail, cleaning, security services and property management, representing a 21.4% increase compared to 21 000-odd in April. In this connection, will the Government inform this Council:

- (a) *how the Government interprets the aforesaid figures, and whether it has assessed if there is a problem of a serious mismatch of job types in Hong Kong; if there is, of the reasons for that, and what measures the Government has to solve the problem; if not, why there are more than 200 000 unemployed and underemployed persons despite the substantial number of vacancies available in the private sector;*
- (b) *whether the Government has conducted any detailed analysis on the future supply of and demand for various types of jobs in Hong Kong; if it has, of the details and outcome; if not, the reasons for that, and whether it has planned to conduct such a study; if it has, when it will do so; if not, of the reasons for that;*
- (c) *whether the Government knows if there is a phenomenon of a large number of vacancies for low-paid jobs (for example, cleaning and dish washing, and so on) remaining unfilled after the implementation of the statutory minimum wage (SMW); if so, whether it will formulate measures to address the problem of the continuous increase in the number of low-paid job vacancies; if it will, of the details; if not, the reasons for that;*
- (d) *as it has been reported that after the implementation of SMW, a large number of young people have joined the security services industry which requires longer working hours, thus affecting the employment of a large number of middle-aged people with low skills and educational attainment, whether, in addition to the existing measures, the Government will enhance its support for middle-aged people to find employment; if it will, of the details; if not, the reasons for that;*

- (e) *as the statistics from the Social Welfare Department (SWD) show that, at the end of April this year, the total number of cases under the Comprehensive Social Security Assistance (CSSA) Scheme was 282 351, among which 29 206 belonged to the category of unemployment, whether the Government has analysed the reasons for these CSSA recipients being unemployed; if it has, of the details; if not, the reasons for that; and in the past five years, for how long these CSSA recipients were unemployed and received CSSA respectively (set out the longest, shortest and average durations concerned for these cases in each year); the situation of the referral of these people to the LD for job seeking; the success rate of job seeking; and the reasons for failing to get a job; and*
- (f) *in the past five years, of the number of able-bodied CSSA recipients who were unemployed; the number of them who found paid jobs through the Support for Self-reliance (SFS) Scheme and whose earnings from employment were partially or totally disregarded when assessing the amount of assistance payable to them under the provision of disregarded earnings of the CSSA Scheme; the highest, lowest and average wages that they earned; the number of years for which they had received support; whether the Government had assessed and analysed the effectiveness of the SFS Scheme; if it had, of the details; if not, the reasons for that?*

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

- (a) According to the latest labour force statistics released by the Census and Statistics Department, the seasonally adjusted unemployment rate stood at 3.5% (provisional figure) in March to May 2011, same as that in February to April 2011. The underemployment rate also remained unchanged at 1.9% in the two periods (provisional figure).

Owing to strong economic growth and continued job creation, total employment rose notably further, by around 15 000, to an all-time high of 3 600 500 in March to May 2011. Over the same period, the labour force increased by around 17 800 to 3 735 300. The new jobs created helped absorb most of the additional workforce. Consequently, the number of unemployed persons rose only slightly

by some 3 000 to the latest figure of 134 900 during the period. Meanwhile, the number of underemployed persons increased by around 700 to 69 600.

The total number of private sector vacancies posted by the LD in the first five months this year increased by 18.9% to 324 936 over 273 344 in the same period last year.

In the next few months, a new batch of fresh graduates and school leavers will join the labour market. Together with job seekers induced by the recent implementation of the SMW to join the labour market, these two factors will have an impact on employment.

However, given Hong Kong's buoyant economy and positive hiring sentiment at the moment, labour demand is expected to remain firm in the near term. This could help cushion the impact on the unemployment rate arising from the increase in the labour supply. We will continue to closely monitor developments in the labour market and do our best to assist job-seekers.

- (b) In studying specific employment and manpower situation, the bureaux/departments concerned will make reference to a wide range of relevant statistics and research studies. These include the Manpower Projection (MP) conducted by the Government and the Vocational Training Council (VTC)'s Manpower Surveys. A new round of MP is being conducted to assess the future manpower supply and requirements, as well as the manpower balance by education level, at the macro level. It is scheduled for completion by the end of 2011. VTC conducts Manpower Surveys on a regular basis to provide short-term projections on the manpower requirements for some specific sectors.
- (c) Owing to strong economic growth at the moment, the number of private sector vacancies posted by the LD in May increased when compared to that in April. Some employers may experience difficulties in filling certain vacancies. To address the issue, the LD has stepped up its efforts in providing employment services to fill these vacancies.

Apart from disseminating vacancy information through a network of 12 job centres, a Telephone Employment Service Centre, the Interactive Employment Service (iES) website and vacancy search terminals installed at various locations in the territory, the LD organizes large-scale job fairs at various locations from time to time to expedite the dissemination of employment information. We keep in close touch with employers of different industries to canvass vacancies of different types, including vacancies and elementary occupations from sectors which are more likely to be affected by the implementation of SMW. In the first five months of 2011, the LD organized five large-scale job fairs attracting some 7 300 job seekers to join. Another two will be held in July in Tung Chung. From time to time, the LD also organizes district-based job fairs in 12 job centres in the territory to respond speedily to the recruitment needs of employers as well as to disseminate the most updated vacancy information to job-seekers. Furthermore, mini job fairs are organized for employers of the catering and retail industries at the LD's two industry-based recruitment centres almost every working day to offer job-seekers on-the-spot job interviews.

Apart from the above, the LD conducts weekly comparisons of the most-sought-after jobs by its registrants and occupations with the largest number of vacancies. The information, publicized at our website and job centres, provides a handy reference for job-seekers and employers to keep abreast of the latest labour demand and supply situation. We also make reference to the information in canvassing suitable vacancies and organizing recruitment activities.

The LD will continue to adopt a multi-pronged approach in facilitating the dissemination of employment information with a view to assisting job-seekers in getting hold of the latest vacancy situation to widen their choice in job searches and assisting employers in recruiting staff.

- (d) Owing to the buoyant economy and positive hiring sentiment at the moment, quite a number of organizations have plans to recruit additional staff. In May 2011, the number of private sector vacancies posted by the LD increased by 12.3% from 58 697 in April

2011 to 65 943, and up by 7.9% over 61 089 in the same period last year. Moreover, the number of vacancies from low-paying sectors such as retail, catering, estate management and security services, as well as cleaning services all registered an increase in May 2011 over the previous month. The overall increase in the number of vacancies will certainly help job-seekers of different age groups, including youths as well as those less educated and low-skilled middle-aged, secure employment.

The LD has all along been concerned with the employment of middle-aged job-seekers. Specifically, for the middle-aged, the LD has launched the Employment Programme for the Middle-aged to encourage employers to take on unemployed job-seekers aged 40 or above and offer them on-the-job training through providing employers with on-the-job training allowance.

In addition, the LD will continue to operate its various specialized employment programmes (including the Employment Programme for the Middle-aged) with a view to helping job-seekers with special needs and employment difficulties secure employment. We will closely monitor the actual impact of the implementation of SMW on the employment market and continue to adopt multi-pronged measures to facilitate the employment of the middle-aged. Where necessary, we will consider further enhancing this programme so as to strengthen our employment support to the middle-aged.

In terms of training, in response to the economic situation and market needs, including the possible changes in the labour market following the implementation of the SMW, the Employees Retraining Board (ERB) plans to increase the number of training places to 130 000 in 2011-2012, and has reserved resources for an additional 30 000 training places. ERB will closely monitor industry conditions and adjust the allocation of training places flexibly to meet the needs. The service targets of ERB cover all Hong Kong residents aged 15 or above and with education attainment at sub-degree level or below. People of different age and background, including the middle-aged, may benefit from the services of ERB.

- (e) As at the end of May 2011, there were 282 123 CSSA cases. Of these, 29 131 were unemployment cases. The number of CSSA unemployed recipients over the past five years broken down by duration of stay on CSSA for one year or less and more than five years is at Annex.

In general, unemployed able-bodied CSSA recipients aged below 60 are required to participate in the SFS Scheme to receive employment assistance services, including job matching. As at the end of April 2011, the percentage of SFS participants who had taken up employment was 26.4%.

The SWD is unable to provide information on the beneficiaries' reasons for unemployment, the duration of unemployment, or the reasons for individual participants' failure in securing employment because the computer systems concerned do not capture such information.

- (f) The number of CSSA unemployed recipients in the past five years is at Annex; the number of those benefiting from partial or total disregarded earnings arrangement is 1 935, 1 841, 1 779, 2 504 and 2 667 at the end of each year. The SWD is unable to provide information on the minimum, average and maximum amount of their employment earnings, or the duration of them receiving employment assistance services under the SFS Scheme as the computer systems concerned do not capture such information.

The SWD has been closely monitoring the progress, and reviewing the effectiveness, of various employment assistance programmes. For instance, the SWD has earlier commissioned the University of Hong Kong to evaluate the New Dawn Project, which is a specialized employment programme for CSSA single parents and child carers. The conclusion was that the project was beneficial to both the participants and their children.

Annex

Number of CSSA unemployed recipients⁽¹⁾
by duration of stay on CSSA

<i>Duration of stay on CSSA</i>	<i>2006⁽²⁾</i>	<i>2007⁽²⁾</i>	<i>2008⁽²⁾</i>	<i>2009⁽²⁾</i>	<i>2010⁽²⁾</i>
One year or less	6 292	4 745	4 971	7 217	4 597
More than one to two years	4 040	3 300	2 899	3 272	4 228
More than two to three years	3 679	2 804	2 516	2 320	2 458
More than three to four years	4 746	2 847	2 416	2 287	1 940
More than four to five years	4 214	3 632	2 436	2 066	1 835
More than five years	12 488	13 909	15 896	17 438	16 839
Total	35 459	31 237	31 134	34 600	31 897

Notes:

- (1) CSSA unemployed recipients refer to those who are unemployed or who are gainfully employed but with employment earnings less than the prescribed level (which was \$1,435, \$1,450, \$1,555, \$1,630 and \$1,630 as at the end of 2006, 2007, 2008, 2009 and 2010 respectively, and \$1,685 with effect from 1 February 2011).
- (2) Figures are as at the end of the year.

Employment of Contract Teachers in Aided Schools

13. **MR CHEUNG MAN-KWONG** (in Chinese): *President, I have previously requested the Education Bureau to provide the number of teachers employed by aided schools under fixed-term contracts to fill the permanent teaching posts within their approved teaching establishment and the number of schools concerned, and have noted that this is a very common employment practice among schools. As such, I have written to the Education Bureau, requesting it to ensure prevention of abuse of the practice of employing regular teachers with fixed-term contracts by schools in filling the permanent teaching posts within their establishment. The authorities replied in late June last year that they had urged schools to review such arrangements and undertook to take timely follow-up actions with those schools which had abused this employment practice, so as to ensure the job stability of teachers, and to ensure that the long-term development needs of schools will be met. In this connection, will the Government inform this Council:*

- (a) of the numbers of aided primary and secondary schools which had employed contract teachers to fill the permanent teaching posts within their approved teaching establishment in the 2010-2011 academic year and the numbers of such contract teachers, together with a breakdown by District Council district as set out in the following tables, as well as the changes in those numbers as compared with those in the 2009-2010 academic year;

District Council district	Number of aided secondary schools in the district		Employment of contract teachers to fill permanent teaching posts within the approved teaching establishment (aided secondary schools)			
			Number of schools		Number of contract teachers	
	Number in 2010-2011	Changes as compared with the figure in 2009-2010	Number in 2010-2011	Changes as compared with the figure in 2009-2010	Number in 2010-2011	Changes as compared with the figure in 2009-2010

District Council district	Number of aided primary schools in the district		Employment of contract teachers to fill permanent teaching posts within the approved teaching establishment (aided primary schools)			
			Number of schools		Number of contract teachers	
	Number in 2010-2011	Changes as compared with the figure in 2009-2010	Number in 2010-2011	Changes as compared with the figure in 2009-2010	Number in 2010-2011	Changes as compared with the figure in 2009-2010

- (b) whether the authorities will cap the ratio of the number of contract teachers employed by each aided school to fill the permanent

teaching posts within its approved teaching establishment for compliance by schools; if they will, of the ratio;

- (c) of the respective numbers of primary and secondary schools the authorities had written to last year, urging them to review the relevant employment arrangements; and among them, the number of primary and secondary schools which to date have not carried out any reasonable improvement, and the number of regular teachers employed by them with fixed-term contracts, together with a breakdown by the districts in which the schools are situated; and*
- (d) how the authorities will deal with those schools which employ regular teachers with fixed-term contracts for a prolonged period of time or employ a large number of such regular teachers and show no improvement after being urged by the authorities; whether the authorities have demanded those schools to significantly reduce the number of regular teachers employed with fixed-term contracts?*

SECRETARY FOR EDUCATION (in Chinese): President,

- (a) The posts on the approved teaching establishment of aided schools are regular posts, and the teachers filling these posts (except temporary or supply teachers) are regular teachers. According to the information provided by schools on the appointment of teachers, while most regular teachers do not have a fixed term of employment, a small number of regular teachers are employed for a clearly defined contract period (DCP). These teachers, same as those without a specified term of employment, are eligible to join the Grant/Subsidized Schools Provident Fund Schemes. The numbers of aided secondary and primary schools by school district of the Education Bureau and figures on the employment of regular teachers on DCP term in the 2010-2011 school year, as well as the changes in these figures as compared with the 2009-2010 school year, are set out at Annexes I and II respectively.
- (b) Some schools employ regular teachers on DCP term because of factors like actual operational needs, manpower requirements in the coming years, and so on, for example, anticipated redundancy arising from reduction of classes in future, time-limited nature of

some regular teaching posts, flexibility in curriculum planning and subject match of teachers. The Education Bureau has always been encouraging schools to adopt, according to their needs for continuous development, the most suitable arrangements for the appointment of teachers with a view to providing quality education for students. At the same time, schools should also endeavour to provide a stable working environment for their teachers in order to retain talents and boost teachers' morale. As the circumstances differ from school to school and the reasons for employing regular teachers on DCP term also vary, it is not advisable to cap the number or percentage of this type of teachers that can be employed by each school.

- (c) Last year, we reviewed the teacher employment arrangements of aided primary and secondary schools through different channels, including verbal and written inquiries and school visits, and noted that most schools employing regular teachers on DCP term did so owing to actual operational needs. However, in order to improve the job security of teachers, the Education Bureau wrote to 10 primary schools and 49 secondary schools, urging them to review their employment arrangements to ensure that the employment of teachers on DCP term did not exceed the extent required by their long-term development needs. This year, we have followed up the situation of these 59 schools and found that most of them have reduced the number of regular teachers employed on DCP term. However, five primary schools and 17 secondary schools have yet to make improvement in this respect. The distribution of these schools by school district and the numbers of such teachers employed are set out at Annex III. We will continue to follow up the matter with these schools.
- (d) We have maintained contact with schools that have employed regular teachers on DCP term for a prolonged period of time or employ a large number of such teachers. According to most of these schools, they cannot improve the situation for the time being because the contracts of the teachers concerned have not yet expired. Nevertheless, they plan to appoint such teachers as regular teachers without a DCP in the next one or two school years. Some schools have employed more regular teachers on DCP term to allow greater flexibility in subject match of teachers at the early stage of the

implementation of the New Senior Secondary (NSS) academic structure because it takes time for them to assess students' needs and plan the combinations of elective subjects to be offered. Despite that, these schools have indicated that, upon the smooth implementation of the NSS curriculum, such teachers will be employed as regular teachers without a DCP. For some other schools, the reason for employing regular teachers on DCP term is to cope with possible redundancy arising from anticipated reduction of classes due to the decline in student population in recent years.

We will keep in view the practice of employing regular teachers on DCP term by schools. If irregularities persist without good reason, the Education Bureau will discuss with the schools and school sponsoring bodies concerned, and ask them to deal with the matter seriously.

Annex I

Employment of Regular Teachers on DCP Term by Aided Secondary Schools

<i>Education Bureau school district</i>	<i>Number of aided secondary schools in the district</i>		<i>Employment of contract teachers to fill permanent posts on the approved teaching establishment (aided secondary schools)</i>			
	<i>2010-2011 school year</i>	<i>Change as compared with the figure in 2009-2010 school year</i>	<i>Number of schools</i>		<i>Number of contract teachers*</i>	
			<i>2010-2011 school year</i>	<i>Change as compared with the figure in 2009-2010 school year</i>	<i>2010-2011 school year</i>	<i>Change as compared with the figure in 2009-2010 school year</i>
Central and Western	8	0	3	0	10	-1
Wan Chai	9	0	5	0	21	+6
Eastern	24	0	12	0	53	-4
Southern	14	0	10	0	56	+9
Sham Shui Po	15	0	9	+3	37	+5
Yau Tsim Mong	12	0	9	-2	55	-6
Kowloon City	28	0	14	+1	64	+15
Wong Tai Sin	22	0	13	+1	64	+11
Kwun Tong	25	0	13	0	67	-4
Tsuen Wan	13	0	7	-2	56	+8
Tuen Mun	36	0	23	+2	135	+19

<i>Education Bureau school district</i>	<i>Number of aided secondary schools in the district</i>		<i>Employment of contract teachers to fill permanent posts on the approved teaching establishment (aided secondary schools)</i>			
	<i>2010-2011 school year</i>	<i>Change as compared with the figure in 2009-2010 school year</i>	<i>Number of schools</i>		<i>Number of contract teachers*</i>	
			<i>2010-2011 school year</i>	<i>Change as compared with the figure in 2009-2010 school year</i>	<i>2010-2011 school year</i>	<i>Change as compared with the figure in 2009-2010 school year</i>
Yuen Long	30	0	17	0	122	-4
North	17	0	9	+1	60	+26
Tai Po	19	0	11	-1	67	-10
Sha Tin	38	0	25	+3	144	+1
Sai Kung	18	0	14	+1	74	+12
Islands	7	0	6	0	34	-1
Kwai Tsing	31	0	19	+5	80	+16
Total	366	0	219	+12	1 199	+98

Note:

* The number of regular teachers on DCP term includes full-time and part-time teachers.

Annex II

Employment of Regular Teachers on DCP Term by Aided Primary Schools

<i>Education Bureau school district</i>	<i>Number of aided primary schools in the district</i>		<i>Employment of contract teachers to fill permanent posts on the approved teaching establishment (aided primary schools)</i>			
	<i>2010-2011 school year</i>	<i>Change as compared with the figure in 2009-2010 school year</i>	<i>Number of schools</i>		<i>Number of contract teachers*</i>	
			<i>2010-2011 school year</i>	<i>Change as compared with the figure in 2009-2010 school year</i>	<i>2010-2011 school year</i>	<i>Change as compared with the figure in 2009-2010 school year</i>
Central and Western	16	0	5	+1	14	+5
Wan Chai	13	-1	6	+2	22	+9
Eastern	23	-1	12	+2	21	+5
Southern	11	0	8	+1	17	-4
Sham Shui Po	18	+1	10	+1	21	-2
Yau Tsim Mong	17	-2	11	0	20	+2

<i>Education Bureau school district</i>	<i>Number of aided primary schools in the district</i>		<i>Employment of contract teachers to fill permanent posts on the approved teaching establishment (aided primary schools)</i>			
	<i>2010-2011 school year</i>	<i>Change as compared with the figure in 2009-2010 school year</i>	<i>Number of schools</i>		<i>Number of contract teachers*</i>	
			<i>2010-2011 school year</i>	<i>Change as compared with the figure in 2009-2010 school year</i>	<i>2010-2011 school year</i>	<i>Change as compared with the figure in 2009-2010 school year</i>
Kowloon City	27	0	11	+1	26	-9
Wong Tai Sin	27	-1	13	+2	21	-1
Kwun Tong	30	0	17	+5	59	+19
Tsuen Wan	19	-1	14	+3	31	+10
Tuen Mun	35	-3	12	+1	30	+4
Yuen Long	43	0	14	+2	32	+7
North	27	0	10	+1	36	+6
Tai Po	17	-3	5	-3	19	+2
Sha Tin	38	0	16	+4	39	+15
Sai Kung	21	0	7	-2	30	-8
Islands	16	0	4	-4	13	-6
Kwai Tsing	30	0	10	-1	26	-11
Total	428	-11	185	+16	477	+43

Note:

* The number of regular teachers on DCP term includes full-time and part-time teachers.

Annex III

Distribution of Schools in Which the Employment of Regular Teachers on DCP Term Has Not Improved in the 2010-2011 School Year by School District

<i>Education Bureau school district</i>	<i>Aided secondary schools</i>		<i>Aided primary schools</i>	
	<i>Number of schools</i>	<i>Total number of teachers concerned*</i>	<i>Number of schools</i>	<i>Total number of teachers concerned*</i>
Eastern	1	10	-	-
Islands	-	-	1	8
Southern	2	29	-	-
Kowloon City	2	22	-	-
Kwun Tong	2	19	-	-
Sai Kung	2	24	1	11

<i>Education Bureau school district</i>	<i>Aided secondary schools</i>		<i>Aided primary schools</i>	
	<i>Number of schools</i>	<i>Total number of teachers concerned*</i>	<i>Number of schools</i>	<i>Total number of teachers concerned*</i>
Sham Shui Po	-	-	1	10
North	1	19	2	19
Sha Tin	1	13	-	-
Tuen Mun	4	54	-	-
Tsuen Wan	1	23	-	-
Yuen Long	1	13	-	-
Total	17	226	5	48

Note:

* The number of regular teachers on DCP term includes full-time and part-time teachers.

Recognition of Sick Leave Certificates Issued by Registered Chiropractors

14. **DR JOSEPH LEE** (in Chinese): *President, the registration system for chiropractors has been implemented in Hong Kong for nearly 10 years, and the practising qualification of and the code of practice for chiropractors are under statutory control. In recent years, the demand for chiropractic services has continued to increase but the medical certificates (commonly known as "sick leave certificates") issued by chiropractors have still not been recognized under labour legislation. The Inter-bureaux/departmental Working Group (the Working Group) set up by the Government in 2005 to conduct a study on whether the sick leave certificates issued by chiropractors should be recognized under labour legislation pointed out that the chiropractic sector has yet to provide a set of guidelines on the issuance of sick leave certificates, and the Code of Practice issued by the Chiropractors Council of Hong Kong (the Council) does not contain any explicit requirement on the maintenance of medical records of patients by chiropractors. Having considered various factors which include, inter alia, only a small number of members of the public have sought chiropractic treatment at present, reflecting that the public have limited knowledge of chiropractors, the Working Group does not recommend recognizing the sick leave certificates issued by chiropractors. In this connection, will the Government inform this Council:*

- (a) *given that some members of the chiropractic sector have relayed to me that at present, some organizations of the sector in Hong Kong*

(such as the Chiropractic Doctors' Association of Hong Kong) have already drawn up guidelines on the issuance of sick leave certificates for reference by their members, and quite a number of chiropractors have maintained medical records of their patients, whether the authorities have looked into and considered this latest situation; if not, of the reasons for that; whether they can provide the detailed report of the Working Group;

- (b) whether it has assessed if the situation that only a small number of members of the public have sought chiropractic treatment and the public have limited knowledge of chiropractors is due to the fact that at present the Government has not yet introduced chiropractic services to public medical services; moreover, as the registration system for chiropractors has been implemented for a long time and the practising qualification of chiropractors is already subject to regulation, why the authorities have not yet introduced chiropractic services to public medical services;*
- (c) whether the authorities have planned to consult the public on issues including the registration system for chiropractors and the issuance of sick leave certificates by chiropractors, and so on; if they have, of the timetable and details; and*
- (d) whether at present, the authorities have any plan to review afresh the feasibility of recognizing the sick leave certificates issued by chiropractors under labour legislation; if they have, of the timetable; if not, the reasons for that?*

SECRETARY FOR LABOUR AND WELFARE (in Chinese): President, my reply to Dr Joseph LEE's question is as follows:

- (a) In the course of studying whether the medical certificates issued by chiropractors should be recognized under labour legislation, the Working Group held a meeting with the representatives of the Hong Kong Chiropractors' Association, Chiropractic Doctors' Association of Hong Kong and the Council, inviting them to express their views and provide useful information for the study. Afterwards, the Working Group received a number of documents from the

chiropractic associations. However, it did not receive any notification that guidelines on the issuance of medical certificates had been prepared.

In general, if a healthcare sector considers it necessary to formulate any guidelines, the guidelines would be submitted to the relevant registration and regulatory body for vetting and promulgation. The guidelines should then be adhered to by all the practitioners in that sector. The Working Group wrote to the Council on 31 July 2007 and 29 September 2009 inquiring whether there was any plan to develop guidelines on the issuance of medical certificates. On 4 December 2009, the Council replied that chiropractic associations were working on a draft guideline and the finalized version would be put to the Council for consideration. The Labour Department (LD) had followed up with the Council on the issue. In March 2011, the LD was informed that no guidelines had been received by the Council so far.

Regarding the maintenance of medical records, the Working Group understood that many chiropractors had kept their patients' medical records of their own accord. However, it was also noted that the Code of Practice for the Guidance of Registered Chiropractors (CoP) issued by the Council did not contain any explicit requirement on the maintenance of medical records. On 4 December 2009, the Council revealed that the CoP was under review to include a new section on patients' medical records, setting out what information was required to be documented. According to information from the Council, the CoP has not been revised yet.

As regards the report of the Working Group, since it contains views given by individual organizations and persons for internal reference by the Working Group, the full report will not be released. However, the key findings of the study have been presented in the Information Paper of the Legislative Council Panel on Manpower (Paper No.: CB(2)2044/10-11(03)).

- (b) The main responsibility of the Working Group is to study whether the medical certificates issued by chiropractors should be recognized under labour legislation. Thus, it had not explored whether there was any correlation between the prevalence of chiropractic treatment

and the availability of chiropractic service in the public healthcare system. However, the Working Group noted that chiropractic lacked ethnic root in the local Chinese community. Even though injured employees can claim reimbursement for the cost of chiropractic treatment under the Employees' Compensation Ordinance, only a small number of citizens have sought such treatment. The LD undertook two surveys of injured employees who called on the department for sick leave clearance in October 2007 and November 2010. The respective results indicated that 0.5% and 2.9% of the injured employees had sought chiropractic treatment. In a similar survey conducted by the LD in 2003 to ascertain the prevalence of Chinese medicine among injured employees, 32.1% of the respondents replied that they had sought Chinese medicine treatment. At that time, the medical functions performed by registered Chinese medicine practitioners had yet to be recognized under labour legislation and Chinese medicine treatment was not available in the public healthcare system.

In addition, existing services provided by public hospitals and health issues handled by relevant allied health professionals already cover those handled by chiropractors. Therefore the Hospital Authority (HA) has no plan to introduce chiropractor service at the moment. The HA will consider new services and facilities in response to the demand of the public for different healthcare services.

(c) and (d)

In order to gain a more updated and thorough understanding of the community's knowledge and utilization of chiropractic treatment and gauge the prevalence of chiropractic treatment in Hong Kong, the LD will commission the Census and Statistics Department (C&SD) to conduct a comprehensive survey. It is tentatively scheduled to be conducted in the latter half of 2012. The LD will commence the preparatory work with the C&SD shortly. Views from the chiropractic sector in respect of the survey are welcome. At the same time, the Administration will continue to communicate with the stakeholders and closely monitor the latest development of chiropractic in Hong Kong and other regions.

Voluntary Optimization of Class Structure Scheme

15. **MR RONNY TONG** (in Chinese): *President, given that the decline in secondary student population has caused under-enrolment in some secondary schools and thus they face the crisis of school closure, the Education Bureau has implemented the Voluntary Optimization of Class Structure Scheme (VOCSS). In this connection, will the Government inform this Council:*

- (a) *whether the Government has set target numbers under VOCSS for the reduction of secondary school places in the territory as well as in each secondary school in each of the next five years; if it has, of the details; of the criteria and justifications adopted by the Government in setting such target numbers, and whether they include the merits of the schools' operation and their locations;*
- (b) *whether the authorities have implemented VOCSS mainly from the cost-effectiveness perspective or for the purpose of safeguarding teachers' livelihood; also, of the education philosophy based on which VOCSS has been implemented; and*
- (c) *given that the former Education and Manpower Bureau indicated in a paper submitted to the Bills Committee on Education (Amendment) Bill 2002 in June 2004 that "[a]ll Government schools have established their own School Management Committee (SMC) to manage the school and formulate the school development plans", yet, recently some traditional Government schools (such as the King's College and the Queen's College) were said to have voluntarily participated in VOCSS to reduce the student enrolment number at Secondary One level, but the schools indicated that the authorities had not put the plan to vote in their SMCs, whether the authorities have assessed if this approach is contradictory to the statement by the former Education and Manpower Bureau in the past; if so, whether they will start afresh discussion with SMCs of the Government schools concerned on whether or not the schools will participate in VOCSS?*

SECRETARY FOR EDUCATION (in Chinese): President,

- (a) All along, the Education Bureau has monitored the impact of the population changes on the demand and supply of school places. When there is an increase in the student population, the number of classes to be offered will be increased; when there is a decrease in the student population, the number of classes to be offered will be reduced, given that the demand and supply of school places are calculated on a territory-wide basis. In recent years, the declining student population has led to a continuous decrease in the number of students progressing to Secondary One, creating a very unstable environment among secondary schools. According to the latest projection of the Hong Kong population released by the Census and Statistics Department, it is projected that there will be a decrease of more than 20% in the annual intake of Secondary One students, from 69 000 in the 2010-2011 school year, to 53 900 in the 2016-2017 school year.

Owing to the serious situation caused by the decline in student population, the Education Bureau launched the VOCSS in 2010 to enable schools operating five classes of Secondary One to reduce one class in order to alleviate the impact on the school sector caused by the drastic decline in student population in the coming few years. Thus, the larger the number of schools joining VOCSS, the greater the stabilizing effect on the school sector will be. After the introduction of the enhanced measures of VOCSS in November last year, we received a total of 202 applications for VOCSS from secondary schools, which accounts for about 90% of the schools eligible for joining VOCSS. Except for one school which was found not eligible for joining VOCSS and another withdrew its application, the remaining 200 schools have all been approved to join VOCSS in the 2011-2012 school year. According to the current projection, a slight rebound of student enrolment may appear only after the 2016-2017 school year, but further assessment is required to ascertain the situation nearer the time.

- (b) We carried out extensive consultation with the school sector before the introduction of VOCSS. The school sector and key stakeholders generally agreed that class reduction is an effective

means to reduce the impact of declining student population and at the same time allow schools to create more teaching space for enhancing the quality of teaching. The measures also help schools to solve the problems of surplus teachers and subject mismatch arising from the reduction of classes. As such, the larger the number of schools joining VOCSS, the greater the stabilizing effect on the school sector will be, and a healthy education ecology can thus be maintained. The implementation of VOCSS will not only help to maintain a good mix of different types of schools to cater for students with diverse needs, but also enable teachers to focus on teaching and help to ensure a smooth implementation of the New Senior Secondary academic structure in secondary schools.

- (c) Under school-based management, all government schools have set up their own SMC to manage the school. The SMC members are required to perform their duties in accordance with the SMC constitutions. The SMC constitutions of government schools clearly state that the SMCs should play a proactive role in implementing policies advocated by the Education Bureau, carry out duties according to the directions given by the Permanent Secretary for Education, and ensure the vision and mission as set by the school sponsoring body (SSB) be carried out. The discussion on VOCSS by SMC members has been conducted, premising on the above understanding of the duties of SMCs.

VOCSS is a policy advocated by the Government. The Education Bureau, being the Policy Bureau responsible for implementing VOCSS as well as the SSB of government schools, has the obligation to set an example to other SSBs and schools by requesting the government schools concerned to participate in VOCSS. Actually, the government schools, in joining VOCSS, are fulfilling their responsibility for implementing education policies advocated by the Education Bureau as well as complying with the requirements of the SMC constitutions. VOCSS has received enthusiastic support and overwhelming response from the school sector. Admittedly, the participation of government schools has played a key role in this regard.

As a matter of fact, the Education Bureau has carefully considered the stakeholders' views and the situation in each individual school before deciding that the government schools concerned should participate in VOCSS.

Promotion of Chinese Art and Culture

16. **MR LAU KONG-WAH** (in Chinese): *President, regarding the promotion of Chinese art and culture, will the Government inform this Council:*

- (a) *whether the Government has any policy or measure to promote Chinese art and culture, provide more opportunities for displaying valuable artistic works and cultural relics in Hong Kong and, at the same time, tie in with the development of the West Kowloon Cultural District, as well as step up liaison with the Mainland in the promotion of Chinese art and culture;*
- (b) *given that the Animated Version of the Riverside Scene at Qingming Festival was enthusiastically received by the public when being displayed in Hong Kong, and that the recent display of the reunited painting Dwelling in the Fuchun Mountains at the National Palace Museum of Taiwan after its first half section, the Broken Mountain, and the second half section, the Wu-yung Version, had been separated for more than 360 years across the Strait has attracted a large number of tourists, and that it has been reported that the Taiwan authorities concerned spent nearly 100 million Hong Kong dollars (NT\$368 million) on producing a digital 3D animated version of the Dwelling in the Fuchun Mountains which will be displayed at the end of next month, and may be exhibited on the Mainland in September this year, whether the Government will consider discussing with the Taiwan authorities concerned to strive for the exhibition of the 3D animated version of the Dwelling in the Fuchun Mountains also in Hong Kong during the period when it is on display on the Mainland, so that the people of Hong Kong can appreciate the artistic value of the painting, and seize the opportunity to promote Chinese art and cultural knowledge; and*

- (c) *given that it has been reported that the display of the Dwelling in the Fuchun Mountains has triggered a surge in tourism with overseas travel industry organizing package tours for viewing the painting, which indicates that the organization of the exhibition brings certain business opportunities, whether the authorities will, in the event that they succeed in striving for the exhibition of the 3D animated version of the Dwelling in the Fuchun Mountains in Hong Kong, consider taking this opportunity to tie in with the promotion of the related trades to attract tourists from the neighbouring Guangdong Province and Macao to come to Hong Kong, so as to facilitate the promotion of Chinese art and culture as well as create business opportunities for Hong Kong?*

SECRETARY FOR HOME AFFAIRS (in Chinese): President,

- (a) The museums managed by the Leisure and Cultural Services Department (LCSD) collaborate frequently with their counterparts in the Mainland for displaying the artistic treasures and cultural relics of China in Hong Kong. For instance, an exhibition "The Pride of China: Masterpieces of Chinese Painting and Calligraphy of the Jin, Tang, Song and Yuan Dynasties from the Palace Museum" was held at the Hong Kong Museum of Art (HKMA) in 2007, featuring Along the River During the Qingming Festival by Zhang Zeduan and other exquisite paintings and calligraphies from the collection of the Palace Museum; another exhibition "The Prosperous Cities: A Selection of Paintings from the Liaoning Provincial Museum" was held at the HKMA in 2009, showcasing fine selections of paintings and calligraphies of the Ming and Qing dynasties from the collection of the Liaoning Provincial Museum, including Along the River During the Qingming Festival by Qiu Ying of the Ming dynasty. The LCSD is discussing with some renowned museums in the Mainland, such as the Palace Museum, on the arrangement for more frequent exchanges and closer collaboration in hosting more large-scale heritage and arts exhibitions in its museums so that more Chinese artistic treasures and historical relics can be brought to Hong Kong for public appreciation.

- (b) The LCSD has currently no plan to introduce the "3D animated version of the Dwelling in the Fuchun Mountains" for display in Hong Kong, but will obtain more information from the organizer to further explore the feasibility of arranging such an exhibition in Hong Kong. We share the view that animation production can be a very effective means of promoting traditional Chinese art and culture to the public. In fact, the LCSD promptly arranged the display of the "River of Wisdom — Animated Version of the Riverside Scene at Qingming Festival" in Hong Kong upon the closure of the Shanghai World Expo in November last year and took the opportunity to introduce to visitors the culture, history as well as science and technology of the Song dynasty. We will continue to look for similar opportunities and arrange suitable exhibitions to be held in Hong Kong.
- (c) We have been working with the Hong Kong Tourism Board (HKTB) to actively develop and promote Hong Kong's cultural tourism so as to achieve a more diverse portfolio of tourism products and to enhance Hong Kong's overall attractiveness as a premier tourist destination. At present, there is no decision on staging the "3D animated version of Dwelling in the Fuchun Mountains" in Hong Kong. If opportunity arises, the HKTB will publicize the exhibition through different channels (including website, visitor hotline and visitor centres). The HKTB will also discuss with travel trade partners the introduction of relevant travel itineraries, so as to attract visitors to come and enjoy the exhibition in Hong Kong.

Regulation of Consumer Transactions Involving Pre-payment for Goods and Services

17. **DR PAN PEY-CHYOU** (in Chinese): *President, in Hong Kong, there are many consumer transactions adopting a pre-payment mode, which require consumers to sign contracts of relatively longer duration and pre-pay large amounts of money. Recently, I have received a complaint in which the complainant's family member who had been suffering from mental illness for 20 years was allegedly induced by the staff of a fitness centre using improper selling tactics to sign a contract for joining fitness courses and buying membership packages, and to pre-pay over \$60,000 in total. They subsequently requested*

for a refund and produced a medical certificate on the mental illness of the family member concerned, but their request was rejected by the fitness centre on the ground of "respecting the spirit of contract". In this connection, will the Government inform this Council:

- (a) whether it knows the number of complaints involving unfair trade practices in the sale of products or pre-paid services to persons with disabilities received or handled by the Consumer Council (CC) and the relevant law-enforcement departments in the past three years; the reasons for and the amounts of money involved in such complaints as well as the outcome;*
- (b) whether it knows the number of cases involving unfair trade practices in the sale of products or pre-paid services in which the victims had resorted to civil litigation to claim compensation in the past three years; the amounts of money involved; the average time required by the courts to handle such cases; and whether the claimants were successful in their claims;*
- (c) what government departments at present offer assistance and advisory services to persons with disabilities aggrieved by the unfair trade practices used in the sale of products or pre-paid services; whether the authorities have any plan to amend the legislation to allow persons with disabilities who can prove their disabilities to enjoy longer "cooling-off periods" and claim periods for consumer transactions than those applicable to able-bodied persons; if they have, of the details; if not, the reasons for that; and*
- (d) whether the authorities have any plan to enlarge CC's scope of investigation power and improve its redress mechanism to enable it to handle in a timely manner in the future disputes between consumers and business operators arising from the pre-payment mode of consumer transactions, and to empower CC to suspend the instalment payments by bank credit cards for the pre-payments involved in the complaint cases, so that the complainants will not have to claim for compensation through complicated and prolonged litigation proceedings; if they have, of the details; if not, the reasons for that?*

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

- (a) The Consumer Council (the Council) and the Customs and Excise Department (the Customs) do not enquire about the physical or mental condition of complainants in their handling of complaints in relation to unfair trade practices in the sale of products or pre-paid services. Therefore, neither the Council nor the Customs have statistics on complaint cases lodged by persons with disabilities.
- (b) The Judiciary does not keep statistics on cases involving suspected unfair trade practices in the sale of products or pre-paid services. Therefore, we are not able to provide such information.
- (c) At present, a dedicated division in the Council is tasked to provide advice on consumer issues, and conduct mediation and render assistance in consumer disputes. Besides, the public may refer to the Customs cases involving suspected application of false trade descriptions to goods in the course of trade which may be in breach of the Trade Descriptions Ordinance. The Customs would follow up on these cases in accordance with the Ordinance.

To tackle unfair trade practices more effectively, we consulted the public on legislative proposals to enhance protection for consumers against unfair trade practices last year, and published a consultation report in January this year.

Regarding the imposition of a mandatory cooling-off period on consumer contracts, after taking into account the views received during the consultation period, we propose in the consultation report that a mandatory cooling-off period of seven days be imposed on contracts involving goods and/or services with a duration of not less than six months.

A cooling-off period allows consumers to consult third parties where necessary, and reconsider their decisions free from any undue influence that may have been exerted during the course of the transaction. Moreover, the availability of a cooling-off period can also add to deter unscrupulous acts like aggressive practices in the

first place. If a longer cooling-off period is to be imposed on contracts entered into by persons with disabilities, they have to disclose their disabilities to traders. We consider that such arrangements undesirable. A more prudent approach is to set up a cooling-off period of an appropriate length to protect all consumers. We consider that a cooling-off period of seven days can provide appropriate protection for consumers (irrespective of their mental or physical conditions).

- (d) One of the legislative proposals to enhance protection for consumers against unfair trade practices is to introduce a compliance-based mechanism. Apart from instituting criminal prosecution, the enforcement agency can use the civil avenues under the mechanism to tackle false trade descriptions and other unfair trade practices.

Specifically, the enforcement agency will look into the complaints, and if justified, it may seek undertakings from businesses to stop or refrain from continuing an offending act as appropriate. The enforcement agency will be empowered to publish the undertakings, and to apply to the Court for an injunction if a business has breached any undertaking it has given, or in other circumstances as the enforcement agency sees fit. The Court may make an order directing the business to comply with the undertaking, or to refrain from engaging in conduct that constitutes or might constitute an unfair trade offence.

The Council will continue to play the existing mediating role between aggrieved consumers and businesses under the proposed regime. We expect that the effectiveness of the Council's mediation work will be enhanced with the back up of the compliance-based mechanism and possible criminal prosecution under the charge of the enforcement agency.

Besides, according to our understanding, where some consumers use credit-card instalment payments to finance pre-paid transactions, they have in effect entered into a loan agreement with the credit-card issuing bank for credit to finance the transactions. The loan is to be repaid by credit card instalment payments in accordance with the terms of the loan agreement. The credit-card issuing bank is not a

party to the transaction between the consumer and supplier of the goods or services. Therefore, we do not consider it appropriate to empower the Council (or any executive authorities) to take up an adjudicating role and direct a bank to stop receiving instalments when disputes between the consumers and the suppliers of goods or services arise.

Yan On Estate in Ma On Shan

18. **MR LEUNG KWOK-HUNG** (in Chinese): *President, I have received complaints one after another from the first batch of residents who moved into Yan On Estate (the Estate) in Ma On Shan in May this year, indicating that when they moved into the Estate, the property management services contractor (the contractor) of the Housing Department (HD) collected excessive charges from them, and that the facilities and shops in the Estate were not yet open, and the car park was misused by the staff members of the contractor, thus causing great inconvenience to them. In this connection, will the Government inform this Council:*

- (a) *of the total number of residents who will reside in the Estate upon its formal occupation date in July this year; the number of shops that will open in the Estate by then and the types of business operated by these shops;*
- (b) *whether it has carried out an assessment to ensure that shops in the Estate will have started operation when the residents move in; if it has, of the reasons why no shop is open at present; if not, how it can ensure that the needs of the residents are not neglected as a result;*
- (c) *given that among the aforesaid residents, some Comprehensive Social Security Assistance (CSSA) recipients, elderly people and people with disabilities indicated that the contractor required them to first settle a Debris Removal Charge (DRC) before it would assist them in signing their tenancy agreement and making arrangements to move in, and even though some residents signed a declaration stating that they would not renovate their flats, the contractor still requested them to pay DRC first, whether such practice is in*

compliance with the Government's existing requirements; if so, of the reasons for not stipulating such a charge in the "offer letters" issued to the residents in respect of the allocation of public rental housing (PRH) flats; if not, whether the HD has followed up the collection of excessive charges by the contractor and has immediately assisted those residents who have signed a declaration or who will not renovate their flats by demanding the contractor to refund DRC to them, as well as ordered it to stop collecting such a charge;

- (d) given that the aforesaid residents indicated that when residents who are CSSA recipients moved into the Estate, the contractor requested them to pay a deposit with their CSSA payment first and refused to give them any immediate remission, thereby causing difficulties in their livelihood, whether the Government has assessed if such an arrangement is tantamount to a reduction of money for meeting these CSSA recipients' living expenses, and whether the Government will immediately rectify this wrongful arrangement and immediately return the deposits to such CSSA recipients;*
- (e) when the car park of the Estate will open for use by the residents; and whether the Government has procured "third party risks insurance of building" for the car park before it is formally open for use;*
- (f) whether the Government has found out if there are private vehicles parking in the car park before it is open for use by the residents; and whether such vehicles belong to the staff of the contractor and whether they have paid the parking fee;*
- (g) whether the Government will immediately install additional traffic lights at road junctions of the Estate so as to enable residents to go safely to the petrol stations nearby for shopping or to the parks for doing exercise; if it will, when it will implement this proposal; if not, of the reasons for that; and*
- (h) whether the Government will immediately request the relevant franchised bus companies to increase the number of bus routes*

running via the Estate, so as to facilitate the residents to travel from and to the Estate; if it will, when it will make the request; if not, of the reasons for that?

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): President, Property Services Agents (PSA) undertaking the estate management work of the Hong Kong Housing Authority (HA)'s PRH estates should strictly comply with the terms of the management contracts entered into with the HA when performing their duties. The HD monitors their overall works performance and standard closely to ensure that quality management services are provided to PRH residents.

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

- (a) The official intake of the Estate in Ma On Shan which provides a total of 2 587 PRH units for about 6 800 residents will take place in July 2011. In the said Estate, there are three shops suitable for trades such as convenience store, cafe and food/grocery shop.
- (b) The HA has leased two shops in the Estate for the operation of convenience store and food/grocery shop. It is anticipated that the shops will commence operation in around this August. The HA is also inviting tenders for another shop in the Estate which is suitable for the operation of a cafe.

In addition, there is a shopping centre in the nearby Heng On Estate that provides residents of Yan On Estate with a wide range of services such as food and beverage services, retail services, bank, post office, clinic, market, and so on.

- (c) Pursuant to the property management contract, PSA is permitted to charge new tenants the DRCs according to the flat size. The obligation of DRC payment and its amount has been clearly set out in the Decoration Handbook, Intake Notification Letter and Notes on Intake provided by the HD to prospective tenants prior to intake. The PSA would also brief prospective tenants of the matters pertaining to collection of DRC during intake briefing sessions.

If new tenants are elderly households (households with all members aged 60 or above), recipients of CSSA offered by the Social and Welfare Department (SWD) (either the tenant or the tenant and all/some members of the household), or himself/any household member is disabled, they can apply to the HD for exemption of DRC during the intake.

For tenants who declare that no fitting-out works will be carried out, PSA would conduct flat inspection within three months after the execution of tenancy agreement and arrange for the refund of the DRC within one month after its inspection. For individual tenants who are eligible for the exemption at the time of intake but did not apply for exemption during intake and indeed have paid the DRC, the HD would arrange for the refund upon receipt of the exemption application as soon as possible.

- (d) Under the prevailing policy, prospective tenants who are CSSA recipients (either the tenant or the tenant and all/some members of the household) can apply for exemption of the payment of rent deposit during intake provided that the SWD does not pay for the deposit. For individual tenants who are eligible for the exemption at the time of intake but did not apply for the exemption during intake and indeed have paid the deposit, the HD would arrange for the refund upon receipt of the exemption application as soon as possible.
- (e) The Estate carpark is scheduled for opening for use by residents in around this July. The HA has procured public liability insurance coverage for the carpark.
- (f) The construction of the Estate was completed in end-May 2011. The contractors' site staff members are required to follow up with the rectifications and repairs and thus have their cars parked in the Estate carpark to facilitate their works. Parking fees are not charged for those duty-related vehicles parked in the carpark. However, the HD will step up checks of the carpark to prevent any abuse cases.
- (g) At the north-east corner of the Estate where Hang Tai Road joins Hang Fai Street, there is already a pedestrian crossing facilitating

residents of the Estate travelling to the nearby Heng On Estate and park. Traffic signs and road markings are provided at the said pedestrian crossing to alert motorists to drive slowly and beware of the pedestrians. The signs will also alert pedestrians to the direction of the approaching traffic and to carefully cross the road. A large pedestrian island is in place in Hang Fai Street to facilitate pedestrians to conveniently cross the road.

Taking into account the traffic condition at the road section and the existing pedestrian crossing facilities, the Transport Department (TD) has no plan to signalize the crossing at the location.

- (h) The TD has arranged appropriate public transport services for the Estate, including two franchised bus routes and one green minibus route passing through the Estate, to facilitate residents travelling to the New Territories and Kowloon. The TD will closely monitor the number of passengers of the franchised bus routes and green minibus route concerned after the official intake of the Estate, and will review the public transport services depending on the actual situation.

Disputes on Copyright Infringement of News Reports Among Media

19. **MR ALBERT CHAN** (in Chinese): *President, some members of the public have recently relayed to me that disputes on copyright infringement of news reports have arisen frequently among various media organizations in recent years, and there is a trend of the problem worsening acutely, as quite a number of media organizations took legal actions against one another over copyright infringement of news reports, which caused serious economic loss to both parties, adversely affected the development of media and journalism as well as drove up the operating costs of media organizations substantially, hampering their daily operation. In this connection, will the Government inform this Council:*

- (a) *whether the authorities have tried to look into the problem of frequent disputes on copyright infringement of news reports among media organizations in recent years and offered them assistance; if so, of the details; if not, the reasons for that;*

- (b) *whether it knows the respective numbers of litigation cases involving copyright infringement of news reports among media organizations in each of the past three years; and*
- (c) *whether the authorities will consider conducting an in-depth study on the aforesaid problem and formulating policies or amending the legislation to reduce litigation and disputes involving copyright infringement of news reports; if they will, of the details; if not, the reasons for that?*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Chinese): President, as major content providers, media organizations in Hong Kong should act responsibly and observe the law in the dissemination of news and messages, whether through the printed platform or the Internet. To create a business environment which is fair and conducive to the sustainable development of the creative industry, Hong Kong has an established legal system for the protection of intellectual property rights, including copyright. We review on a regular basis the efficacy of the Copyright Ordinance (Cap. 528) to ensure that it remains appropriate in present day circumstances.

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

The Copyright Ordinance grants copyright owners different exclusive rights to protect the fruits of their creation. Copyright is a private property right. Similar to remedies for other tortious acts, copyright owners have to initiate civil legal action and adduce evidence against the relevant infringers in order to safeguard their rights. If the infringement case involves criminal element, the right owner could file a complaint with the Customs and Excise Department (C&ED).

As regard civil actions, the Judiciary has implemented the Civil Justice Reform (CJR) since April 2009. The underlying objectives of the CJR are to, amongst others, increase the cost-effectiveness of the procedures in relation to civil proceedings, ensure that a civil case is dealt with as expeditiously as is reasonably practicable, and facilitate the settlement of disputes. The CJR promotes the use of mediation by which parties to the litigation may voluntarily

negotiate with each other with a view to resolving their disputes. Compared with litigation, resolving disputes through mediation could effectively save the parties' time and costs.

Nowadays, competition in the media market is keen. When reporting the same news, disputes about copyright issues involving similar content or expression may arise between media organizations. To help media and front-line journalists better understand their basic rights and duties as well as how to properly deal with others' intellectual property, the Intellectual Property Department (IPD) has published a booklet entitled "Copyright for Journalists in Hong Kong⁽¹⁾", which explains, among others, that:

- (i) Copyright protects the expression of ideas and their related end products (tangible), but not the underlying ideas themselves (intangible).
- (ii) The Copyright Ordinance not only protects fruits of creation, but also allows reasonable use of copyright works. Hence, different permitted acts are prescribed under the Ordinance, including fair dealing of copyright works for the purposes of criticism, review and news reporting (section 39 of the Ordinance).

The IPD will continue to conduct publicity and public education activities through different channels in the coming year, including organizing talks and seminars, to strengthen the media and the community's understanding and respect for intellectual property.

With regard to part (b) of the question, our reply is as follows:

The Administration does not have statistics on the number of litigations which involve copyright infringement of news reports among media organizations. In the past three years, the C&ED received four complaints against media organizations in respect of alleged copyright infringement acts while IPD did not receive any relevant complaints.

(1) Copy of the booklet could be found at <http://www.ipd.gov.hk/eng/pub_press/publications/journaliste.pdf>

BILLS**First Reading of Bills**

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

SECURITIES AND FUTURES (AMENDMENT) BILL 2011

CLERK (in Cantonese): Securities and Futures (Amendment) Bill 2011.

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

Second Reading of Bills

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

SECURITIES AND FUTURES (AMENDMENT) BILL 2011

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Deputy President, I move the Second Reading of the Securities and Futures (Amendment) Bill 2011 (the Bill).

The main object of the Bill is to statutorily oblige listed corporations to disclose price sensitive information in a timely manner and impose civil sanctions on any breach of the requirement. At the same time, the Bill seeks to streamline the process to enable the Securities and Futures Commission (SFC) to institute proceedings before the Market Misconduct Tribunal (MMT) direct. We also make use of this opportunity to propose empowering the SFC to establish a cross-sectoral Investor Education Council (IEC), and to introduce certain technical amendments to the Securities and Futures Ordinance (SFO).

At present, the requirement on listed corporations to disclose price sensitive information is set out in the Listing Rules of the Stock Exchange of Hong Kong Limited. The strength of the regulatory force has been an issue of

concern. A statutory price sensitive information disclosure regime is necessary to enhance market transparency and quality, to bring our regime more in line with the practices of overseas jurisdictions, and to maintain Hong Kong's position as a premier capital formation centre. Public consultation on the legislative proposals was conducted last year.

To define price sensitive information, the Bill proposes borrowing the concept of "relevant information" currently used in the "insider dealing" regime in the SFO. In other words, price sensitive information will be the same set of information currently prohibited from being used for insider dealing, and such information would be renamed as "inside information". This is the same as the approach adopted in the United Kingdom and the member states of the European Union. Opinions collected in the consultation exercise also generally supported this practice.

Under the Bill, a listed corporation must disclose any inside information as soon as reasonably practicable when the information has come to the knowledge of the listed corporation.

To strike a reasonable balance between ensuring sufficient market transparency and protecting the legitimate interests of listed corporations in preserving certain information in confidence to facilitate their operation and business development, the Bill will provide several safe harbours which cover information prohibited from being disclosed by a Hong Kong Court or under Hong Kong statutes, and information concerning an incomplete negotiation or proposal. Given that many listed corporations have major business activities outside Hong Kong, to cater for the practical needs of such corporations, the Bill provides that if disclosure of certain information would mean a contravention of legal prohibition in other jurisdictions, listed corporations can apply to the SFC for waivers in individual cases. To facilitate compliance, the SFC would promulgate guidelines on what constitutes "inside information" and when the safe harbours would be applicable. The SFC would also provide an informal consultation service, initially for 24 months, on the disclosure requirements.

If a listed corporation has breached the disclosure requirement, an individual "officer" of the listed corporation will also be in breach of the disclosure requirement under two circumstances. First, the corporation's breach is a result of his intentional, reckless or negligent conduct; and second, he has not

taken all reasonable measures to ensure that proper safeguards exist to prevent the breach.

When listed corporations and their "officers" breach the statutory price sensitive information disclosure requirements, the MMT would handle the alleged breaches and may impose various civil sanctions including:

- (a) Disqualification of the "officer" from being a director or otherwise involved in the management of a listed corporation for up to five years;
- (b) A "cold shoulder" order on the "officer", that is, the person is deprived of access to market facilities for up to five years;
- (c) A regulatory fine up to \$8 million on the listed corporation, each of the directors and/or the chief executive respectively;
- (d) Ordering an "officer" to undergo training; ordering a listed corporation to appoint an independent professional adviser to review its compliance procedure and advise on compliance matters to prevent a similar breach.

In the past, market participants expressed grave concern about the circumstances under which non-disclosure would constitute a violation of the law and the criminal consequences involved. For this reason, throughout our consultation exercise, we have pledged to focus on civil sanctions against non-disclosure of price sensitive information by listed corporations. Market participants generally support a civil regime. Among them, many listed corporations opine that the proposed civil sanction measures are of a severe nature. And there are views suggesting that to sanction those in breach of disclosure requirements by a civil process where a lower standard of proof can be adopted will be more effective than instigating a criminal process. We believe the civil regime proposed in the Bill is appropriate to achieve the purpose of encouraging compliance and acting as a deterrent.

Currently, under the SFO, MMT proceedings can only be instituted by the Financial Secretary, and the Presenting Officer is appointed by the Secretary for Justice to conduct the proceedings. To allow for a streamlined process to

enforce the statutory price sensitive information disclosure requirement and to deal with the existing six types of market misconduct stipulated in the SFO, the Bill proposes empowering the SFC to institute proceedings before the MMT direct, without having to first refer the case to the Financial Secretary for his decision to do so. The Bill will also provide for the SFC to be responsible for appointing the Presenting Officer in MMT proceedings in place of the Secretary for Justice.

Under the current SFO, the six types of market misconduct is regulated by two alternative and mutually exclusive means, that is, criminal prosecution and civil proceedings before the MMT. To ensure the primacy of criminal prosecution, the Bill will provide that the SFC must not institute any MMT proceedings for market misconduct unless it has obtained consent of the Secretary for Justice. This gives the Secretary for Justice the priority to contemplate criminal prosecution for the relevant misconduct. However, as cases of breach of price sensitive information disclosure requirement will not give rise to any criminal liability, the SFC can institute civil proceedings before the MMT without first seeking the consent of the Secretary for Justice.

In view of the continuous development of the financial market, the Bill proposes empowering the SFC to establish a cross-sectoral IEC as its wholly-owned subsidiary to holistically oversee the needs of investor education and delivery of related initiatives. The IEC aims to influence the financial attitude and behaviour of the general public by improving their financial literacy and capability. This proposal is supported by the other financial regulators and well-received by the public.

International experience has shown that it is more cost-effective and creates the most synergy for an investor education body to be set up as part of the regulatory community. Among the financial regulators in Hong Kong, only the SFC has an explicit statutory remit to pursue investor education in the securities and futures sector.

Moreover, we also propose to make use of this opportunity to introduce several technical amendments to update the SFO.

In a nutshell, the statutory price sensitive information disclosure regime proposed in the Bill would help promote a continuous disclosure culture among

listed corporations to allow timely access by the public to more comprehensive information to facilitate their investment decision. Besides, the establishment of an IEC will help improve the financial literacy and capability of the public. Hence, the Bill will enhance the overall regulatory regime for the financial market and further improve investor protection.

Deputy President, I so submit.

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Securities and Futures (Amendment) Bill 2011 be read the Second time.

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

Resumption of Second Reading Debate on Bills

DEPUTY PRESIDENT (in Cantonese): We now resume the Second Reading debate on the Anti-money Laundering and Counter-terrorist Financing (Financial Institutions) Bill.

ANTI-MONEY LAUNDERING AND COUNTER-TERRORIST FINANCING (FINANCIAL INSTITUTIONS) BILL

Resumption of debate on Second Reading which was moved on 10 November 2010

DEPUTY PRESIDENT (in Cantonese): Mr CHAN Kam-lam, Chairman of the Bills Committee on the above Bill, will address the Council on the Committee's Report.

MR CHAN KAM-LAM (in Cantonese): Deputy President, in my capacity as Chairman of the Bills Committee on the Anti-money Laundering and Counter-terrorist Financing (Financial Institutions) Bill (the Bill), I submit the

report of the Bills Committee to the Legislative Council and brief Members on the Bills Committee's major deliberations.

The object of the Bill is to provide a legislative framework to implement the various requirements of the Financial Action Task Force (FATF), including:

- (a) Imposing customer due diligence requirements and record-keeping requirements on specified financial institutions;
- (b) Regulating the operation of money changing and remittance service and licensing of money service operators; and
- (c) Establishing the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Review Tribunal (the Tribunal).

The Bills Committee has held 15 meetings and invited the public (including relevant trade and professional organizations) to give views on the Bill.

During the course of deliberations, Members' major concern has been whether the proposals in the Bill have adequate measures and appropriate mechanisms in place to ensure the full protection of the rights of financial institutions and their employees under regulation as well as the public affected while having regard to meeting the international requirements.

Under the Bill, in respect of customers falling within the definition of "politically exposed person", financial institutions are required to undertake additional measures which include obtaining senior management's approval, taking adequate measures to establish the source of wealth and funds, and taking additional measures in monitoring their business relationship with the relevant persons. According to the proposed definition of "politically exposed person", a political exposed person refers to an individual who is or has been entrusted with a prominent public function in a place outside the People's Republic of China, and the individual's family members or close associates. Some Members have expressed concern about the scope of persons covered by such a definition.

The Administration has explained that the definition of "politically exposed person" is drafted having regard to the prevailing international standards

promulgated by the FATF which highlight that politically exposed persons mean individuals who are or have been entrusted with prominent public functions in a foreign country. According to the Interpretation and General Clauses Ordinance, foreign countries referred to countries other than the People's Republic of China.

The Bills Committee has sought clarification on the customer due diligence measures applicable to a customer or beneficial owner who is a person entrusted with prominent public functions but is not a politically exposed person as defined under the Bill. The Administration has advised that in respect of such a customer or beneficial owner, financial institutions should assess whether the business relationship is considered as presenting high money laundering or terrorist financing risks having regard to all factors and circumstances. If so, financial institutions must comply with the special requirements applicable to high risk circumstances in the Bill.

The Administration has also confirmed that the customer due diligence requirements applicable to persons falling within the definition of "politically exposed person" in the Bill are similar to the relevant requirements applicable to high risk circumstances. The regulatory arrangements, consequences and sanctions for breaches of such requirements are also the same.

Clauses 5(6) and (8) of the Bill provide for the criminal offence provisions in respect of breaches of customer due diligence and record-keeping requirements with the element of "with intent to defraud". Clause 5(6) applies to financial institutions whereas clause 5(8) applies to employees of financial institutions. Mr James TO has expressed concern that there is no specification of any particular person to be defrauded under such provisions. The Administration's initial response is that, according to the advice of the Department of Justice, "with intent to defraud" means an intention to practise a fraud on another person, or an intention to act to the prejudice of another person's right. Generally speaking, there is no specification of any particular person to be defrauded under such criminal provisions and there is no requirement that economic loss should be caused. A general intent to defraud is sufficient to constitute the mental element of the offence.

Mr James TO has expressed the view that the scope of the criminal offence provisions in the Bill should not be too wide and should be framed to be confined

to offences pertinent to the anti-money laundering and counter-terrorist financing measures in the Bill. On this premise, he considered that the provisions should be revised to specify the person, such as the financial institution concerned and/or the relevant authority, to be defrauded. The Administration has subsequently accepted Mr TO's view, and agreed to move Committee stage amendments (CSAs) to clause 5(6) to add "a relevant authority" after "with intent to defraud" and to clause 5(8) to add "the financial institution or a relevant authority" after "with intent to defraud".

Under clauses 10(7), 10(8), 13(7) and 13(8) of the Bill, a person commits an offence if, being a person who is employed to work for a financial institution or is concerned in the management of a financial institution, the person, with intent to defraud, causes or allows the financial institution to fail to comply with certain specified requirements or perform certain specified acts.

Dr Margaret NG has expressed concern that the provisions under clauses 10(7), 10(8), 13(7) and 13(8) will apply to an employee regardless of whether the employee possesses the necessary authority to "allow" the financial institution concerned to fail to comply with a relevant requirement or perform a relevant act. Mr James TO has expressed the view that criminal liability should not arise if it is not within an employee's power to stop his colleague from performing a certain act even if he is aware that the act could lead to a breach. The Bills Committee has requested the Administration to clarify these issues with reference to the case law.

The Administration has explained that the provision of "causes or allows (an institution) to fail to comply" is also used in comparable provisions in the SFO and the Financial Reporting Council Ordinance. The financial institution's failure to comply with the requirements to provide information or produce documents or records imposed by an authorized person or investigator may be caused by an individual employee. Depending on the facts and circumstances of the case, if an employee does not have any power to control the provision or otherwise of the information required to be produced by the financial institution concerned, the employee would not be caught by the offences under clauses 10(7), 10(8), 13(7) and 13(8). As a direct authority on the meaning of the word "allow" cannot be identified, Mr James TO has suggested that the relevant public officer should state expressly the legislative intent at the resumed

Second Reading debate on the Bill. The Administration has accepted Mr TO's suggestion.

Apart from the foregoing major deliberations, the Bills Committee has also studied the following matters:

- (a) Arrangements for the Bill's application to the Government;
- (b) Customer due diligence and record-keeping requirements applicable in different circumstances;
- (c) Supervisory and investigatory powers of the relevant authorities;
- (d) Arrangements for the regulation of money service operators (MSOs);
- (e) The scope and corresponding penalty of criminal offences provided under the Bill;
- (f) The appointment and procedures of the Tribunal; and
- (g) Provisions concerning the protection of legal professional privilege.

The details of the discussion are set out in the written report.

In response to the concerns and views of Members and deputations, the Administration will propose a number of CSAs. The Bills Committee agrees to the CSAs proposed by the Administration and supports the resumption of the Second Reading debate on the Bill.

Deputy President, next, I am going to express my personal views.

Hong Kong is an open and flexible market with a frequent influx of enormous amounts of hot money. To ensure the alignment of Hong Kong's financial system with the world is particularly important to maintaining Hong Kong's status as an international financial centre. At present, there are different MSOs in the market. Among them, banks, securities firms and insurance companies are under the regulation of the Hong Kong Monetary Authority, the

Securities and Futures Commission and the Office of the Commissioner of Insurance respectively. As to money changers and remittance agents, only a simple registration with the police is required. A licensing regime is introduced in the Bill to impose uniform regulation on MSOs by the Commissioner of Customs and Excise of Hong Kong. Generally speaking, this will help enhance the anti-money laundering system applicable to financial institutions to make it better aligned with the current international standards. Therefore, it merits our support.

No doubt money changers and remittance agents are the most affected by the introduction of the Ordinance. In my view, the regulation of the money service market by the Ordinance is conducive to the long-term development of the trades. To remittance agents, it is actually a good thing. However, we hope that the procedure for enforcement of the legislation will be streamlined to avoid hindering the trade's operation and efficiency, and bringing an additional burden in costs; clear guidelines will be drawn up to strengthen the education for remittance agents to enable them to have a thorough understanding of the relevant regulatory regime; and specific arrangements will be put in place during the transition period to prevent confusion from arising from remittance agents either rushing or delaying to get licensed.

Deputy President, over the past couple of years, some money changers and remittance agents often came to me for help. Their bank account services were terminated for no apparent reason. On one occasion all the accounts of dozens of remittance agents were terminated in two weeks. Without a bank account, it is practically impossible for remittance agents to do business. But the banks need not give any reasons. A simple response of "a business decision" renders remittance agents most helpless. Even when their accounts are reinstated by banks after repeated negotiations, they are still worried that their accounts will be cancelled some day, putting them out of work. A more difficult situation for them is that sometimes even the accounts of their family members are also cancelled. As we all know, we cannot do without banks in our daily life nowadays. If the accounts of the whole family are cancelled, it will be impossible even to pay children's school fees.

We understand that banks have their own concerns about large-amount remittances. Now that an official regulatory regime is in place, their concerns

can be allayed. However, I am worried that banks will refuse to provide services to these customers to avoid the checking procedures so as to save administrative costs.

I happen to have some first-hand experiences. My daughter recently intended to open a Renminbi account with the HSBC. But she was refused on the grounds that the bank found out her father is a politically exposed person. I personally consider this reason really inadequate. But my daughter received a far better treatment than remittance agents. Why? The bank at least gave her a reason. Nowadays, many Hong Kong people are keen to go to places outside the territory, especially the Mainland, for fun or do shopping online. Perhaps they have got Renminbi accounts as well. So, opening a Renminbi account is actually quite common now. My participation in politics is not directly related to my daughter, and she is not involved with my work. Besides, my account has posted no bad financial records. So, this reason is not convincing at all. In my view, the main reason is that the bank tried to avoid the trouble of carrying out extra checking procedures. I think the same applies to their treatment of remittance agents. This is because to banks, one less remittance agent means one less job likely to cause trouble. We hope that banks will discharge their social responsibility in checking those who should be checked and enhancing the transparency of the process. Extra restrictions should not be imposed on remittance agents to cause them unnecessary trouble and even posing threats to their survival.

Deputy President, I wish to mention in passing that we received a number of complaints from remittance agents a few years ago about the termination of service by banks. The major target of their complaints was the Bank of China (BOC). However, in all fairness, remittance agents have all along been unable to open accounts with the other banks. Eventually, they were able to do so with the BOC. Along with the increasingly stringent international regulation on money laundering practices, the BOC has finally decided not to allow them to open accounts until there is more clearly-defined regulation on such practices before this service is resumed.

I have cited my personal experience to illustrate that in order to pre-empt procedural troubles brought by foreign currency accounts, banks would rather not do such remittance business to avoid possible breaches of requirements and even situations that are relatively difficult to control.

Moreover, Deputy President, in the course of deliberations, I have noted that under the present registration system, there are actually two types of licences — one for services at fixed locations and the other for services in a mobile operation. I have raised my concern with the Government, that possible loopholes will emerge in the regulation of these two types of licences. The requirements to be imposed on licences for services at fixed locations are more stringent whereas those on licences for services in a mobile operation may be less stringent. Insofar as anti-money laundering is concerned, we hope that a higher level of vigilance will be maintained, and efforts in such areas as regulation, punishment and sanction will be enhanced.

Hong Kong's deficiencies in this area may affect the reputation of Hong Kong as a financial services centre. After this new regime is put in place, I hope the Government will examine the health of the regime from time to time. Even though international standards may have been satisfied, I believe a better job done of regulation will better facilitate the development of this trade.

Deputy President, the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) and I will support the Bill proposed by the Government, and the CSAs proposed.

I so submit.

MR ALBERT CHAN (in Cantonese): Deputy President, I am not a member of the Bills Committee. However, in terms of principle and concept, I approve of the fight against acts of money laundering. I would like to take this opportunity today to express my worries. Mr CHAN Kam-lam has relayed a greater part of the problem just now. Over the past year, I have also received many cases of people seeking help with the termination of their bank accounts.

At the stages of the drafting of the legislation and the submission of the legislation by the Government, some banks did, due to a lack of thorough understanding of the Bill and an attempt to avoid administrative or technical trivialities arising from the passage of the Bill, unilaterally terminate the services of some accounts that may involve frequent money exchanges with the Mainland without the support of any specific evidence and information, thus greatly

affecting the living of people who were carrying on businesses through these accounts.

Many responsible persons of these accounts basically may be just relatives and friends of the Mainlanders, or just having commercial dealings with them. Through financial arrangements with the Mainland, these persons can carry out some commercial or investment activities in Hong Kong to enable them to earn a stable income for their living or their families. No evidence has indicated that they have anything to do with such activities as terrorism, money laundering or illegal money exchanges. However, without the support of any specific evidence, banks had decided unilaterally to terminate these accounts, citing the reason that this legislation would be introduced by the Government and the details of the legislation had already been announced.

In fact, there is a considerable number of this kind of accounts. The correspondences between the BOC and me — the correspondences between us over the past year have amounted to dozens of letters. After our intervention, the bank indicated that discretion would be exercised. In the end, in most of the cases where the people have sought help from Members, their accounts have been reinstated by the bank. For this reason, this legislation has given me some cause for concern. After its implementation, will the problem I mentioned just now happen again and again? My greatest worry is about the wrong target being hit by mistake. Any policy is the same. When the Government wishes to carry out some reasonable act through a policy, no matter how correct and just the starting point is, and how it is supported by the public, grey areas appear in the law, and the interpretation of the law will give rise to ambiguities. These ambiguities will easily cause the party concerned — especially banks to terminate the accounts of certain customers in order to reduce administrative troubles or possible problems. It is because even though banks will lose some of their customers, it will not have too great an impact on their overall operation.

However, to the people, these accounts may be their means of living. Perhaps some people have relied on this kind of financial arrangements over the past one to two decades to assist them in handling their finances. Besides, what they have used are some lawful approaches that have existed for one to two decades. However, due to the implementation of a new piece of legislation now,

their livelihood is adversely affected by some possibly immature interpretation of the law or some administrative behaviour out of excessive worries. However, there are actually no safeguards in this regard. There is no mechanism stipulated in the legislation that enables these people to see justice prevail for them because banks have the absolute administrative authority and the people have no channels to complain or claim damages. If the people want to sue banks through civil redress, they are almost certainly doomed to lose because banks need not give any reasons to terminate an account. Banks only need to say that they can no longer provide services to this account and then they can have it terminated. One comment from banks suffices. Deputy President, it only takes one such action of banks to destroy the livelihood of the whole family.

Regarding the issues I raised just now, I think the Secretary is most familiar with them. I hope that the relevant parties and banks, especially in the early days of the implementation of the legislation, will negotiate a mechanism for the termination of bank accounts and give the people a clear account of it. I hope that either the Hong Kong Monetary Authority or the Secretary will negotiate with banks an approach recognized by all parties to avoid the indiscriminate killing of innocent people, which is very important.

I wish to raise an issue in passing. Mr CHAN Kam-lam quoted just now the example of his daughter. Actually, I have had the same experience. Recently, banks have been in an extremely nervous state. Many people — especially some politically exposed persons — have encountered huge inconveniences in opening an account. When I chanced upon the Secretary last week, I raised this issue with him. The bank account for the new body formed by Mr WONG Yuk-man and me has yet been opened almost two months after our application. Eventually, we asked our co-workers to make enquiries with the bank. Eventually, the bank advised that because of our extremely sensitive status which was categorized as the high-risk group, approval was not granted for our opening of an account because we wanted to open it under the name of the People Power.

Hong Kong has claimed itself as a financial centre. We have been holding this kind of status for over two decades. We are not terrorists, but we are being described as dangerous persons now. Although we do throw bananas and "wipe the place up", we do not owe any money to the banks, right? I think

this really is a big joke. However, I wonder whether I should feel better when I heard that Mr CHAN Kam-lam's daughter also encountered similar problems in opening an account. This means the high-risk group covers not only those in the opposition camp like us, but also those of the loyal red origin. Even a family member of the nuclear member of the DAB and the royalist camp has also encountered these problems in opening a bank account. Secretary, do you not think this is ridiculously hilarious? I think only "small potatoes" like us, only members in the opposition camp like us are discriminated against and targeted because the big bosses of banks naturally consider us very troublesome people. However, it has turned out that even the family member of the backbone of the royalist camp has also encountered similar problems now. I think due attention should be paid and rectification be made.

I have heard some people explain that this is a tradition of banks in the United States. According to this tradition in the United States system, this kind of yardstick will be used by banks in the United States to deal with applications for opening of accounts by any politically-involved persons. However, Hong Kong is a financial centre. There is no reason for us to follow the practice of the United States in these matters, right? Now, even some British-funded banks have followed the practice of the United States. I consider this absolutely unacceptable. Therefore, I wish to take this opportunity today to bring up the problem of hitting the wrong target by mistake by these anti-money laundering measures and to urge the Secretary to avoid hurting the people who have relied on these accounts for their livelihood. Second, if the so-called dangerous persons or their family members meet obstruction in opening a bank account, the reputation of Hong Kong as a financial centre will be tarnished.

MR WONG TING-KWONG (in Cantonese): Deputy President, the object of the Anti-money Laundering and Counter-terrorist Financing (Financial Institutions) Bill (the Bill) is to address the deficiencies in the present anti-money laundering regime of financial institutions in Hong Kong to make it better aligned with the international standards. Hence, provisions have been made to impose customer due diligence and record-keeping requirements on specified financial institutions; regulate the operation of money changing and remittance service and licensing of MSOs; establish the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Review Tribunal; and confer on the authorities

various supervisory and enforcement powers. In the course of deliberations, the Administration has listened to the views of deputations and Members and heeded sound advice to propose a number of amendments. Therefore, the DAB supports the Bill and the amendments.

However, I wish to raise several points about which the DAB are particularly concerned. First, regarding the customer due diligence and record-keeping requirements, the DAB agrees that the risk-based principle should be observed to provide that simplified customer due diligence measures will be applied to specified customers of a lower risk, but in higher-risk circumstances, compliance with special requirements should be in order. In this way, it will be more flexible in easing the pressure on financial institutions in bearing heavy and serious responsibilities on the one hand, and ensuring the stringent implementation of the customer due diligence process by financial institutions in customer checks instead of treating it only as a matter of routine on the other.

Moreover, with respect to the adoption of customer due diligence measures, the Bill proposes the identification and verification of the identity of the "beneficial owner". The threshold in the definition of "beneficial owner" in the Bill is the owning or controlling of 10% or more shareholding or voting rights of a customer. Hence, anyone with more than 10% shareholding needs to provide information for customer due diligence and record-keeping purposes. This will bring considerable pressure on financial services operators because their customers may find this requirement complicated and harsh, and the remittance payee may refuse to co-operate and provide relevant information. What is more, the threshold in the definition adopted in the United Kingdom, Australia and Singapore is 25%. The Law Society of Hong Kong and the Association of Banks have then suggested that the threshold should be relaxed to 25% to bring it on a par with that adopted in these overseas countries. However, the authorities have explained that the 10% threshold in the guidelines of the Monetary Authority is time-honoured with no specific problem. However, the problem lies in the difference between overseas and local standards. The Bill also proposes that heavier sanctions be imposed. Is it necessary for Hong Kong to set such a stringent and high threshold to overtake the United Kingdom and catch up with Australia, and to increase the workload of financial services operators to cause troubles to the people? In the end, we are very pleased to see that the authorities have accepted the proposal and made amendments.

Moreover, regarding the requirement to empower the regulatory authority to inspect and investigate necessary records and documents of financial institutions, the DAB hopes that there will be proper checks and balances, transparency and consistency in the exercise of such power by the regulatory authority to avoid the abuse of power. Besides, the regulatory authority should handle the relevant records and documents properly to ensure the appropriate use of such information and avoid abuse.

Regarding the regulation of the operation of money service, the definition of "money changing service" in the Bill excludes money changing service provided by hotels for the convenience of their guests. It is believed that the chances of using hotels' guest money changing service for money laundering purposes are slim. However, I think the authorities should not lower their vigilance. Instead, they should keep an eye on the relevant service provided by hotels. Have the authorities ever assessed the possibility of lawbreakers using money changing service for money laundering purposes through the acquisition of hotels? As boutique style serviced hotels are very common in Hong Kong now, the acquisition of such hotels is not at all very difficult. Therefore, in my view, after the implementation of the Ordinance and the stepping up of the fight against money laundering, lawbreakers may then attempt to make use of other channels to carry out such illegal activities. Therefore, it is hoped that the authorities can pay attention to this issue.

Moreover, some licensed MSOs conduct their business in a mobile mode. The DAB has raised the query that when compared with MSOs operating at fixed locations, it seems that less stringent requirements are imposed on them or they are not so readily regulated. Therefore, the authorities should strengthen the supervision of the mobile mode of operation, and examine ways to pre-empt any attempt by a MSO to keep his operation at a fixed location in the dark and claim to have switched to the mobile mode.

In addition, the Legislative Council Panel on Financial Affairs and I received requests from some remittance agents. They were discontented with banks closing all the accounts under their names without giving them any reasons, thus causing considerable impacts on their business operation and even their livelihood. The Bill proposes to require those who wish to conduct money changing or remittance business to apply for a licence. The problem is that even

if they satisfy as far as possible the licensing requirements set out in the Bill to obtain a licence in future, all their efforts are futile if banks continue to deny them access to account services. Therefore, the DAB hopes that the authorities will negotiate with banks to boost their confidence in licensed MSOs, and to enhance their transparency in handling these accounts, in order to avoid the indiscriminate closure of these operators' accounts by banks.

Regarding criminal offences provided under the Bill, the Bill stipulates that responsible persons and employees of a financial institution will be criminally liable if they knowingly or with intent to defraud cause the financial institution to breach the requirements. The DAB urges the authorities to step up publicity to assist responsible persons in understanding the details of the relevant regulations to note the meaning of "knowingly" and "with intent to defraud", so as to prevent them from being caught by the law inadvertently.

Moreover, regarding the maximum fine of \$1 million for criminal offences with the element of "with intent to defraud", I think the penalty is too heavy and not at all appropriate. At the meetings of the Bills Committee, I suggested that the Government should consider setting the maximum fine at a certain proportion to the possible profits gained by the financial institution convicted of the relevant offence. Regrettably, my proposal was not accepted. The authorities have responded that the relevant penalty is the same as that for a similar offence. I have reservations about this.

Lastly, the DAB urges the authorities to consult the views of the trades on the formulation of the regulatory guidelines as soon as possible after the passage of the Bill, maintain close contact with the trades, and provide assistance to the trades as far as possible in the transitional period to facilitate the smooth implementation of the Ordinance in the future.

With these remarks, Deputy President, I support the Bill and the amendments.

MS AUDREY EU (in Cantonese): Deputy President, I speak on behalf of the Civic Party in support of the Anti-money Laundering and Counter-terrorist Financing (Financial Institutions) Bill (the Bill).

Actually, the fight against money laundering is not a new initiative. As early as in 1989, the Financial Action Task Force was established at the international level. And the checking of politically exposed persons has all along been conducted by banks. This is why Mr CHAN Kam-lam said in his speech earlier that his daughter was implicated and encountered difficulties in exchanging Renminbi or opening a Renminbi account. Mr Albert CHAN also said that the People Power, an organization to which he belongs, was unable to open an account with the HSBC. So, when he heard Mr CHAN Kam-lam say that his daughter had the same problem, he was feeling a bit better. I wonder whether he will also feel better when he learns that the Civic Party has the same problem as well. Similarly, we are unable to open an account with the HSBC. Despite a great deal of effort and time, we have met with no success after all.

The object of this kind of legislation is to combat money laundering activities or terrorists. However, I often have the feeling that such legislation has all along hit the law-abiding people first in causing them all sorts of inconveniences in daily life. As to whether the legislation can achieve its original purpose of producing actual effect in the fight against terrorists or lawbreakers engaged in money laundering, we actually do not have the answer most of the time. Nevertheless, we still support the resumption of the Second Reading debate of this Bill today, and the various amendments to be proposed by the Secretary later on.

The focus of the Bill is on requiring financial institutions to carry out the customer due diligence process, especially the checking of politically exposed persons, on which we have spent a long time discussing. The definition of "politically exposed person" in the Bill categorically provides that the individual is "in a place outside the People's Republic of China". In other words, individuals in the Mainland, Taiwan or Macao are not covered in the definition of "politically exposed person". Therefore, during the discussions, we have asked why these people are excluded. Since the daughter of Mr CHAN Kam-lam, Mr Albert CHAN and the Civic Party all have to be checked, why is it not necessary for politically exposed persons in the Mainland, Macao or Taiwan to be subject to the same process?

The Government has explained that there is no cause for concern because the requirements in respect of politically exposed persons set out in Schedule 2 are actually the same as those in the other relevant Parts. For this reason, the

same customer due diligence requirements will be applied to any politically exposed persons, regardless of whether they are individuals outside or inside the People's Republic of China. Therefore, the requirements in this Part have actually been in force all along and the Bill is only seeking to regularize it. A number of codes of practice will also be drawn up in future to set up a licensing regime for MSOs, that is, remittance agents and money changers mentioned in the speeches of Mr CHAN Kam-lam and Mr Albert CHAN earlier. This is a new requirement because according to the past or present practice, money changers are required to register with the Hong Kong Police Force.

As mentioned in the speeches of Mr CHAN Kam-lam and Mr Albert CHAN earlier, Members have often received complaints about the need of many money changers to open an account with the BOC. People who have business with the Mainland cannot open an account with the other banks because they often have to rely on the services of the BOC. Since many provinces, cities or small places in the remote areas are only served by the branches of the BOC, it is essential to have an account opened with the BOC in order to carry on a remittance business.

However, account services are often terminated by the BOC abruptly. Not only money changers have been targeted, their family members and close associates have also been implicated. Even the bank accounts of their children still at school have been cancelled. This will lead to another problem. Those who are implicated with their account services having been terminated have to live with a bad record for a lifetime and find it very difficult to open an account in future. This is because other banks dare not accept an account opening application from those who have been rejected to open an account or who have had their account services terminated by a bank.

This not only poses problems to the livelihood of money changers, but also affects their family members. For example, their daughter may not be able to open a payroll account when she goes to work in society in future. The extent of implication may even go to her younger brother doing business in the Mainland. If he authorizes his elder sister to act on his behalf in banking transactions of deposit and withdrawal because he often has to work out of town, and if his sister works in the money changing business and the BOC finds out she has the

authority to handle her brother's account for deposit and withdrawal, her brother's business account will also be frozen.

We have often reflected the situation to the BOC and the Hong Kong Monetary Authority (HKMA) upon receipt of this kind of complaints. As Mr Albert CHAN said, the cases were addressed at first but were gradually ignored by the BOC, which has denied us any channels of complaint. Therefore, I am very pleased that the Bill has regularized the operation of money changing and remittance services and introduced a licensing regime for regulatory purposes, which is a matter of significant importance.

In my view, after the introduction of the licensing regime, the most important thing is that there are laws to go by. As long as their licences are not revoked, the Government has the responsibility to ensure that those conducting this kind of business can open an account. If their licences are revoked by the Government due to misconduct in breach of the code of practice or licensing conditions, banks certainly will not open an account for them. However, if they perfectly abide by the law and the Government cannot produce any evidence of their wrongdoing, Secretary Prof K C CHAN, the Government really has the responsibility to ensure that they have access to appropriate banking services. Therefore, I support the Secretary in regularizing the business of the relevant trades through a licensing regime.

In this regard, I think that when there are responsibilities, there are rights. It is necessary for the Government to ensure that once problems I just mentioned arise in future, the HKMA and Secretary Prof K C CHAN are duty-bound to negotiate with banks to find out why the bank account services of these people and their family members are terminated. I wish to put this on record. The problem is that in the past before a licensing regime was put in place, law-abiding people would register with the Commissioner of Police to enable banks to know they were conducting a money changing business, but those who did not obey the rule did not do so. It can thus show that the implementation of the legislation always targets law-abiding people, but allows non-law-abiding people to take advantage of loopholes.

Hence, at the resumed Second Reading debate of the Bill today, I wish to particularly point out that while money changers and remittance agents must

comply with the relevant regulations in future, the Government, at the same time, must also bear a certain responsibility for them. This is a very important point.

Moreover, we have had much discussion on certain details of the Bill, such as the protection of legal professional privilege and the application of the Bill to the Government. We have conducted detailed discussions and the Government has also heeded sound advice to accept various amendment proposals by all means. It will propose various CSAs later on. I am not going to speak again. But I wish to point out here that I welcome the biggest effort the Government has made in this regard.

However, I had raised one point during the scrutiny of the Bill, but it was not accepted by the Government. It relates to law-enforcement officers entering premises to conduct searches. Very often, they search everything on the premises, including things that are irrelevant. Sometimes they seize things that are related to legal professional privilege or personal privacy but not necessarily related to the case or the suspected offence. In this regard, the concerned person should have the right to request law-enforcement officers to seal the papers or sensitive information to give him enough time, of course, this means to seek a court ruling as soon as possible within a short time before such information or papers can be unsealed. Otherwise, if law-enforcement officers are allowed to search and go through all the contents of the papers or information, it is possible that they will infringe upon the concerned person's legal professional privilege or his personal privacy which is irrelevant to the case.

However, the Government has declined to give any express direction in this regard during the deliberations on the Bill. I hope the Secretary will make clear to law-enforcement officers in his speech that at least they have to draw up proper guidelines. Law-enforcement officers certainly have the power to enforce the law. However, when a search is conducted by law-enforcement officers, adequate protection should also be provided to the concerned person or the suspected person. If he requests to seal some sensitive information and papers to facilitate the seeking of a court ruling within a very short time, this arrangement for preservation of confidentiality should be made.

Thank you, Deputy President.

MR JAMES TO (in Cantonese): Deputy President, I have been engaged in the scrutiny work for this kind of anti-money laundering legislation for 20 years, and I have scrutinized many pieces of legislation.

I wish to reiterate briefly my consistent attitude. It is that Hong Kong should only do what the international convention and international standard require us to do, and we do not need to do anything in excess or even overtake the others to be the one taking the lead, despite Hong Kong's satisfactory practical performance in many areas.

Why did I say that? It is because while Hong Kong no doubt must follow the general trend of the world, at the same time, we are one of the financial centres in China where some of our transactions or money flows are not necessarily exactly the same as the mode of transaction in the other financial systems. Therefore, I always think that we have to examine whether we should be mindful of not overdoing it; whether we should leave it when it is just right and need not go too far.

At the first eight to 10 meetings during the early stage of the scrutiny of the Bill, some 70% to 80% of the time was taken up by me to express my views. However, the Government seemed to have turned a deaf ear to them. At first, I was really a bit worried, thinking "My goodness! If the Government remains this way till the end, my amendments are likely to suffer a more or less the same fate as those I proposed for the interception Bill. The problem will be huge then. I have to work around the clock for several days."

Other colleagues subsequently became aware of the crux of the problem. Different political parties and groupings reminded the Government that what was not practicable, and there were problems here and there. The Government seemed to start to "heed our advice". Apparently, the vast majority of the amendments today are proposed after heeding the views of colleagues in the Bills Committee.

I particularly wish to raise several points. But I will not repeat the problems faced by remittance agents because they have already relayed their problems to various major political parties. I particularly agree to what Ms Audrey EU said just now. After the passage of the Bill, if remittance agents do observe the requirements in the legislation, and no charges can be brought against

them under the legislation by any law-enforcement agencies, can banks still refuse on fair and square grounds to open accounts for them to continue their remittance business?

What is my greatest worry? Actually, I have mentioned it in the past. Some banks have refused to open accounts for remittance agents on commercial reasons. However, in the case where remittance agents are refused by all the banks on commercial grounds, but they satisfy the basic requirements under the regulation of the legislation and receive no charges against them, may I ask the Government whether the authorities will turn a blind eye to it and let all the banks — I am not talking about the BOC alone though it has made things more convenient for remittance agents — continue to refuse their applications for opening accounts?

If all the banks comply with the legislation and refuse them on commercial grounds, making them unable to continue their remittance business and open an account, I think the Government should bear a very heavy responsibility. Therefore, I hope the Secretary will specially keep an eye on the future development. This is the first point.

The second point concerns politically exposed persons. According to the Government, the definition in the current legislation does not cover an individual who is entrusted with a public function in the Mainland, Taiwan and Macao. In this regard, the Government has advised that even ordinary members of the public have to go through the banks' customer due diligence process. So, this kind of persons is actually no different from the locals. However, I believe there is a difference in the practical process, as well as at the regulatory level.

The problem is: Will there be some loopholes in practice? I do not have any idea. However, talking about the conduct of money laundering activities through Hong Kong by politically exposed persons in the Mainland, Macao and Taiwan, there were actually some cases in the past, including one involving a former Macao official responsible for land administration. However, his case was not exposed by banks, but by law-enforcement agencies.

I believe if regulation is imposed in accordance with the definition in the present legislation, perhaps in the discussion on the drawing up of guidelines

between the Government and banks, it is necessary to specially ask them to pay attention to this point.

As there are indeed a great number of amendments, I am not going to discuss them one by one. I particularly wish to talk about one point, which is that under this legislation, some persons can allow their subordinates to breach certain requirements in the legislation. The current amendment proposes to add "a capability of control" to this concept to make it fairer. Otherwise, the original concept of "allow" will easily produce cases where a crime is committed innocently.

The last point is that the legislation does not cover a future trend that I wish to remind the Government of. The international anti-money laundering agency has also started to keep a close watch on large transactions of antique trade or special business. Recently I have got some clues, some sources indicating the emergence of a relatively difficult situation, and that is, the sale of second-hand luxurious goods, possibly including handbags. I am not specially targeting some recently-listed companies. However, since the value of these second-hand goods is likely to amount to \$80,000 to \$100,000, and such goods have a "birth certificate" and can be exchanged for money in Hong Kong, the Mainland and other Southeast Asian countries, it is necessary for us to keep a close watch on it.

As I said right at the beginning, Hong Kong does not necessarily have to take the lead, but it seems that this problem seldom happens in other places, that is, the exchange for cash with second-hand goods (except antiques or famous paintings). Of course, Italian or French labels only sell first-hand goods. They do not run any service of second-hand goods in exchange for cash at the same time. I hope the Government will keep being vigilant. If this situation comes to the notice of the international anti-money laundering agency but we do not have any relevant information or tip-off whatsoever, I think it does not look quite good. Therefore, I hope the Government will start keeping an eye on this situation.

Lastly, I wish to talk about the situation mentioned by several colleagues earlier, which concerns the experience of Mr CHAN Kam-lam's daughter as told by him, and the experience of the People Power, the Civic Party and some other colleagues. Does it indicate some sort of discrimination? I do not think so. The most important point is whether the concerned person can open an account.

Our law requires banks to pay special attention to vetting applications for opening accounts, even to the extent that banks have to ask clearly the applicant's business and his banking service needs. If banks refuse an application without any particular credible and positive evidence, there is something wrong with them. On the contrary, I think if the concerned person can open an account, it is necessary for the current "risk-based" regulatory regime (including law-enforcement agencies and banks) to keep a closer watch on the situation, for example, whether the person's behaviour or activities involve extraordinary frequent cash transactions, or large transactions with an unknown party. If there is nothing wrong with the operation his account, I think this seems to be the point of balance sought by the legislation. It is because this is what the legislation requires banks to pay special attention to.

However, some colleagues may think that it takes only one week for some commercial firms to open an account, but it takes one month for the immediate families of a Member to do so. But this is exactly the requirement of the current legislation, and the standard the world requires us to meet. I hope Members will have a thorough understanding of this set of standards currently implemented. We should have more patience because we are indeed sensitive politically exposed persons, and the world has agreed that special attention should be paid to this "risk-based" category.

Of course, we may think that politically exposed persons in Hong Kong, especially Members, do not have such power. Parliamentary assembly members in other places can easily rise to become the prime minister and then step down to be parliamentary assembly members again, that is, the alternation of power. Their situation may not be the same as ours. We may be quite frustrated that we cannot become a member of the Government. However, as this is a global standard that Hong Kong must follow and legislate on it, I hope colleagues will understand it. Some members of the public, especially our family members, may not quite understand why there is such trouble. I hope Members will understand that this is our responsibility and obligation as a Member, and we have no choice. As we have taken up this post, our immediate families are affected one way or another. It is likely that this kind of activities is really rampant in other countries or nearby regions, and we have to be subject to special checking as a result.

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

MR CHIM PUI-CHUNG (in Cantonese): Deputy President, when we talk about the anti-money laundering issue, we certainly speak in all seriousness. How can anyone not render it support? However, I hope the Administration will first understand the special environment of Hong Kong. The environment of Hong Kong is special in that before the reunification, or even a long time ago, Hong Kong had been acting as an intermediary of overseas remittance. Regardless of whether they are overseas Chinese in San Francisco or Southeast Asian countries, they sent money to their hometowns every year. This is an old habit and they are still doing this now. In the early 1960s, life in the Mainland was harsh and poor, so Hong Kong people would send postal parcels of old clothings and nearly everything back to their hometowns. Therefore, the Administration must understand the special environment of Hong Kong before complying with the international legislation.

Over the past 10 years or so, or even over the past 20 to 30 years, the Renminbi has been in indirect circulation. However, there are still a number of companies and individuals using various channels to make remittances to the Mainland. I do not believe the Government knows nothing about it because many Hong Kong businessmen and factory owners are conducting business and relevant trades in the Pearl River Delta, and even the Yangtze River Delta and other places in China. Therefore, even if this legislation is passed today, the Government has to have a clear idea that on the one hand, it has to uphold the law, and on the other, as Members said earlier, it has to issue licences to operators and money changers as soon as possible to avoid making things difficult for them, especially those traders who have a clean record all along. After the enactment of the legislation, we have no reason to discriminate against them. Legislation is meant to protect Hong Kong people and the participants concerned, rather than making things difficult for our own people and residents.

Therefore, first of all, I think the Government should exempt traders who have already been operating before the enactment of the legislation from checking and issue licences to them. Second, I wish to remind the banks concerned that despite their having a licence, it does not mean they are more superior as they are also part of the services industry. In particular, after the Lehman Brothers incident, the true character of many banks has been exposed. They have put extensive advertisement on television and media on ordinary days. Even some of the banks are still advertising to drum up business. However, they do not

understand that after the Lehman Brothers incident, their conduct and practice have lost credibility among Hong Kong people. Therefore, the Government should remind banks that they should not do whatever they want, and that they are duty-bound to serve the local community and the people and to afford them conveniences. Of course, if their services are unsatisfactory, members of the public and customers have the right to make choices. The Government has the responsibility and obligation to deal with this matter. It should not enact this legislation in the name of fighting against money laundering and allows banks to ride above the people again.

Money laundering activities certainly bring disgrace to society as a whole and the financial industry. However, we can see from the Lehman Brothers incident that under the wrong policy of the HKMA, banks misled the people by denying them a full picture in a bid to boost business, which is definitely a problem of greater magnitude.

Deputy President, we can also see that as the official channel for the exchange of Renminbi has yet been clearly defined, the Renminbi is not freely convertible. Under this situation, the Government has still stressed the success of CEPA. However, we can see at the same time that some stock brokers have to tout for business in the Mainland in secret because if they do not do so, some other people will, and their competitiveness will then be undermined or challenged. However, what protection does the Government offer them? Are there any formal and lawful channels to enable them to solicit business in the Mainland in the open? I really cannot see any. In this way, the Government actually hints that they can do so in secret, and it is fine as long as they do not do so in the open. This means they are told to breach the law in secret. The Government needs to have the courage to take up the responsibility of negotiating with the relevant Mainland authorities to come up with a true solution. It should not press charges against these people in retrospect, saying they breached the law in the past when laws are enacted only in future. Actually, the Government is, in a way, encouraging people to breach the law. Why? It is because the Government is telling them how excellent CEPA is. However, in reality, the scope of business involving stock brokers, insurance agents and even professionals in the other financial trades has remained vaguely defined. But the Government is still encouraging them to expand their business under these vague circumstances. What does it mean? As the Government, it should tell the people clearly what the actual situation is. Otherwise, many major firms will

use their own means, channels and Mainland connections to operate their business.

We had a debate on how to promote the development of small and medium enterprises last Wednesday. I said at the time that small and medium enterprises did not only cover those in the commercial and industrial sectors, but also lawyers, accountants, and even other professionals. Of course, doctors and healthcare personnel will be included later. But the financial industry is facing this situation now.

Deputy President, the fourth point is that we have to analyse the Ordinance clearly. The Securities and Futures Commission (SFC) treats some people those with a criminal record, that is, those who have committed a criminal offence and sentenced to imprisonment by the Court regarding the so-called fit and proper person defined by the SFC, is a certain person not allowed to engage in or own a certain business indefinitely because he has a criminal record? The Court hands down a ruling, for example, to ban a certain person from being a company director for a certain period of time. Theoretically speaking, if it is a 10-year ban, the restriction is lifted automatically after 10 years. However, this is not the practice of the SFC. After 10 years, that person is still not regarded as fit and proper. The SFC imposes extralegal punishment indirectly. The court's ruling is a public punishment (an officially recognized legal punishment), but the use of "a fit and proper person" as a reason is a form of extralegal punishment. The Government must conduct studies and give a clear definition. We cannot assume that things will not go wrong if we give the Government the power in the enactment of legislation. At present, we can see that the Government is always the one who does things wrong. Therefore, more clearly defined criteria must be sought by society as a whole. For this reason, I am taking this opportunity to ask the Secretary to clarify whether the SFC has misused this law. If the Court rules that it is not a problem, only the proposal of an amendment to the Ordinance again by the Legislative Council will make a change.

Deputy President, the separation of powers is upheld in Hong Kong. Apart from the executive authorities, there is also the Judiciary. However, the Judiciary actually does not have the power to offer advice on any of the Bills of the Legislative Council. Even if the legislation is unclear, the Judiciary can only rule in accordance with the law enacted by the Legislative Council, regardless of

whether the law is right or wrong. In the case where a piece of legislation is unclear, the Court can only ask the executive authorities to propose amendments in the Legislative Council. Therefore, even though we all agree to combat money laundering, I still hope that Members will understand that the passage of the Bill does not aim to put more restrictions and ties on Hong Kong. Deputy President, we understand that the environment in Hong Kong is special. Hong Kong has no natural resources, if we give up everything We can see that Hong Kong is not disgraced by money laundering or fraud. On the contrary, Hong Kong has been victimized and lawfully deceived by global "predators" that are well-versed in the law. At present, the Hong Kong Stock Exchange, in the name of turning Hong Kong into a financial centre, has carried out many consultations and reforms. However, basically, these reforms are not fair to the financial sector of Hong Kong as a whole. Deputy President, I wish to take the opportunity of this Bill to speak. With my knowledge in finance, I hope that I can advise the Government to protect the interests of various parties by way this legislation. I so submit.

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 Financial Services and the Treasury to reply. This debate will come to a close after the Secretary has replied.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Deputy President, first of all, I would like to thank Mr CHAN Kam-lam, Chairman of the Bills Committee and other members of the Bills Committee for their careful scrutiny of the Anti-money Laundering and Counter-terrorist Financing (Financial Institutions) Bill (the Bill). The object of the Bill is to enhance the anti-money laundering regulatory regime of financial institutions to make it better aligned with the current international standards, thereby strengthening Hong Kong's status as an international financial centre. The Bills Committee has given many valuable opinions on the regulatory regime

to perfect the Bill. We have submitted some amendments after taking on board the opinions of the Bills Committee. I will move the relevant amendments at the Committee stage.

The Financial Action Task Force (FATF) is the international anti-money laundering standard-setter, of which Hong Kong is a member. In an evaluation on Hong Kong by the FATF in 2007-2008, while they recognized the strengths of Hong Kong's overall anti-money laundering regime, they also highlighted some room for improvement in regulating the financial industry, *inter alia*, the lack of statutory backing for the customer due diligence and record-keeping requirements applicable to financial institutions, the limited range of regulators' supervisory and enforcement powers on compliance, the lack of appropriate sanctions against breaches of requirements, and the absence of an anti-money laundering regulatory regime for remittance agents and money changers. The enactment of the Bill aims to address these deficiencies. Before the introduction of the Bill, the Financial Services and the Treasury Bureau conducted two rounds of public consultation in 2009.

At present, the customer due diligence and record-keeping requirements for financial institutions are set out in the guidelines issued by the Monetary Authority, the Securities and Futures Commission and the Insurance Authority to the relevant trades. The relevant provisions covered by the Bill largely reflect the existing requirements in these guidelines, with specific provisions made to provide for suitable supervisory and enforcement powers of the regulators and sanctions against non-compliance, having regard to the requirements of the FATF and the opinions gathered in the public consultation. Moreover, the Bill also provides for the setting up of a licensing regime for remittance agents and money changers, that is, "money service operators" (MSOs) referred to in the Bill. An independent tribunal will also be established to review supervisory sanctions imposed on breaches by the relevant regulators and the licensing decision of the Commissioner of Customs and Excise on MSOs.

One of the proposals in the Bill is to provide for criminal offences in respect of non-compliance of anti-money laundering and counter-terrorist financing measures and requirements to provide information imposed on financial institutions by relevant authorities for inspection and investigation under the Bill. The Bills Committee has discussed the provisions for criminal offence with the element of "with intent to defraud" under clauses 5(6) and (8) in respect of breaches of the specified provisions in Schedule 2. In the interest of clarity, we

have accepted the suggestion of the Bills Committee to specify the target of defraud, including "the financial institution" and "a relevant authority" in respect of the criminal intent, that is, "with intent to defraud" under clauses 5(6) and (8).

As mentioned by Mr CHAN Kam-lam earlier in his speech, the Bills Committee has discussed the explanation of the word "allow" in the relevant provisions for criminal offences under the Bill. The authorities have, at the meeting of the Bills Committee, explained the meaning of the word "allow" in the provisions under clauses 10(7) and (8) and clauses 13(7) and (8) in relation to a person, being an employee of a financial institution or is employed to work for a financial institution or is concerned in the management of a financial institution, "causes or allows (a financial institution) to fail to comply with" the requirement of the provision of information imposed by the relevant authorities. The word "allow" is commonly used in provisions for criminal offences in the laws of Hong Kong. In response to the request of the Bills Committee, we have tried to identify in the cases an authority on the meaning of the word "allow". But relevant judgments of the local Courts cannot be found. Instead, the word "allow" has been interpreted in an overseas court judgment as connoting "elements of awareness and capability of control". The authorities have affirmed that this interpretation of the word "allow" fully reflects the legislative intent of the authorities. Based on this interpretation, when considering whether an employee of a financial institution is in breach of these provisions, depending on the facts and circumstances of the case, if the employee of the financial institution does not have any power to control the provision or otherwise of the information required to be produced by the financial institution concerned, the employee would not have to bear the relevant criminal liability.

The Bills Committee has also met with relevant trade bodies and listened to their views on the Bill. The trades have, in general, agreed that Hong Kong should meet the international anti-money laundering and counter-terrorist financing standards. But they have expressed the wish that the requirements in the future legislation would not exceed the relevant international standards. The measures required by the current Bill, including the definition of "politically exposed person" and the measures on these customers and beneficial owners, are formulated in full adherence to the international standards. Having considered the trades' views on the Bill and discussed with the Bills Committee, we have, on the premise that Hong Kong's compliance with the FATF requirements will not be jeopardized, proposed amendments to amend certain provisions under

Schedule 2 of the Bill to ease the doubts of financial institutions about compliance in the future.

Under the new legislation, although MSOs can choose to operate in either the fixed location mode or mobile operation mode, we can guarantee that regardless of the mode of operation, they will be regulated by the same requirements in future. As the regulatory authority, the Commissioner of Customs and Excise will certainly apply the same standard in law enforcement.

Members have brought up the bank account issue of remittance agents just now. As we advised at the meeting of the Bills Committee, whether or not to maintain business relationships with particular customers is a matter for financial institutions, including banks, to decide. In considering whether to establish or maintain a business relationship with a customer, banks will take into account a number of factors including whether the business relationship would pose a risk to the bank and the ability of the bank to manage the risk. Given the nature of remittance business, which involves the movement of funds often in substantial amounts (whether in single transactions or over time), often across borders between jurisdictions, and often through (sometimes multiple) intermediaries, it is inherently a high-risk sector.

The regulatory requirements to be introduced under the Bill, in particular the requirement that MSOs will have to meet the licensing requirements, to be subject to customer due diligence and record-keeping requirements and to be supervised for compliance with those requirements, will give other financial institutions some measure of assurance in maintaining business relationships with them. Provided that a MSO is licensed under the Bill having met the licensing criteria and complies fully with the relevant statutory customer due diligence and record-keeping requirements having regard to the relevant regulatory guidelines, the HKMA does not see any reason in principle why a MSO should not be able to access banking services due to money laundering/terrorist financing risks.

Provided that the business relationships are assessed not to be of high risk, the threshold for the verification of the identity of certain people by financial institutions will be relaxed from those owning or controlling 10% or more shareholding or voting rights to 25%. Moreover, we have proposed to amend

the Bill to add a statutory defence for an employee of a financial institution who has acted in accordance with the financial institution's established policies and procedures for the purpose of ensuring compliance with the relevant specified provision.

On the basis of the outcome of the evaluation, the FATF resolved that Hong Kong should be put on a regular follow-up process. Therefore, Hong Kong is required to report to the FATF on a regular yearly basis on follow-up actions. According to the procedures of the FATF, Hong Kong is expected to have addressed the major deficiencies in our overall anti-money laundering regime by the middle of next year at the latest and seek removal from the follow-up process. Therefore, if the Bill is passed by the Legislative Council, it will come into force on 1 April 2012, in order to meet the schedule set by the FATF.

Deputy President, the Bill and the amendments proposed by the authorities are supported by the Bills Committee. I implore Members to support the Bill and the amendments proposed by the authorities. Thank you, Deputy President.

DEPUTY PRESIDENT (in Cantonese): I now put the question to you and that is: That the Anti-money Laundering and Counter-terrorist Financing (Financial Institutions) 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): Anti-money Laundering and Counter-terrorist Financing (Financial Institutions) Bill.

Council went into Committee.

Committee Stage

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

ANTI-MONEY LAUNDERING AND COUNTER-TERRORIST FINANCING (FINANCIAL INSTITUTIONS) BILL

DEPUTY CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Bill.

CLERK (in Cantonese): Clauses 1, 2, 4, 6, 7, 8, 10, 11, 13 to 17, 19, 20, 22, 23, 26, 28, 31, 32, 35, 37, 39, 41, 43, 44, 48 to 51, 54 to 76, 78, 79 and 81 to 89.

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

(No Member indicated a wish to speak)

DEPUTY CHAIRMAN (in Cantonese): I now put the question to you and that is: That clauses 1, 2, 4, 6, 7, 8, 10, 11, 13 to 17, 19, 20, 22, 23, 26, 28, 31, 32, 35, 37, 39, 41, 43, 44, 48 to 51, 54 to 76, 78, 79 and 81 to 89 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 3, 5, 9, 12, 18, 21, 24, 25, 27, 29, 30, 33, 34, 36, 38, 40, 42, 45, 46, 47, 52, 53, 77 and 80.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Deputy Chairman, I move the amendments to the clauses read out just now. The amendments to these clauses are printed on the paper circularized to Members. I have explained the purposes of some of these amendments earlier on. As for the other amendments, there are broadly four categories as follows:

The first category of amendments relates to the criminal offences provided under the Bill. These amendments include, as I said during the resumed debate on the Second Reading of the Bill, specifying the persons to be defrauded in relation to the intent to commit an offence, or "intent to defraud" under the criminal provisions of clauses 5(6) and 5(8), and providing for a statutory defence for an employee of a financial institution or a person employed to work for a financial institution.

The second category of amendments serves to allow the mobile operation mode under the licensing system for licensed money service operators (MSOs). Examples of these amendments are as follows: Clause 29(1)(b) which provides for the criminal offence of operating a money service at premises other than those specified in the licence is deleted, so that MSOs operating in the "mobile operation" mode will not be caught by this criminal provision; clause 30(2) is amended by deleting the reference to premises specified in the licence, so that MSOs operating in the "mobile operation" mode are not required to operate money service on premises specified in the licence; and clause 30(3)(b) is amended to the effect that the stipulation that the Commissioner for Customs and

Excise may grant a licence only if the Commissioner is satisfied that the premises are suitable to be used for the operation of a money service is applicable only to MSOs choosing to operate at fixed locations.

The third category of amendments involves the statutory powers of the relevant authorities. They include enhancing checks and balances on the authorities in exercising statutory powers. An example is to amend clause 46(2)(d) such that the persons who may be detained under this subclause would be limited to those who appear to the authorized officer to be, or likely to be, able to give information relevant to the investigation of the suspected offence.

The last category of amendments involves amendments to the wording in the Chinese text of the Bill, in order to more accurately reflect the meaning of the English text. In addition, some amendments are made to the wording to clarify and rationalize the relevant provisions.

After examining these amendments, the Bills Committee supports them. I implore Members to support the amendments. Thank you, Deputy Chairman.

Proposed amendments

Clause 3 (see Annex I)

Clause 5 (see Annex I)

Clause 9 (see Annex I)

Clause 12 (see Annex I)

Clause 18 (see Annex I)

Clause 21 (see Annex I)

Clause 24 (see Annex I)

Clause 25 (see Annex I)

Clause 27 (see Annex I)

Clause 29 (see Annex I)

Clause 30 (see Annex I)

Clause 33 (see Annex I)

Clause 34 (see Annex I)

Clause 36 (see Annex I)

Clause 38 (see Annex I)

Clause 40 (see Annex I)

Clause 42 (see Annex I)

Clause 45 (see Annex I)

Clause 46 (see Annex I)

Clause 47 (see Annex I)

Clause 52 (see Annex I)

Clause 53 (see Annex I)

Clause 77 (see Annex I)

Clause 80 (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 Financial Services and the Treasury 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.

CLERK (in Cantonese): Clauses 3, 5, 9, 12, 18, 21, 24, 25, 27, 29, 30, 33, 34, 36, 38, 40, 42, 45, 46, 47, 52, 53, 77 and 80 as amended.

DEPUTY CHAIRMAN (in Cantonese): I now put the question to you and that is: That clauses 3, 5, 9, 12, 18, 21, 24, 25, 27, 29, 30, 33, 34, 36, 38, 40, 42, 45, 46, 47, 52, 53, 77 and 80 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 38A	Application to operate at particular premises
New clause 86A	Section 130 amended (Suitability of premises for keeping records or documents).

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Deputy Chairman, I move the Second Reading of new clauses 38A and 86A.

Deputy Chairman, as I said in my speech just now, one of the categories of amendments serves to allow mobile operation mode under the licensing system for licensed MSOs.

(THE CHAIRMAN resumed the Chair)

New clause 38A deals with cases where a MSO operating in the mobile mode may, subsequent to the grant of licence, wish to change to operate at fixed locations. This new clause is added to require a "mobile operation" MSO to seek prior approval from the Commissioner for Customs and Excise before it operates a money service at fixed locations. It is a criminal offence to breach this requirement.

New clause 86A serves to amend section 130 of the Securities and Futures Ordinance (Cap. 571) to stipulate that the requirement for licensed corporations to seek the approval of the Securities and Futures Commission for the premises for keeping of the records thereunder also applies to the records required to be kept by licensed corporations under this Bill.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clauses 38A and 86A 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 as stated. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clauses 38A and 86A.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Chairman, I move that new clauses 38A and 86A be added to the Bill.

Proposed additions

Clause 38A (see Annex I)

Clause 86A (see Annex I)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clauses 38A and 86A be added to the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedules 1 to 4.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Chairman, I move the amendments to Schedules 1 to 4. Schedule 1 is amended to align the definition of terrorist financing with the relevant sections of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575).

The amendments to Schedule 2 involve the requirements relating to customer due diligence and record-keeping for financial institutions. Some of the amendments are proposed after considering the views expressed by the industry on compliance in the future. The objective is to enable the relevant requirements to better cater for the actual operation of financial institutions, thereby allaying the compliance concerns of the industry. The amendments will not affect Hong Kong in meeting the relevant international standards as a whole.

The amendments to Schedule 3 concerning the fees applicable to the MSO licensing system are proposed consequential to the amendments to Part 5 of the Bill about allowing the mobile operation mode which were passed just now.

The amendments to Schedule 4 are made in response to the views of the Bills Committee on the resignation notices of the Chairman and members of the

Review Tribunal to be established under the Bill and the requirement for the chairperson sitting as sole member of the Tribunal to report to the Tribunal.

After examining the amendments mentioned above, the Bills Committee supported the amendments. I implore Members to support the amendments.

Proposed amendments

Schedule 1 (see Annex I)

Schedule 2 (see Annex I)

Schedule 3 (see Annex I)

Schedule 4 (see Annex I)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedules 1 to 4 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bills

PRESIDENT (in Cantonese): Bill: Third Reading.

ANTI-MONEY LAUNDERING AND COUNTER-TERRORIST FINANCING (FINANCIAL INSTITUTIONS) BILL

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

Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Bill

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

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Bill 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): Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Bill.

Resumption of Second Reading Debate on Bills

PRESIDENT (in Cantonese): We now resume the second reading debate on the Buildings (Amendment) Bill 2010.

BUILDINGS (AMENDMENT) BILL 2010

Resumption of debate on Second Reading which was moved on 3 February 2010

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

MR IP KWOK-HIM (in Cantonese): President, in my capacity as Chairman of the Bills Committee on the Buildings (Amendment) Bill 2010, I will report on the deliberations of the Bills Committee.

The Buildings (Amendment) Bill 2010 (the Bill) seeks to amend the Buildings Ordinance to empower the Building Authority (BA) to require owners to carry out periodic inspections and repairs of their buildings through the introduction of a mandatory building inspection scheme and a mandatory window inspection scheme (hereinafter referred to as "the two schemes") to ensure a better and safer building environment. The Bill also provides for matters relating to the appointment, control and duties of Registered Inspectors (RIs) and Qualified Persons (QPs) who are to deal with such inspections and repairs.

The Bills Committee has held 22 meetings with the Administration and received views from parties concerned, including relevant trade associations and professional institutes, on the Bill.

The Bills Committee in general supports the legislative intent of the Bill. During the deliberation, some members were particularly concerned about whether there would be sufficient RIs and QPs to meet the market demand and ensure market competition. The Administration envisages that there should be adequate RIs and QPs to meet the demand. The Building Department (BD) will, in collaboration with the professional institutes, encourage qualified building professionals to register as RIs so as to provide inspection services.

The Bills Committee hopes that the Administration can ensure relevant government departments and organizations, including Hong Kong Housing Society (HKHS) and the Urban Renewal Authority (URA), to have sufficient manpower resources to enforce and support the two schemes. The Administration has advised that sufficient resources, particularly manpower of the BD, will be provided to cope with the additional workload arising from the implementation of the two schemes. The HKHS and URA will also reserve adequate manpower and resources to support the implementation of the two schemes.

The Bills Committee is concerned that many building owners, particularly elderly owners of old buildings, may not have the financial means and technical know-how to fulfil the requirements of regular inspection and repair. Moreover,

the majority of building owners may not be conversant with tendering procedures and analysing the tender prices submitted. Members urge that the Administration should consolidate the various assistance schemes, provide financial, professional and technical assistance to needy owners' corporations (OCs). It should also help owners understand how best to select inspectors and contractors as well as monitoring the progress of works.

Some members have requested the Administration to develop a database on the costs involved for the reference of building owners and explore measures to prevent possible corruption and malpractices, such as tender-rigging activities, in building maintenance and repair works.

In this regard, the Administration has undertaken that it would effect co-ordination among various departments and partner organizations, consolidate the various assistance schemes available and streamline their application procedures. In addition, in a joint effort with the HKHS, the URA and professional institutes, it would develop relevant guidelines, standard templates, and the "Standard Form of Contract for Decoration, Repair and Maintenance Works". It will also provide a comprehensive range of assistance to building owners at the various stages of building inspection and repair. The Hong Kong Institute of Surveyors (HKIS) is now examining the formulation of indicative price lists for various typical items of works for the reference of owners and OCs.

The Bills Committee has held detailed discussions on unauthorized building works (UBWs) and internal alteration works. Some members are extremely concerned that the Bill has not provided that an RI and an QP must notify the building owners and OCs of any case of emergency and any UBWs in common parts and external wall of the building that is revealed during prescribed inspection or prescribed repair.

To address members' concern, the Administration has advised that a requirement will be stipulated in the subsidiary legislation that the RI and QP must deliver a copy of the documents submitted to the BA (such as inspection report and completion report) to the owners and OCs, no later than the date when the documents are submitted to the BA. The BD has also stipulated in the draft Code of Practice a requirement on RIs and QPs to alert the owners and occupants of any case of emergency. The BD will, through its publicity and public

education, remind owners and OCs to include such a requirement in the contracts with their RIs and QPs.

A member has expressed grave concern that the Code of Practice and the practice notes are not legally enforceable. The member has indicated that he may move an amendment to provide that an RI and QP must comply with the practice note on best practices on tendering procedures for their engagement.

As for penalties, the Bills Committee notes that an owner who has been notified by an OC and, without reasonable excuse, refuses to contribute his share of cost of inspection or repair works that is required by the OC for the purpose of complying with the statutory notices under the two schemes, shall be guilty of an offence and be liable on conviction to a fine at level 3 (\$10,000) and to imprisonment for six months. A number of members consider the proposed imprisonment penalty too heavy. To allay members' concern, the Administration has proposed to remove the imprisonment term but increase the fine to level 4 (\$25,000) to retain a significant deterrent effect against unco-operative owners. The Bills Committee supports the proposed amendment.

The Bills Committee also notes that the BA may impose a surcharge of 20% on the cost incurred by the BA to be recovered from an owner who has failed to comply with a notice served under the two schemes. Some members have proposed that the surcharge be capped at 20%, meaning that the BA would have the flexibility to impose a lower surcharge subject to a ceiling of 20% on the cost incurred by the BA. The Administration will introduce amendments to this effect.

During deliberations on the Bill, the Administration has proposed the incorporation of a series of amendments so that a number of new building safety initiatives can be included in the Bill in order to further strengthen the existing statutory building safety control regime. However, as some members have diverse views on the introduction of such amendments at the present stage and the legal adviser to the Legislative Council has advised that it is difficult to see how the proposed amendments relate to the two schemes, the Administration has decided to withdraw the relevant amendments and will pursue the introduction of the proposed amendments through a separate Bill as soon as possible.

The Bills Committee supports the Administration's proposal to resume the Second Reading debate on the Bill at the Council meeting on 29 June 2011.

President, next I would like to express my views on the Bill.

I am expressing my views on the Bill on behalf of the DAB, which supports the passage of the Bill.

As we are getting older and older, we will develop more ailments. This is a most normal physiological phenomenon. Regular physical examination for early identification of causes of illness so that the right medicine can be prescribed to cure it at root is one way to maintain good health. Buildings, like the human body, will become dilapidated over time if they lack regular repairs and maintenance. This is also a normal phenomenon. So, buildings should be subject to regular inspection to ensure structural quality. The essence of the old saying "prevention is better than cure" which is based on our predecessors' experience is very clear and easy to understand.

Hong Kong is a highly developed and densely populated city with ageing buildings. Building neglect has been a long-standing problem in Hong Kong. Structural deterioration will lead to concrete spalling, which may pose safety hazards to pedestrians. Occasionally, fatal incidents did happen. We can see that recently there was an incident in which the entire roof of a building collapsed, posing a great threat on the surrounding environment and the safety of pedestrians. Such undesirable situations not only pose a serious threat to the occupants, but also other building users and pedestrians nearby. And the building owners will also bear a heavy liability to damages.

In addition, incidents involving windows falling from height due to lack of proper maintenance and improper use also pose a serious threat to public safety. The cost of dilapidated buildings and windows and their impact at the social and individual levels are enormous.

The policy on mandatory inspection of buildings and windows provided by the Bill is not a hasty decision made overnight. It has taken almost eight years from 2003 when an extensive public consultation on the policy was launched up to the present when a consensus has been reached and the Bill drafted by the Government submitted to this Council for discussion. During this period, there

has been sufficient and ample time for the brewing of public consensus, that is, owners should take up the responsibility of keeping their buildings in good conditions and shoulder the financial commitment, which is a considerate practice.

The DAB strongly supports the spirit and principles of the Bill. The Bills Committee has held 22 meetings for discussions. That the participating members have repeatedly discussed the implementation and impact of the Bill is because they wish to strike a proper balance between public safety and owners' responsibility so that building quality can be assured and the public can have a better and safer living environment.

As a member of the Central and Western District Council, having observed the owners' and tenants' plight and troubles arising from building neglect in a district full of private buildings, I fully understand that the prerequisite to the success of the two schemes is the support of building owners. Of course, it is also necessary to provide appropriate support to owners, particularly in some old districts. The reason is that quite a number of building owners, particularly elderly owners of old buildings, face a major problem, that is, they may not have the financial means, ability, and of course technical know-how to arrange for regular building inspections and repairs in order to fulfil the statutory requirements.

Currently, there are about 40 000 private buildings in Hong Kong, of which 40% have formed OCs. Among the target buildings aged 30 years or more selected by the Bill, about 26% are "three nos" buildings (that is, no OC, no management company and no management committee). Given these buildings, the Government should first of all ensure proper use of resources, a right focus and support for buildings which need it most so that the provisions of the Bill can be implemented after coming into effect.

President, another problem I wish to talk about is that in facing building maintenance, there are indeed some irresponsible owners who have refused to share the cost of inspection or repair works. As the saying goes, "There is a mix-up of a variety of people in our society." There are always some who would adopt an indifferent attitude and refuse to co-operate even though they are living in the same building despite the ensurance of structural safety is the priority consideration in respect of the building in which they live.

To tackle the unruly behaviour of such owners, an amendment to the Bill has proposed that the fine be increased to level 4 (\$25,000). This will certainly have some deterrent effect on unco-operative owners and the DAB supports the amendment.

Secondly, in order to target at irresponsible owners, the Bill provides that the BA may impose a surcharge of 20% on the cost incurred by the BA for the whole project to be recovered from an owner as penalty. Self-awareness is regarded as a virtue. The responsible owners should comply with the statutory notice on their own initiative. Given that it is necessary to impose a fine in order to ensure compliance, it is absolutely normal to impose a heavier penalty. As for this amendment, the DAB also expresses its support.

President, the lack of maintenance for ageing buildings has been a long-standing problem in society. I am confident that after the passage of the Bill, a new direction for building maintenance policy will be established. Although we always have to overcome obstacles in order to take the first step, and people will also need time to adapt and accept the mandatory way of tackling the problems, I believe that in the long run, the implementation of the Bill can reduce the heavy social costs arising from dilapidated buildings as long as we have a common goal and make careful consideration for the sake of structural safety. I think this is very important. I also hope that after the passage of the Bill, we can work together in the implementation of building and window maintenance.

With these remarks, President, I support the Bill. Thank you.

MR WONG KWOK-HING (in Cantonese): President, the Second Reading of the Buildings (Amendment) Bill 2010 (the Bill) today gives us some mixed feelings because, not long ago, a fire causing serious casualties broke out in a tenement building situated at Ma Tau Wai Road, Hung Hom. The fire was not huge, but it caused four deaths including a pregnant woman. The residents had no way out when the fire broke out. It is helplessly sad to see such a tragedy that happened in a tenement building.

President, some time before this tragedy, an old tenement building in To Kwa Wan collapsed within seconds after a big bang. We saw on the television

residents screaming for help from the rickety old building, they were just overwhelmed with agony. I can still remember that it occurred on a Wednesday when we were holding a regular meeting. On hearing the news in the Chamber, we went to the Ante-Chamber to watch the television and saw the tragic scene

(Some Members pointed out that it was Friday)

Was it Friday? Thanks for the reminder. Perhaps we were going through a lengthy debate on that day. We might be holding the Finance Committee meeting. Actually, we felt very bitter and were heartbroken on seeing the scene. I welcome the Bill submitted by the Administration today. However late, it is always better late than never. Today, the Bill is finally submitted to the Legislative Council for Members' decision.

President, the two accidents in To Kwa Wan are certainly not the only accidents related to old buildings, are they not? There are over 17 000 buildings that are more than 30 years of age in the entire Hong Kong. Quite many of them have been in disrepair and lack of proper management or even no management at all. Incidents of passers-by being injured by spalling concrete as a result of building ageing happen from time to time. The recent hot talk of the town is "sub-divided units" and this Council has just raised a number of questions in this regard. The "sub-divided units" are increasing at a most alarming rate. It exposes not only the structural safety problems of buildings in Hong Kong, but also the numerous time bombs everywhere in this densely populated metropolis. Therefore, it is the Government's unshirkable responsibility to ensure the safety of our buildings.

President, in spite of our sorrow, we must understand that relying solely on any post-event piecemeal remedies will never solve the problem. On the contrary, we should take practical action to address the symptoms as well as its root cause with a view to finding a long-term solution to the relevant buildings safety problem. In simple terms, mandatory building inspection and mandatory window inspection are like mandatory "body check-up" for buildings. It is the first most fundamental step in preventing crisis. Hence, the Hong Kong Federation of Trade Unions (FTU) supports the Bill submitted by the Administration. However, we do not support the amendment proposed by Mr

KAM Nai-wai. Anyway, we will express our views after he has proposed his amendment.

President, the Administration has raised a number of proposals under the Amendment Bill with the purpose of solving the long-term problem of buildings neglect through regular inspection as well as preventive repairs and maintenance. The Ordinance is closely related to the safety of residents of old buildings and passers-bys. It also involves the operation of the construction industry, and the assessment and registration of professional qualifications. I have, therefore, reflected the concerns and proposals of various sectors during the scrutiny process, hoping that the Administration can consider them and further improve the relevant Ordinance. During the process, I can see that the Administration has accepted some of my views.

President, the Mandatory Building Inspection Scheme (MBIS) and Mandatory Window Inspection Scheme (MWIS) respectively cover domestic buildings aged 30 years or above and buildings aged 10 years or above. Except domestic buildings not exceeding three storeys, the question of how to provide support in actual implementation has become the first and foremost concern of the Administration. Among these old buildings, those "three-nos" neglected buildings (that is, without Owners' Corporations (OCs), without management and without maintenance) have become the most urgent problem. At present, there are approximately 7 000 buildings of such kind that have not hired any management company. Nor do these buildings have any OCs or other residents' organizations. Even worse, most of the residents are elderly people who do not have much savings or cash at their disposal. The units they currently reside in or own are their only assets and they simply cannot afford tens of thousands of dollars in maintenance costs.

Most of these buildings have never undergone any regular maintenance in addition to the lack of proper management. Even if the Buildings Department (BD) can conduct building inspection and window inspection for them, they may not be able to pay for the relevant costs, not to mention the penalty surcharge on them. How can they afford all these charges? Therefore, I suggest that the Administration should introduce various measures to help these owners organize themselves together to deal with the inspection and maintenance of their buildings. As for buildings such as those located at Ma Tau Wei Road in To Kwa Wan which have great difficulty in forming OCs, should the Government

not consider expediting the process to improve building management and maintenance in the form of street, district or co-operative associations? The Administration gave a positive response during a meeting and promised to give consideration to this. Has there been any progress to date? I wonder if the Secretary will respond to this later on.

Moreover, I oppose making it a criminal offence for owners who refuse to share the costs of inspection and repair works. Even if they refuse to share the costs (on various pretexts of course), it is nothing but a civil case that involves claims or is subject to court or tribunal proceedings. It is indeed excessively harsh of the law to make this criminally liable and impose punishment.

There are some owners who really have no money to pay for the costs, not that they intend to be unco-operative. Therefore, the Administration should not require them to pay a 20% surcharge if they have reasonable justifications for not complying with orders issued by Building Authority (BA). I hope that the Government could consider exercising discretion in the light of circumstances if the owners have reasonable justifications besides actual financial difficulty.

As for the two aspects mentioned, I have demanded the Administration to withdraw the proposal of imprisoning any owner who refuses to share the costs of building inspection and repair. Instead, the relevant costs should be registered against the property title of unco-operative owners by way of charge. For those owners and residents who are in contravention of a notice without reasonable justifications, I suggest that the Administration should levy surcharge on them only at the stage of recovering the cost of works paid by the BA. I very much welcome that the Administration has finally adopted these views.

However, I have reservations about the Administration's deletion of the original proposed amendment regarding regulation of signboards and issue of warrants to enter private premises during the legislation process. There are currently 190 000 signboards in Hong Kong with a majority of them being unauthorized structures. Under the MBIS, legal signboards are inspected in order to identify any unauthorized structures for further actions by the BD. The most appropriate way is to immediately remove any illegal signboards which are likely to pose danger. On the other hand, signboards found to have no problem after inspection should be allowed to continue to be used upon completion of some registration procedures. In doing so, an across-the-board regulatory

approach can be avoided and the Administration can still order removal of any structure which may pose danger in accordance with the Ordinance.

If under certain circumstances where a warrant is successfully applied from the Court pursuant to the Ordinance, I then agree to the notion of authorizing the BD to enter private premises for the purpose of checking and inspection. It is a fairer approach if the gate-keeping job is done by the Court. Hence, I hope that the Administration could expedite the submission of a relevant Bill in order to follow up the issue. I was indeed a little disappointed after learning that the Bill submitted this time does not include contents on these two aspects.

President, as for the registration of minor works contractors, individuals or companies who want to contract to carry out minor works need to register with the BD with effect from 31 December last year. But the relevant contractors have to pay a registration fee in addition to an application fee before they can be listed as qualified to carry out such works. This is covert shifting of the Government's administration cost onto the applicants. Formal licenses should directly be granted to those contractors or relevant individuals who have met the Administration's requirements through attending courses and attaining a passing grade. Why do they still have to pay an extra registration fee?

Regarding the MBIS and MWIS, what procedures should a qualified professional go through in order to become a Registered Inspector? Some unions have expressed that the registration system, at present, is still not very clear or readily understandable. In this regard, I suggest that the Administration should step up publicity to enhance the industry's knowledge of the new measures before the formal implementation of the system. Meanwhile, it should also streamline the procedures of application and registration as well as the administration work. More importantly, the registration fee for the qualified applicants should be waived to avoid double-charging.

As the MBIS and MWIS will soon be implemented, we need the help of many front-line Liaison Officers and Community Organizers to effectively handle and promote building management besides the various elements just mentioned. But the existing number of Liaison Officers is basically insufficient to support the Administration's objective to promote building management. There are currently 110 Liaison Officers working all over the 18 districts of Hong Kong, meaning that only five to six Liaison Officers are serving one district. As

manpower is in shortage and Community Organizers are in no position to substitute Liaison Officers, how can they handle thousands of private buildings in each district? In order to meet the actual needs, the Home Affairs Department should recruit additional Liaison Officers while at the same time turning some experienced and senior Community Organizers into permanent staff so as to retain Community Organizers who are experienced and possess proper qualifications. As for those whose performance is not up to standard, further training should be arranged for enhancement.

Finally, I welcome the Administration in accepting my proposal on computerization of records. Thank you, President.

MR KAM NAI-WAI (in Cantonese): President, on behalf of the Democratic Party, I speak in support of the Second Reading of the Bill on the mandatory inspection schemes for windows and buildings.

Just now, an Honourable colleague pointed out in his speech that recently, a number of tragedies relating to building safety had occurred. I believe that whenever such tragedies occur, all of us would surely ask why the Bill has not been passed even though it has been scrutinized for a long time, and the Secretary would also take the opportunity to call on Members to pass the Bill as quickly as possible. However, I wish to state clearly to the public that even after the passage of this Bill today, the problems relating to building safety can still not be completely solved because there is still a long way to go in the education efforts to cultivate among owners an awareness of carrying out repairs on their buildings properly.

In fact, this legislative exercise took shape as early as in 2003 during the SARS outbreak, when the Government established the Team Clean. At that time, the Team Clean raised the issue of repairs and management of buildings and the Democratic Party also raised the idea of implementing a mandatory building inspection scheme with the Government. In late 2003, when the Government published a consultation paper on building management and repairs and carried out stage one of the consultation on the issue of building management and repairs, the Democratic Party also agreed with the principle of mandatory inspection of buildings and believed that the Government was duty-bound to assist owners in

carrying out building inspections, since this is not just a matter of the safety of owners but also a matter of public safety.

At that time, the Democratic Party proposed that the Government provide a free first-time inspection service to owners and offer interest-free or low-interest loans to them, so as to offer assistance in building inspection and repairs to ensure building safety. However, the Government had carried out its consultation for a long time. This is different from the case of the present replacement mechanism, on which no consultation was carried out, and the consultation on the mandatory inspection of buildings and windows was carried out for more than two years. In the end, the Government conducted a stage-two consultation exercise in 2005 on the mandatory inspection of buildings and windows. If we compare these two instances, we will find that it was not necessary to carry out consultation on a piece of legislation that affects our electoral rights, whereas consultation was carried out on the introduction of mandatory inspection of buildings for a number of years.

After the conclusion of stage two of the consultation, the Government originally planned to introduce a Bill into the Legislative Council in 2007 but it turned out that we had to wait until 2010, that is, last year, for the Bill to be introduced. The Chairman of the Bills Committee also said just now that we had held more than 20 meetings on the issue of mandatory inspection of buildings. The proposal back then was that buildings which were more than three decades old had to be inspected once every seven years, whereas buildings over five decades old had to be inspected once every five years. However, in the end, the Bill provides that buildings more than three decades old can be inspected once every 10 years. As regards the mandatory inspection of windows, the age of a building was even adjusted upwards to more than 10 years before an inspection is required, so quite a lot of changes were made to the original proposals.

The Democratic Party supports this Bill in principle and agrees with the enactment of legislation to require the inspection of buildings and windows. However, the Democratic Party also wishes to stress that initially, we proposed to the Government the provision of free first-time inspections of buildings. As we all know, building inspections are carried out by way of visual inspection and this is the approach adopted most often by the Government. However, the Government now insists that requirements on qualifications must be specified and

we are disappointed with this. If the Government can provide the service of first-time visual inspection of buildings, there will be a lot of merits and no demerits whatsoever because this can enhance the credibility of the inspection scheme at the initial stage, so that owners will be more willing to participate in it. If the Government tasks its officers to carry out inspections first and requires owners to carry out repairs only after problems with their buildings have been detected, I believe owners will be more willing and eager to discharge their responsibility in carrying out repairs. At the same time, this will also enable the Government to get hold of more accurate information relating to building inspections, so that a database on this can be established.

However, the Government now requires owners to bear the responsibility of carrying out building inspections on their own and it will only provide assistance by way of the introduction of assistance schemes. However, I think this kind of assistance schemes have a lot of restrictions, for example, the building inspection assistance schemes introduced by the Hong Kong Housing Society (HKHS) and the Urban Renewal Authority (URA) require that in the urban area, only flats with an annual rateable value of not more than \$100,000, and less than \$76,000 in other districts, are eligible for assistance. Recently, I have received enquiries from many owners, in particular, those of flats in the urban area, who pointed out that in spite of the recent soaring flat prices, some of the consolidated loan schemes introduced by the Government still adopt such an approach in determining the eligibility for assistance. Therefore, some owners suggested that the Government hold discussions with the two said organizations to explore the possibility of reviewing the level of rateable value under these assistance schemes annually. This is because property prices are rising all the time and the sale price of flats in the urban area is at least \$10,000 per sq ft, so their rateable values have also risen accordingly. Originally, the Government estimated that 80% of the owners would be eligible for assistance but in reality, many owners have been edged out and are no longer eligible for the assistance offered by the Government. Therefore, it is hoped that the Government can undertake to conduct a review of the assistance criteria annually.

In addition, the Democratic Party also hopes that the Government can commission the relevant organizations, such as the HKHS and the URA mentioned earlier on, to establish a database on building repairs to make it easy for small owners to make comparisons with the aid of this database. The Government now requires owners to carry out building inspections on their own,

but according to the experience of local communities, when owners want to carry out repairs, they often encounter many unscrupulous consultants or contractors. Therefore, if the Government can establish a database on this for owners to make reference to and provide information and comparisons on such matters as the approximate charge for each repair item, owners will have access to greater support. This is quite an important point.

I have stressed in the meetings of the Bills Committee a number of times that according to our observations in the local communities, the performance of many consultants and contractors was actually quite disappointing. Of course, we have no concrete evidence to prove that they were involved in corrupt or illegal practices, but their performance makes many owners think that although the original intention of hiring consultants was to supervise the works, it turns out that they have to supervise the work of these consultants instead. They describe this situation as "too many cooks spoil the broth" and it only poses greater difficulties to the repair works. Since some 2 000 buildings will have to be inspected each year in the future, the business turnover at stake will be quite great, so later on, I will move amendments in this regard and comment on this issue further.

However, I wish to remind the inspectors concerned that clause 30D provides that Registered Inspectors must carry out inspections personally. At present, among the Qualified Persons (QPs) in consultancies, that is, the people belonging to Prof Patrick LAU's sector, the practice referred to as "license borrowing" can often be found. In other words, the licence holders never show up but they are said to be the QPs in consultancies. It can be said that such instances are very common in the sector concerned and this is nothing new. Therefore, in the debate today, I wish to remind those people who may become inspectors in the future of such a provision in the Bill.

Inspectors are not confined to QPs alone. At present, the number of people undertaking building inspections stands at about 1 800 and this number will increase to 6 500, so this is quite a substantial increase. The Government pointed out that such an increase was a precaution to prevent the market from being monopolized, but I am worried about whether, of the 1 800 people mentioned just now, even 180 of them are active in the building inspection market or not. When this number increases to 6 500, the Secretary really has to see how many people are actually active in the market. Can the Government

undertake that there will be officers to carry out supervision personally to ensure that these inspectors will carry out the relevant inspections personally? I personally have great doubts about this.

On the question of how to make improvements to the supervision of professionals, the Democratic Party proposed that the HKHS and the URA carry out the preliminary examination of such works, but the Government disagreed on the ground that they are not law-enforcement agencies. In that case, it begs the question of how much manpower the Government has to undertake this task immediately. Earlier on, the Government made a funding application to the Finance Committee for the establishment of a directorate grade post for the implementation of mandatory inspections of buildings and windows. At that time, the Government claimed that random checks would be made to 30% of the inspections. I hope the Government can step up the efforts in this regard.

This is particularly the case at the initial stage because the authorities must establish a credible system. If an unsatisfactory situation arises, thus making the public feel that not only is the inspection regime complicated, it is also a hassle to the public, and they are unwilling to do anything because of the difficulty in undertaking the tasks, even if the Government wants to take prosecution actions, it will be impossible to take all the cases to Court. The present Bill is quite harsh to small owners and has laid down fairly harsh penalties, for example, a daily fine, imprisonment for not carrying out inspections, and so on. So to small owners, this is quite a harsh piece of legislation. However, the authorities cannot merely rely on the penalties to enforce the relevant provisions. If small owners have difficulty in seeking assistance from contractors or QPs under the system and these professionals are unreliable, the system will collapse.

Similarly, the Democratic Party has a very simple request. Initially, I was also unaware that the following thing would happen: Concerning Registered Inspectors or QPs, simply put, they are the people responsible for building or window inspections but it turns out that initially, the Bill did not specify that the completion reports and certificates prepared after the conclusion of inspections had to be handed to owners. Secretary, let me tell you that this really happened. After the people concerned have completed their inspections, they can just submit the reports to the Government without submitting them to the owners concerned, so this situation can be described as mystifying and perplexing.

It is possible for these people to submit the reports to the Government without the agreement or perusal of the owners concerned and without owners being informed of the condition of their buildings. Although professional guidelines should be drawn up to stipulate that owners cannot alter the reports, at least, they should be informed of the situation. In view of this, the Government eventually agreed to add a provision to the Bill to require that the inspection reports have to be submitted to owners for perusal. I believe this arrangement can enhance transparency and enable owners to strengthen their supervision of the inspectors and QPs concerned. This is also quite an important matter.

Earlier on, an Honourable colleague also raised the issue of how to organize owners, but this may not come under the purview of the Secretary. During discussions on the Bill, we also explored how the District Offices (DOs) can offer assistance in this regard. I believe the behaviour of officers from the DOs in the meetings can be described as "dumb as a wooden chicken". They dared not answer the relevant questions and also lacked any knowledge in this regard. As a result, on organizing local communities in respect of mandatory building and window inspections, they lack any knowledge whatsoever of the usual procedures, not to mention the know-how. I hope the Secretary can reflect this clearly to Secretary TSANG Tak-sing and make it clear to him that the manpower for this must be strengthened. The BD must increase the manpower for inspections and the DOs must also increase their manpower to provide assistance because if 2 000 buildings have to be inspected each year, there will be quite a lot of confusion in the market. Judging from the experience of implementing the Operation Building Bright now, it can be seen that the number of buildings handled in a year is less than 1 000 and for over one year, only less than 1 000 buildings have been handled, so some sort of situation will surely occur in the market. I hope the DOs and the BD can increase their manpower for this task.

One last point that needs to be raised is that in the end, the Government withdrew the provisions on mandatory entry into premises for inspection and the regulation of signboards. The Democratic Party hopes that the Government can submit as soon as possible legislative proposals on these two areas to the Legislative Council for discussion. We support imposing regulation on signboards and mandatory entry into premises for inspection. Although we may not agree with the details of the proposal put forward by the Government in this regard and we also think that we must proceed carefully in the regulation of

signboards and mandatory entry into premises for inspection, we support the Government in putting forward the relevant proposals as soon as possible, so that the Legislative Council can deliberate on them, so as to effectively solve other problems related to enhancing building safety. Thank you, President.

MR LEE WING-TAT (in Cantonese): President, I support the Second Reading of the Bill.

In fact, the Second Reading of the Bill represents some significant progress, the first step in giving old buildings in the urban area a more systematic repairs and inspection regime. On this point — Mr KAM Nai-wai has talked about the professional issues on behalf of the Democratic Party and I am not going to repeat them — what I want to say is that according to my observations over the years, I think the present situation has reached rather serious proportions and a review to be conducted by a number of Policy Bureaux of the Government is warranted.

We know that such areas as building repairs, fire safety and management are issues that cannot be dealt with by the engineers or technicians of the BD alone. The problems in these areas are perhaps relatively less serious. In a way, new housing estates or new buildings are generally well managed by management companies, so they have fewer problems because first, the buildings are newer and second, even if they are no longer new, as in the case of Mei Foo Sun Chuen and Tai Koo Shing, and even though they were built some 30 or 40 years ago, their management companies and OCs or owners' committees still maintain good management. By good management, I mean that at least, there is a management structure and even if there are blunders, there are still a regime and rules to follow, as well as people to follow up matters.

Since I became a District Board member in 1985, some problems have kept recurring. As Mr KAM Nai-wai said, it is not possible to have good building management without the participation of owners, nor is there any reason not to put in place a good structure, so that a good job can be done in such areas as repairs and maintenance. The Secretary may think that these matters have nothing to do with her, asking why I talk about such matters with her, but this is actually the core of the problem. Frankly, if there is good building management, the problems pinpointed by this piece of legislation are actually meaningless to

her — or rather, she does not have to be bothered by them too much. Would she talk about spalling concrete and the tangle of antennas left unattended in common areas with the flat owners of Mei Foo Sun Chuen? These issues would not arise there.

The present problem is that although the Home Affairs Bureau often says that it encourages the owners of buildings to form OCs, I learnt that its thinking, strategy and programme had led to queries about whether or not the Home Affairs Department (HAD) had the ability to manage the work in this regard properly. This is just like an issue debated by us from 1992 to 1996: Whether or not it was an efficient approach for the Housing Department (HD) to rely on civil servants to manage public housing estates. The reaction of civil servants on hearing this question was to dislike LEE Wing-tat because I supported the system of contracting out some areas of the management of the HD. In spite of this, changes were eventually made to the system, that is, management companies have to be rated each year and those providing unsatisfactory management service will be sacked. I used to be a member of the Housing Authority (HA), but not to mention residents, even though LEE Wing-tat was a member, when I requested to have a meeting with the manager at 7 pm, I would also be asked rhetorically, "Mr LEE, do you want me to attend a meeting at 7 pm? Please say it once again: Do you want me to attend a meeting at 7 pm?" President, this is really what happened. Even a member of the HA cannot request the manager to have a meeting at 7 pm. I am only talking about this particular issue, but not others. It is not possible to change the management culture.

Today's issue is very simple: What training in legal knowledge has an ordinary District Council member received? I, LEE Wing-tat, have not received any legal training either. What legal training have people who want to join political parties or local residents who work in local communities received? In spite of this, they still assist owners in forming OCs. Even Ms Starry LEE is smiling now. Her fellow brothers and sisters are doing a good job but of course, mine are also not doing any worse either, so they all do it this way. We know what the Building Management Ordinance is generally about. Although the views offered by me do not amount to serious legal advice, we all do it this way. However, the Liaison Officers of the DOs only observe meetings and when they are asked of their opinions, they would say that they have to go back to the head office to seek legal advice. President, this issue has been discussed for 20 or 30 years since 1985 or 1986, so it even compares unfavourably with the process of

drafting the Basic Law. Concerning the process of drafting the Basic Law, the Drafting Committee was established in 1985 or 1986 and the Basic Law was promulgated in 1990. Is that not so, President?

After the passage of 16 years, the problem should have been solved. However, regarding the present problem, you can also ask Mr IP Kwok-him if it existed in the 1980s. It did. Does this problem exist now? It still does. Why has no improvement been made? Because no changes to the framework are allowed. If the Hong Kong Housing Society (HKHS) undertakes the work, will the outcome be different? It will be. I find that the employees of the HKHS and Urban Renewal Authority (URA) are bolder in handling the work in this area because they are not civil servants. If one asks the employees of the HKHS about how to form OCs, they would not say that they had to ask Mr WONG, the Chief Executive Officer and Executive Director of the HKHS, how this should be dealt with. They would not reply in this way, President. If one asks the employees of the URA, they would not say that they have to go back and ask the Chairman, Mr Barry CHEUNG, about how to form an OC before giving a reply. They would not do so.

President, I think the situation has reached a stage of despair and resignation. I do not think that changes to this problem can be brought about if Mr KAM Nai-wai or Mr IP Kwok-him talk about it for 100 times or another 15 years. This problem will not change, unless this duty is taken away from the HAD to make it no longer in charge of this duty. I know this proposal is a very bold one and I know that the Secretary for Home Affairs may not agree with it, President, but I cannot see that this culture will change. Unless this duty is carved out and assigned to another framework which is capable of handling these matters with relatively greater flexibility, I cannot see any change.

The URA has established a team of social workers. President, did any one demand that it establish a team of social workers? No. No one considers it necessary for the URA to establish a team of social workers, but why did it do so? This is a matter of common knowledge and common sense. The team of social workers can talk with owners and the elderly people. Be it repairs or restoration, or the forming of OCs for old buildings, the handling of all these matters can be facilitated. Why does the HAD not do so? You cannot get an answer even if you ask it 100 times. Such an approach is really efficient but it simply would not do so. If you raise this with the HAD, it would say that it has a new

approach and that it would make use of such services as professional legal service. However, Secretary, we all know that these minor changes have limited effectiveness. Therefore, I will raise this view boldly with Secretary TSANG Tak-sing on the next occasion.

I believe it is necessary to carry out a major reform. If it is considered that the Civil Service is no longer suitable for this kind of work, it is necessary to carve out this duty boldly and let other relevant organizations assume the responsibility. Just look at the District Council members in the local communities and friends involved in community work, they are also doing this kind of work. Concerning the organization of OCs and owners' committees to facilitate the repairs of old buildings, is it preferable to have the HKHS or the HAD to do this job? I am sure it is better to let the HKHS do it. Of course, the Secretary cannot criticize his colleagues before us. President, this is the actual situation. Unless other directly-elected Honourable colleagues of the Legislative Council disagree with me, this is the actual situation.

Why is the handling this task so difficult? This is the first thing that I wish to talk about. If we do not change, what the Secretary is doing now and the other tasks being carried out as a result of this if the organizations for buildings and owners value their own premises, how could they not care about whether or not the windows and doors are in good repairs, whether or not the management of the building is good and whether or not it is necessary to inspect their buildings? We all know that keeping buildings in good repairs can preserve and even enhance their value.

The HKHS has carried out some renovation works for members of the public in the urban area and said to me, "Ah Tat, by doing something about the interior of buildings and painting the external walls nicely, the value of these buildings have been enhanced by 10%.". We can see that the URA and HKHS have done a good job in painting the external walls of buildings, and this is a clever thing to do. Sometimes, it is just as simple as that. Why are such simple matters turned into such complicated ones in the hands of the HAD? It cannot change anything despite having worked for decades. This is the first thing that I want to talk about. I have talked about it for eight to nine minutes because I just would not feel at ease if I do not speak up. If the authorities still do nothing, a few years later, there may be a piece of legislation on building repairs or some

other matters and it will owe its origin to the problems that cannot be solved even now and were raised by me just now.

Second, another major issue discussed by the Bills Committee is the relationships among various professionals. On a number of occasions, when I chatted with flat owners, I reminded them: Ladies and gentlemen, do not hanker after cheap repairs charges. Cheap prices are likely to do them harm. Often, the consultants may collude with the construction company actually carrying out the repairs. On one occasion, I attended a meeting of the Bills Committee and Prof Patrick LAU was also present. The representative of the Hong Kong Institute of Architects (HKIA) (it seemed to be a Ms KWONG) was also present. Since some consultants are also architects, she was asked how much the quotation in a bid for a consultant project for a building was. The answer was \$3,000. President, that person is a constituent of Prof Patrick LAU and a qualified architect, an Authorized Person who can make a lot of money by undertaking a project, so is it possible to make just \$3,000 as a consultant who undertakes a project? How is that possible? I have no evidence to show that she colludes with construction companies but this arouses the suspicion that some very cheap consultants are identified for owners to choose from, then the selected consultant will recommend a contractor, so it is the contractor who will make a lot of money. In fact, this kind of relationship is no different from tender-rigging or collusion to recommend construction companies that provide poor service.

Subsequently, I asked the HKIA if it had ever penalized this sort of people who gave very cheap quotations in their bids and whose quality of service was so poor that complaints were lodged against them. Has the HKIA ever investigated such cases and penalized these people? President, of course, I could not get any answer. We can see that often, it is not true that owners do not want to spend money on repairs. Changes have occurred over the past decade. I remember that 11 years ago, when I approached the OCs of buildings to talk about repairs, owners would say that after they had received letters from the BD, the first thing they would do was to throw the letters into the rubbish bin. A decade ago, most owners would still not take any follow-up action.

President, the situation now is better because repairs have to be carried out sooner or later, so they would ask me, "Mr LEE, all those people say that they are contractors, so which one in the register is better?" It is very difficult to choose. Assistance is needed in this regard, so I wonder if, first of all, a better job can be

done in professional supervision. Can a better job be done in the prevention of tender-rigging? The Independent Commission Against Corruption (ICAC) has offered advice repeatedly over the past four or five years, saying that a phenomenon relating to the projects on private residential buildings has arisen, that is, a number of instances of tender-rigging and corruption have occurred, as pointed out by me just now. So this is a very serious problem. I even know that in some districts, there are some so-called "special flat owners" who are particularly eager to become members of OCs. They appear to be very enthusiastic but in fact, they want to influence the decisions on tenders. I have seen such owners buy the smallest units in various old buildings, and this is their design.

President, even if the work in this area is put under the charge of the Home Affairs Bureau, I hope the Development Bureau can also consider the fact that on this issue, if it cannot assist small flat owners who are willing to dig into their own pockets to carry out repairs, so as to ensure that their money is well spent, this will give them a great deal of pressure.

Thank you, President.

MS AUDREY EU (in Cantonese): President, a lot of people call the Buildings (Amendment) Bill 2010 (the Bill) the law on building and window inspections and it was submitted to the Legislative Council on 3 February 2010. We have held 22 meetings on the Bill, so it can be said that quite a number of meetings were held, and they were lengthy ones. One of the reasons is that although we all support in principle the inspection of buildings and windows, many problems will arise in implementation, for example, what should be done about buildings without any OCs; even if there are OCs, what should be done if the consent of all tenants cannot be obtained; whether or not the penalties are too heavy; whether or not the offences should be criminalized, and so on. In addition, many problems will also arise in tendering. Furthermore, are there enough QPs or registered persons and how much do they charge? All these are issues that Members have debated over and again all the time.

There is another reason for holding as many as 22 meetings, namely, during this period, many problems relating to building safety occurred, for example, incidents of building collapse, signboard collapse, canopy collapse, and

so on. For this reason, Members would raise, to various extents, some issues of concern in the meetings of the Bills Committee, for example, whether issues relating to "sub-divided units" and signboards can be dealt with through the Bill, what is the definition of projections, whether or not projections can also be dealt with in the Bill, and so on.

Another issue of great concern to us is the so-called "warrant proposal", or the power to gain entry into premises to carry out inspections. Should such a power be included in the Bill? Section 22 of the existing Buildings Ordinance provides for breaking into premises in the presence of a police officer. However, given the present social condition of the SAR, breaking into premises to deal with problems of unauthorized building works (UBWs) is unacceptable to many people. For this reason, many Honourable colleagues raised such question as whether or not the Government should be empowered to enter premises to carry out searches or inspect buildings, and even gain entry into premises to carry out inspections on buildings suspected to have "sub-divided units" and UBWs. We have discussed these issues over and again many times. Initially, when the Government was collecting our views, some Members proposed that warrants be provided for but in the second meeting, other Members voiced their opposition to such warrants. Then, in the third meeting, Members supporting warrants revisited their proposal again, but in the fourth meeting, other Members expressed opposing views again. Therefore, on this issue, the Bills Committee has held a number of meetings to discuss it over and again.

In fact, many issues are not covered by this Bill. I wish to point out that it is the practice of the Government to add a long title to the Bill introduced to state the scope of the Bill. I wish to quote the scope as stated in the Blue Bill, "Amend the Buildings Ordinance to provide for matters relating to the regular inspections of buildings and the associated repairs to prevent the buildings from becoming unsafe; and to make related, consequential and other minor amendments.". In other words, the Bill only has one aim, that is, to provide for regular inspections. Of course, we can put forward proposals relevant to regular inspections, but if we add other provisions to the Bill with a view to dealing with them in passing as a result of the incidents that happened in society at that time, they may exceed the coverage of the Bill. Therefore, after listening to the views, the Government finally decided against adding the other provisions that had been discussed and were mentioned by me just now. Instead, another Bill

will be drafted to deal with such issues as entering premises to carry out inspections, "sub-divided units" or suspected UBWs.

Why did I raise this issue specifically? I know Members hope that the Bill can deal with the widest range of matters possible, but I also hope that when scrutinizing Bills, there can be a reasonable scope and that the basic rules that should be followed in the scrutiny of Bills will be adhered to. If even such basic rules are disregarded, the procedures of the Legislative Council will be infringed and the implications will be great. As a result, we will have no procedure or basic criteria to follow and damaging these frameworks will only make it more difficult for us to deal with matters in the future.

Here, apart from raising this point specifically, I also wish to say to Secretary Carrie LAM that I understand that building safety is a fundamental issue on which action is necessary, but this issue actually involves many other areas. Just now, Mr LEE Wing-tat raised in his speech the issue of whether or not the officers of the Home Affairs Bureau or the HAD were able to play the role of a mediator in the disputes in OCs or owners' committees. Are they capable of providing information and facilitating the operation of the relevant procedures in a reasonable and fair setting? This is very important because the disputes relating to these buildings could often lead to great difficulties in enforcement of the Ordinance.

Many views raised the issue of whether or not a tribunal should be established to enable the owners concerned to resolve these issues in a simple, expeditious and efficient manner at the lowest cost possible. If the HAD is responsible for this task and in addition, there is also a special tribunal to handle such a task, I believe this will facilitate to some extent the making of repairs to buildings and enforcing the relevant legislation. Therefore, I hope Secretary Carrie LAM can refer this issue back to the SAR Government for careful consideration, since this piece of legislation on the inspection of buildings and windows can only deal with a small proportion of the problems, while the great majority of difficulties facing us now are really beyond the coverage of this Bill.

In addition, of course, there are the issues relating to QPs and Registered Inspectors (RIs). The Government has the responsibility to ensure that a sufficient number of people are registered or qualified and that a sufficient number of QPs are willing to undertake such tasks, and charge reasonable fees for

that matter. Otherwise, the enforcement of the legislation will encounter great difficulties. In addition, sufficient information must be provided for owners to understand the details or issues that must be noted when handling such procedures, and the Government is also duty-bound to ensure that a proper job is done in such efforts as publicity, promotion and education.

Lastly, President, I wish to talk about the amendment proposed by Mr KAM Nai-wai. His amendment is divided into three parts, the first being to provide that RIs must comply with the Practice Notes on Best Practices on Tendering Procedures and the second is to provide that QPs must comply with the Practice Notes on Best Practices on Tendering Procedures. As for the third part, it provides that if the two aforementioned types of persons (that is, RIs and QPs) breach the Practice Notes on Best Practices, they have committed a criminal offence and are liable to a fine.

Mr KAM Nai-wai also proposed this amendment in the meetings of the Bills Committee, but the part concerning fines was not mentioned. In proposing this amendment, he mainly hopes to add a provision to specify that these two types of people (that is, RIs and QPs) must comply with the Practice Notes on Best Practices.

The Civic Party and I both support making such provisions because in fact, many provisions of this kind can be found in the law. Of course, the drafting of Mr KAM Nai-wai's amendment is somewhat different and does not quite conform to the way in which laws are generally drafted nowadays, but this kind of provisions can really be found. Let me randomly pick and read out one type that can be found in the legislation relating to gas safety and compliance with work codes. The provision stipulates that if non-compliance with the approved work codes alone will not lead to civil or criminal prosecution but if the Magistrate or the Court believes that the work codes have been violated — a very classic way of drafting can be seen here in the phrase "being or has been contravened", that is, the passive voice is used here, meaning that someone has violated the work codes — and in relevant criminal legal action, this provision can be accepted as evidence.

In other words, in the laws of Hong Kong, there are actually many provisions requiring compliance with various types of codes, be they codes of practice or codes of best practice. Even though their names are different, they

all refer to guidelines that have no legal effect, instead, they are just guidelines on best practices. The way of drafting would generally say that you have to comply but if you do not, it does not constitute any criminal or civil offence *per se*. However, if you are prosecuted, such non-compliance can be one piece of evidence in the prosecution brought against you. This is mainly how such provisions are drafted.

The first two parts of Mr KAM Nai-wai's amendment require that RIs and QPs have to comply with the Practice Notes on Best Practices and precedents of such requirements can be found in the law. Often, it is prescribed that certain codes or practices have to be followed. However, no instances of non-compliance with such codes of best practices, guidelines or codes of practice constituting an offence can be found. The reason is very simple, because such a requirement is self-contradictory. If a legal provision is involved, of course, violating a provision will constitute a criminal offence and one is liable to a fine. However, often, some requirements are not so stringent and they are only best practices or guidelines, so the intention is to make them less stringent because the aim is to prescribe certain ethical standards or some higher or vaguer best practice. Sometimes, changes will also occur in the course of time, so if they are laid down as part of the law, it will be difficult to amend them. Rather, it is hoped that consultations can be carried out in the relevant sector and amendments can then be made accordingly.

Therefore, generally speaking, any violation of such codes, guidelines or so-called best practices or practice notes *per se* will not constitute any offence and attract any fine. For this major reason, I am sorry that I cannot support the third part of Mr KAM Nai-wai's amendment. If a precedent is set, this will affect many other codes, practice notes or guidelines of this kind, thus leading to confusions about their nature.

Various sectors have written to us and I have also mentioned in particular that the Hong Kong Institute of Surveyors also supports drawing up practice notes and codes, believing that this is desirable, but it also considers that this should not constitute a criminal offence. I also agree very much with this point. Therefore, now that I have stated the situation clearly, it may not be necessary for me to speak again at the Committee stage later on. Thank you, President.

MR ALBERT CHAN (in Cantonese): President, this topic of mandatory building inspection and enhancing the statutory regulation of old buildings has been discussed in this Chamber for more than 10 years. The Government has on many occasions introduced Bills on mandatory building inspection, but I have voiced my opposition to them in principle many times.

I oppose them not because I do not think that inspection procedures should not be set up for old buildings. I have pointed out many times that there are problems with the ownership and management of old buildings. In the absence of any suitable and appropriate support in law, engineering and tendering for OCs, owners' organizations and owners of flats in buildings without OCs, the use of some high-handed moves in law to force owners to fulfil their obligations under the law will only serve to add to the hardship and distress of many disadvantaged groups.

Over the past few years and under the leadership of the Secretary, the relevant Bureau has done a lot of work in this regard. First of all, I must commend the Secretary for her hard work which has resulted in more professional support provided by the HKHS and the URA in this regard.

However, President, there is still a grave shortcoming, and I have mentioned it many times in this Chamber. I understand that this belongs not to the portfolio of the Secretary for Development but that of the Secretary for Home Affairs. I have pointed out many times that there is no need to resort to high-handed measures in law to compel owners to carry out inspections of their buildings, because some owners just cannot be compelled. If there is no OC or management company responsible for co-ordinating and executing work in this regard, it would be futile even if some owners are prepared to share the expenses on carrying out such work. If most of the title owners of a building are willing to carry out such work, they can do nothing if they are unable to form an OC. These owners may not be able to do anything and in the end they will be prosecuted because they fail to perform their duties under the law. I believe such things will happen.

Some Members pointed out just now that thousands of owners of flats in old buildings are unable to form their OCs. Actually, under the present system, and as I have pointed out many times, the Secretary for Home Affairs has the authority to order that certain management companies be hired for buildings

without an OC or a management company. Of course, I would still suggest that this appointment of a management company should be carried out by open tender. Then the management company so appointed can be tasked to manage or take over the management of building concerned.

The logic of my argument is simple enough. This is because the objective of the Government in the final analysis is to ensure that certain buildings are under management and that the day-to-day management of these buildings is carried out in an appropriate and lawful manner, especially when it comes to repairs and maintenance. This I believe is the objective that the Government wants to achieve ultimately.

If this objective can be fulfilled by the statutory powers vested in the Government if the provisions in the Multi-storey Buildings (Owners Incorporation) Ordinance (Cap. 344) are still not clear enough, these provisions can be amended. And this is the duty of the Government.

For most of the old buildings, that is, all properties or buildings, they would have a management company when they are completed by virtue of the deed of mutual covenant. But developers, especially those of 40 or 50 years ago, might renounce the right of management after they had sold the flats and made money. But for those private housing estates with some 1 000, 2 000, 3 000 or 4 000 units, the developers concerned would never give up their right of management. President, this is the way things are. No developer will renounce the right of management when there is money to be made or when they can exploit and bully the small owners and make indecent profits. This applies especially to those housing estates with some 3 000 or 4 000 units. But for those buildings with only six floors and two units on each floor and altogether 12 units, the developer would renounce the right of management and return it to the small owners after they have managed the buildings for some time. These small owners are given three months' notice and the developers would give up the right of management and then do nothing.

I have assisted many small owners from this kind of buildings. They received from the management companies I had handled many such cases more than a decade ago. At that time, there were many such old buildings in Tsuen Wan. The management companies would renounce the right of management and inform the small owners of the same. But these old folks did

not know what to do and so I taught them and even helped them to issue notices, convene meetings and form their OCs.

Of course, when these OCs wanted to appoint a management company, no management company would want to take up the offer, for these buildings have only some 10 units and so the management fees would be small in amount and the remuneration of the managers would be very small also. So no management company would want to take up such work. Often the OCs would have to undertake the management work themselves and do such work as collecting fees, and so on. But when there is a need for repairs and maintenance things have become somewhat better in recent years because the HKHS would offer assistance and so there has been some improvement in this regard. But still, many old buildings would have to face problems in management.

Actually, the simplest way is, and as I have suggested many times, but the Government seems to be It is unfortunate that only the Secretary for Development is in attendance today; the Secretary for Home Affairs should sit here as well.

This simple solution is: If there are many buildings in an old urban area which do not have any OC or management company, for example, there are dozens of such buildings around, then the Secretary for Home Affairs can invoke his powers under Cap. 344 and hold a joint tender exercise for these dozens of buildings in that district and determine the rate of the manager's remuneration. Now as a general rule, the manager's remuneration for some large-scale development would be 2% to 3%. When the management companies are given such statutory powers, they can then manage these buildings, many of which are six-storey old buildings. So irrespective of whether they have an OC or not, they can appoint and designate their management companies by virtue of the powers vested in the Secretary for Home Affairs under Cap. 344.

Then the management companies concerned can work to fulfil the demands of the Secretary for Development and take charge of the day-to-day management of the buildings in such areas as repairs and maintenance, and checking if the windows are broken. This is actually a solution to the problem. And it can deal with matters in the day-to-day management of the buildings such as refuse collection or other matters for these buildings as well.

Unfortunately, however, our fighter Secretary for Development is unable to spur other Secretaries into action. It is because the other Secretaries are lazy and they think that this is not their own business. It also goes back to the couldn't-care-less Chief Secretary for Administration which is derelict in his duties.

The Chief Secretary for Administration should address the problem from an overall perspective. He should call a few of these Secretaries concerned and talk with them and together they should study how the problem should be solved. But this couldn't-care-less Chief Secretary still keeps on doing nothing. His popularity ratings continue to plummet because he goes on being the way he is. As the Chief Secretary we have actually been discussing this problem for more than 10 years. As I recall it, we have voted down the proposals made by the Government twice in this Chamber. Now this Secretary is called a fighter and so she wins. Now the Members in this Chamber are basically in support of the Government's proposals. However, back in the old days, the Government had to withdraw its proposals, voted down by us.

This is precisely the problem highlighted by me just now. President, in the end a problem will emerge. No one will object to the intention and spirit of the Bill, and no one will object to the need to ensure the safety and protect the lives of the residents of the old buildings, including the life and safety of people who happen to walk past the streets on which these old buildings stand. No one will say no to that. But a problem will emerge in the end and that is, those owners of old buildings do not have an OC and they are unable to form one. Then they may be prosecuted for non-compliance. They may be accused of not carrying out the management work in accordance with the law. In the eyes of a social worker, this is blaming the victims. It is not that the owners do not want to do it, they would really want to do so and they want people to teach them how to do it. It is like someone in a wheelchair, can you say that the person does not want to rise and walk? They will certainly want to get up and walk, and jump and leap. But they are bound in a wheelchair and they cannot get up and walk. But you are blaming them for not knowing how to walk. We are now blaming a wheelchair-bound person for not knowing how to walk!

I have said to the Secretary many times that she should solve this part of the problem first because this can be solved together with the problem she has in mind. Unfortunately, however, due to the laziness of the Secretary sitting next

to her and who keeps on neglecting the gravity of the problem, this problem of old buildings goes from bad to worse. President, we have raised this proposal for many years, and it is not today that it is raised. I recall at least six or seven years ago that I had made a relevant proposal. But the problem is still there. The Government is still resorting to high-handed measures to deal with the matter. Of course, as I mentioned earlier, the Secretary for Development has done a lot in offering professional support, but I am sure the worries and problems we talk about are still there. So in the end, I want to urge the Government Of course, I commend the Secretary for Development for the efforts made in this aspect, but if the entire Government and other Bureaux do not make any fundamental improvement in this issue of property management, these problems will still lead to catastrophes and tragedies.

President, personally I will not support this Bill. However, given my understanding of the gravity of problems with old buildings, I will not oppose the Bill. Hence, later on when votes are to be cast on this Bill, I will abstain. Thank you, President.

MR RONNY TONG (in Cantonese): President, about this Amendment Bill on the MWIS and the MBIS, I am sure no one will doubt the good intention. Theoretically, this amendment exercise has not advanced the original liability of the owners too substantially. Of course, some Honourable colleagues would think that if this liability is advanced, the grassroots or the not-so-well-off owners will have to bear a heavier burden. It is not acceptable to them in the financial sense. But let me do some explaining here. Under the existing laws, the owners themselves have an absolute responsibility and they shall ensure that their properties are completely safe and do not jeopardize the safety of other people.

Under the Buildings Ordinance and as found in the precedents in common law, such a liability does exist. Hence, the present amendment only seeks to establish a mechanism to prevent the occurrence of tragedies. In theory, it does not aggravate or add to the liability of the owners in building repairs and maintenance. It should therefore not give rise to too much controversy.

However, in actual enforcement, there are indeed some problems. Why? It is not that the present proposals are not desirable, only that the consequence of

written notices being issued by the BD to require the owners concerned to inspect their buildings or carry out repairs and maintenance will certainly result. As its name suggests, the notice issued by the BD for building inspection will certainly be issued before an inspection is taken by the Department. This is because had a building inspection been made, there would be no need for issuing this kind of written notice. A direct request made to the owners concerned for repairs or work done to prevent deterioration of the building structure would suffice. So it can be seen from the definition that this kind of written notice is in effect pushing the liability forward as a means to require the owners to inspect their buildings. Since it is the case, two problems would arise in enforcement. The first is timing, and the second is quality.

Often times we would think that there may be problems with the structure of buildings with an age of 30 years. An example is in a housing estate in Ho Man Tin which I have recently paid a visit. I found that there were great disputes among owners in carrying out building repairs. There is a divergence in views as to whether the window sills should be removed, mainly because there is a difference of some \$10 million to \$20 million in cost. What then is the room for implementation that I have just talked about? It is what may happen in timing, that is, it is discovered after an inspection that some problem is bound to appear in future, but it could be 10 years from now, and so should the repair works begin now or five years later or 10 years later? This is really a problem.

Second, in the case of the window sills I have just mentioned, should the existing window sills be removed or some window sills with steel reinforcements be constructed? Or should window sills of some grand-looking marble be used? It would also give rise to another problem and, that is, quality. How should relevant standards be set? Should they be able to meet the lowest standard of safety or should requirements on beautification or improvement be added? This would lead to arguments. So when the Government proposes this mechanism, should it not minimize disputes or clearly specify some standards or levels for ready compliance by the people?

The proposal as put forward by the Government lets some people be registered as RIs. I agree to this idea. But the criteria for registration are only these people must reach a certain standard in expertise, experience or professional knowledge, but there is still great leeway as I have just talked about as to how they should enforce the law and what kind of advice they give to the OC after

they have inspected the building concerned. There is much room for argument as to whether repairs should be undertaken immediately, or later; or which contractor should be hired, or should the costs of such works be higher or lower, and so on. If the room for argument is great, then there is a possibility that people may abuse the provisions and mechanism concerned or even make profits from them.

We are especially worried about buildings older in age. As Mr Albert CHAN said just now, the grass-roots owners may not know much about building structure, and should there be some building inspector who wants to profit from the inspection exercise and who claims that a contractor can fix everything, the owners may find themselves choosing an expensive package rather than a project which barely meets the basic requirements. The disparity between the two is immense. So the rationale behind the amendment raised by Mr KAM Nai-wai of the Democratic Party is correct and acceptable. This is because the Government has an obligation to devise statutory criteria which are comprehensible and clearly defined. When such criteria are devised, will it reduce the chances of the law being abused or used for profiteering? All along I think that if the regulatory system is sound and comprehensive, it would certainly be helpful.

I therefore think that the proposal by Mr KAM Nai-wai is sound. However, I must admit that as a lawyer, his amendment has caused my eyebrows to twitch. I may not be very happy with its wording, but I think we should not be too mindful of it and instead we should focus on the problems concerned. In this regard, I think Dr Margaret NG is more qualified than me to make criticisms on that point. But I think we should support the idea underlying the amendment. I therefore do not understand why the Government does not accept the proposal for more detailed criteria.

Ms Audrey EU has just mentioned the point about whether the criminal liability should be increased besides devising the statutory criteria and levels. Ms Audrey EU seems to suggest that there may be a problem of duplication of liability. I do not agree to that completely. This is because the criminal liability which Mr KAM Nai-wai talks about is the criminal liability for those who inspect the buildings, not that of the owners. The criminal liability which this Ordinance provides is that imposed on the owners. And so there is a difference between the two. I therefore think that this might not be a ground

strong enough to oppose the liability provisions proposed by Mr KAM Nai-wai in his amendment.

However, I agree that the basic issue is whether such acts should be criminalized in order to prevent the professionals engaged in building inspections from going astray. President, I think whenever it comes to professional judgment, there may often be some small differences in opinion. Even in the legal profession, different lawyers may have different views. Lawyers in this Chamber do hold different views. So in this respect, if the acts concerned are criminalized, I would think that this is a move which goes slightly overboard. Although the grounds may not be the same, I would hold that what Mr KAM Nai-wai has talked about, that is, the proposal to impose criminal liability on professionals and RIs, does have a problem. I therefore find it hard to support it.

However, with regard to the basic concept, I would think that it should be addressed squarely. The Government should offer help to owners by all means, so that they can discern problems and make a wise decision. This is because owners would face a great problem as to how fast the repair works should be carried out, how comprehensive it should be and to what extent the repairs should take, and so on. I hope that the SAR Government can heed the views we have expressed in this regard and even if it does not support this amendment, it can formulate similar provisions based on the same belief in the regulation of RIs. This would make the system better. Thank you, President.

(Ms Audrey EU raised her hand)

PRESIDENT (in Cantonese): Ms Audrey EU, has Mr Ronny TONG misinterpreted the contents of your speech?

MS AUDREY EU (in Cantonese): Yes, Mr Ronny TONG has just misunderstood the contents of my speech. Sorry, maybe due to the fact that a while ago he had to leave the Chamber to answer a telephone call and so he might have not heard me clearly. President, I have never said that I cannot lend my support to the amendment proposed by Mr KAM Nai-wai on criminal liability because double criminal liability may be involved. I know that this does not have anything to do with double criminal liability, but the criminal liability of

QPs and inspectors. I cannot support Mr KAM Nai-wai's amendment because this kind of code of practice, practice notes or guidelines cannot in most cases constitute or carry criminal liability. This is because this kind of provisions is not drafted in the form of legal provisions and frequent changes are made to them. So it is not appropriate to regard them as provisions which may carry criminal liability.

MS STARRY LEE (in Cantonese): President, Members might still remember the serious casualties caused by the collapse of a large canopy of the Wearbest Building in To Kwa Wan more than a decade ago. As the Wearbest Building is opposite to my ward office, the accident would come to my mind every time I passed by the building.

Having been a District Council member for more than a decade, I have seen innumerable accidents involving spalling concrete and UBWs. As I have been fortunate enough to be elected as a Legislative Council Member of this term, I opened another office on Ma Tau Wai Road, and opposite to it is a collapsed building. The collapse of this building would also come to my mind whenever I went to the office. The accident happened that day was unforgettable. A few blocks away stands another building where a fire broke out recently. All these buildings, where tragedies or accidents had occurred, are very near to my office. As I would pass by them very often, I would remind myself to continue to urge the Government and the Secretary in this Council to make more efforts in building safety and management. In this regard, Secretary Carrie LAM has already made a lot of efforts, and her performance merits commendation.

I recall that after the collapse of a building on Ma Tau Wai Road — Members should also remember that the accident was described as one of the most serious building collapse accidents in Hong Kong's history — when the deliberation on this Bill by the Bills Committee was just started, I was invited to give comments in a number of radio and television programmes, and people also began to discuss the problem of sub-divided units extensively — though there were discussions on this topic in the past, there were no heated discussions in television programmes on the problem of sub-divided units until the building collapse incident — many engineers joining me in the discussions in radio programmes and members of the public phoning-in joined in the call for this Council to address the sub-divided units issue by way of legislation on the

introduction of a mandatory building inspection scheme (MBIS) and a mandatory window inspection scheme (MWIS). Of course, members of the public just need to make a call for the issue to be addressed, but how can their call be made part of the legislation? It turns out to be an arduous task. When I was a District Council member, I only knew to call on the Government to address the issue properly. But how could the issue be addressed and how could it be made part of the legislation? It is indeed very difficult.

Hence, when the deliberation on the Bill commenced, I appealed for the legislation to make it mandatory for inspectors to record the situation of sub-divided units. In other words, they are required to record the situation of sub-divided units when conducting the annual inspection of 2 000 buildings by visual observation, and then submit the record to the Building Authority (BA) for follow-up. I have been calling for the setting up of a database on sub-divided units for the evaluation of the impact of these units on the overall building structure and fire safety. Actually, such requests are justifiable.

The current situation of sub-divided units is very serious. Last Sunday, I conducted a simple survey and, with our limited resources, inspected two areas which were the hardest hit by sub-divided units — including the buildings on To Kwa Wan Road and Ma Tau Wai Road as well as those in the vicinity of Hung Hom and Sham Shui Po — the outcome of the deductions made after the inspection carried out with our limited manpower took everyone by surprise. Secretary, it was estimated that more than 40 000 sub-divided units, contrary to the 10 000 sub-divided units mentioned previously in a question raised by me, might be found in the West Kowloon district alone. Of course, these figures might not be very accurate, but still I can cite certain examples to demonstrate to the Secretary the gravity of the situation.

There were originally 14 units in a seven-storey building with two flats on each floor on To Kwa Wan Road. However, eight of these units are sub-divided, with each unit further partitioned into five rooms. As eight times five is 40, and coupled with the six units not yet partitioned, the total number of units in that building is 46. Judging from the number of units, it is actually several times larger than the initial 14 units. Despite the Secretary's remark that these sub-divided units appear to have no substantial impact on building structure, but on top of building structure, electrical installation and fire safety are also our grave concern. Hence, I hope we can make use of the MBIS and MWIS to

enable the BD to grasp the information on sub-divided units more accurately, so that the authorities can conduct an overall review of the actual situation of every "inspected" building and then decide what course of action to take.

The Clerk to the Legislative Council should also remember that, during the deliberations on the clauses on the MBIS and MWIS — I have mentioned this repeatedly but still, we cannot make these clauses stand part of the relevant legislation. This I understand because, first of all, the inspectors — not to mention the inspectors — the Secretary has often said that even officers of the BD are not empowered to enter the premises to inspect the internal partitions, whereas these sub-divided units are actually considered as alternations to internal partitions. Therefore, it is unfair if the legislation makes it mandatory for inspectors to make a report and they may be held accountable differently should they contravene the relevant legislation. This explains why the Government has eventually proposed to include this requirement in practice notes to encourage or require inspectors to report to the BA the relevant situation after building inspection.

I hope that the Secretary can, in her speech later on, reiterate this point and confirm that she will urge the BA or colleagues in the BD to press the relevant inspectors to submit the relevant reports, so that a review of the overall situation of the sub-divided units of these buildings and the extent of their impact on building structure and fire safety can be conducted. I hope the Secretary can boost our confidence in this regard later on by letting us know that the Bureau is indeed very concerned and will enforce it.

Apart from discussing the problem of sub-divided units, I still have something to add. Since the occurrence of the fire, the Secretary has pointed out in her responses to a number of questions raised in the Legislative Council that the Government attaches great importance to this problem. Moreover, the Government's annual target is to inspect 150 buildings and 3 000 units. As I pointed out repeatedly before, 3 000 units are just the tip of the iceberg. Compared with the number of existing sub-divided units, this figure is indeed too small. We still remember the Secretary's remark that the Government relies not solely on inspection, as building and window inspection is just a tool, and that in addition to building and window inspections, efforts should be made to enhance the people's awareness of repairs and maintenance. Given the Secretary's admission that the inspections are just a tool to enable her to grasp the present

situation of sub-divided units in a more comprehensive manner, I hope that she can confirm, in her response later on, as I said just now, that she would urge the BD or the inspectors through the BD to submit the relevant reports to her, so that further follow-up actions can be taken.

Apart from this issue, the next issue I would like to discuss concerns the arrangement for actual implementation after the passage of the legislation on building and window inspections. Some of the work may not fall into the Secretary's portfolio, but it still warrants our attention. Currently, 3 000 or 5 800 target buildings will be inspected per annum, whether for window or building inspection. In fact, the impact of the additional mandatory inspections on the kaifongs is not to be neglected. As pointed out by many Members just now, many kaifongs suspect collusion between these consultancies and contractors, and their suspicions are not unfounded, too.

In dealing with district work over the years, I have seen many unbelievably low bidding prices. The situation has now been somewhat improved, probably because many people talk about it now. Apparently, the "all-in-one" price of \$1,000 to \$2,000 can no longer be found. But even if the calculation is based on \$1,000, \$2,000 or even \$3,000, there are only 107 hours (eight to nine working days) for the entire process, from the initial inspection to the monitoring of contractors during the maintenance and repair works and the submission of the report to the BD. In my opinion, if the matter is dealt with seriously, it is simply impossible for the actual work to be completed in eight to nine days. Moreover, the wages thus calculated is even lower than the minimum wage. Therefore, their quotations are indeed dubious.

I do understand that prices may be difficult to determine. I once discussed with Prof Patrick LAU whether some reasonable prices can be determined by a council of the industry or profession. I remember Prof LAU said that it was actually possible, though not easy, to do so. Is the determination of a price tantamount to solving this problem? Things may not be so. The price determined might become a minimum price. Does the determination of a minimum price mean that in the eyes of owners, the professionals are fully upholding their interests? It may not be the case. Hence, the problem can still not be addressed effectively.

I am grateful to the Secretary for launching the Operation Building Bright this time around. The Urban Renewal Authority (URA) and the Hong Kong Housing Society (HKHS) have indeed rendered enormous assistance and directly intervened in the maintenance and repair projects subsidized by the Government. Through expanding the scope of tendering and offering advice to the owners, I see that the situation has indeed become less acute. Nevertheless, many owners still have misgivings, and I share their concern, too. This is because although it is said that only buildings and windows require inspections, frankly speaking, maintenance and repairs works are usually required after inspection. In general, the consultancy will recommend the owners to carry out maintenance and repair works. Basically, the target of the consultancy is the subsequent maintenance and repair works, not just earning an inspection fee of \$1,000 to \$2,000, or \$6,000 to \$7,000. Hence, should the rules of the game in the market remain unchanged, how can the owners put their minds at ease? Can these professionals really protect the owners' interests? I hope that the Secretary can continue to contemplate what approach can be taken. One of the proposals — though it may be premature — but many people in the industry have proposed to me, and I have also mentioned their proposal in this Chamber, that they hope to have an option of having the Government or public organizations to provide this type of service. If the owners are prepared to spend more money, the professionals from the URA or HKHS, for instance, can then arrange for tendering or monitor the works carried out by contractors on their behalf. Although the fees might be higher, at least the owners trust public or subvented organizations because they have confidence in the service provided by these organizations. Moreover, the owners can at least have a choice. Some owners have expressed their hope for the Government to provide this service, so that they can have the opportunity to choose the professionals in whom they have confidence.

Of course, Prof LAU will respond to this issue later on in the meeting. Will doing so lead to competition with the private sector for profits or turn the Government into part of professionals? We must consider how to strike a balance because I believe the entire market will certainly be changed after the passage of the Bill. Should everything remain unchanged, I believe the owners' scepticism, and even the ICAC cases, will continue to rise. In this regard, although the Bill will eventually be passed, the Secretary should continue to contemplate the problems and the solutions to properly deal with this issue.

Next, when it comes to the manpower arrangement made by the Home Affairs Department (HAD), I recall that at the meetings of the Bills Committee, Mr WONG and many other Members shared the view that the HAD's existing manpower arrangement was severely inadequate. Coupled with the launch of the MBIS and the MWIS, the workload of the HAD will increase substantially. I hope that the Government can review the manpower of the HAD again to ensure that it has adequate manpower to conduct meetings with the residents. This is very important.

In addition to the HAD's inadequate manpower arrangement, the assistance offered to OCs in the past was indeed inadequate, despite the efforts made by the HAD. Thanks to the legislation passed or enforced this year, the expectations on OCs have continued to rise, from the third party insurance to the minimum wage and Operation Building Bright. Now, we even have the MBIS and the MWIS. Such work has led to rising expectations on the work or members of OCs. Members should understand that OCs are working on a voluntary basis. What is more, the members of OCs in many old districts are elderly persons, who simply do not know how to go about their work. In this regard, I see that the HAD has organized some training classes. But still, the HAD must step up its efforts to enable the people to meet the legislative requirements or other demands.

Lastly, I would like to take this opportunity to praise the Secretary for her efforts in dealing with the old buildings. I remember I once told the Secretary at a panel meeting that if only the "best fighting general" worked very hard, the problem of old buildings might still not be resolved. I have also put forward a proposal in public and requested the Chief Secretary for Administration to set up an interdepartmental working group to deal with the problem of old buildings.

In addition to the Development Bureau, the role played by the Home Affairs Bureau is also very important, as mentioned by many colleagues earlier. Come to think about it carefully. Why are there so many problems with these poorly managed old buildings? These problems are simply attributed to management and maintenance, not the age of the buildings. They are actually management and maintenance problems.

In this regard, in addition to the Home Affairs Bureau, the Fire Services Department and other government departments also need to work hard to co-ordinate the efforts. Hence, I hope that the Secretary can convey our views

to the Chief Secretary. We will also strive to make an appointment to meet with him in due course in the hope that he can deal with this hot potato.

MR LEUNG KWOK-HUNG (in Cantonese): President, many Bureau Directors are "the best fighting generals" and they surface one after another. Donald TSANG once described Secretary Carrie LAM as "the best fighting general", but now Stephen LAM has joined her ranks. Hence, whether a Bureau Director is "the best fighting general" depends on the needs of the regime.

Stephen LAM is really unrivalled when it comes to his fighting spirit. In order to become the Chief Secretary for Administration, he has followed in Mrs IP's footsteps in fighting against three great warriors, right? For the time being, I will put him aside and say a few words about Mrs Carrie LAM, whose surname is the same as his. How does Secretary Carrie LAM demonstrate her "fighting ability"? First, she has demonstrated this ability through her handling of the problem of sub-divided units, as mentioned by Ms Starry LEE just now. When it faces anything it does not want to do, the Government will invariably make 20 000 excuses. For instance, if there are no roads, the Government would say that it would not pay for land resumption in order to build the roads. Insofar as the Government is concerned, the lack of roads is the business of the public, and they may discuss with the other party. So long as the Government is reluctant to do anything, it will come up with 40 000 excuses.

The sub-divided units are stained with blood and tears because of a mistake made by the Housing Department to arrange for three elderly persons to live in one public rental housing (PRH) unit, thus turning a sub-divided unit (劏房) into a place where a person was slaughtered (劏人). Such an arrangement has started to disappear because it is indeed too cruel. However, it is now replaced by something else. Why are Hong Kong people so fond of the word "劏"¹? Is it because their living conditions are too poor, and as result, they become so cruel and fierce that they use the word "劏" to describe everything?

The problem of sub-divided units certainly needs to be resolved. President, there is a popular saying that "the parliament can do anything but

¹ The word "劏" means "sub-divided" in "劏房" but "slaughter" in "劏人".

change men into women and women into men" — in fact, it is possible to do so now. Of course, this Council is useless because half of it is handicapped, and only the other half can function. Let me slightly change the British proverb: The Government can do anything but change men into women and women into men".

Sub-divided units are another kind of caged homes but even worse than caged homes because they are enclosed on all sides, while caged homes at least offer a view on the outside. If the problem of sub-divided units is handled with the great talent, bold vision and courage demonstrated by the Government in dealing with the replacement mechanism, the problem can be resolved instantly once the legislative amendment is passed. The Government may ask the "best fighting" Secretary to lobby us. We do want to vote for the Government. It is reported that all Members in this Council do not want to see any sub-divided units because they are a disgrace. Nor do they comply with the International Covenant on Economic, Social and Cultural Rights of the United Nations which stipulates to the effect that "everyone has the right to proper housing". Although the Secretary will definitely refute that "everyone has the right to proper housing" has no standard, there is actually one: the minimum size of a public housing unit is 7 sq m. In other words, the size of a unit built with public money must be at least 7 sq m before it is considered suitable for dwelling. Otherwise, the Government will be ridiculed, and it cannot bring people to pay a visit there.

This is the point. Secretary Eva CHENG and Secretary Carrie LAM would definitely bring very important persons to visit the most beautiful public housing units and tell them that our public housing units are built in a magnificent manner, with trident flats, harmony blocks, and so forth, available. They would also say that the lower strata often spread rumours, saying that the Government has failed to provide proper social welfare, but people can tell by simply looking at public housing construction that our social welfare is already very good. But will they bring people to visit sub-divided units? I bet with my head that they will definitely not do so. They will simply sweep all rubbish, including the pork they have not eaten, under the carpet. Of course, a bad smell will thus be created.

Years ago, TUNG Chee-hwa proceeded to do something about caged homes because he did not want to see them. The incumbent Chief Executive is even worse than TUNG Chee-hwa because the former remains indifferent when he sees the sub-divided units. Given such a Chief Executive, there is such a

Bureau Director. He simply does not have time to address these issues. Identifying land for tycoons has already given him a headache. And then, he has to look for land for the construction of columbaria and public housing. Furthermore, on the issue of UBWs, he changed his mind immediately when he was bluffed by the "country pumpkins". What is more, he changed his mind over and over again within a day.

Ms Starry LEE is not present at the moment. She kept saying that the sub-divided units were intolerable. I really wish to ask this Government which can do everything and make everything possible whether, in the face of such a trivial matter, it has considered amending legislation to eliminate sub-divided units. If not, the Government is merely engaging in empty talk when it says that there is such a need in the market. These rooms, which are the result of sub-dividing a flat for lease, are actually coffins. President, you should know that coffins are considered commodities because no one needs more than one coffin.

This society has produced many living coffins for the public to reap huge profits. To put it bluntly, people sleeping in these living coffins have been suffering from having no place to live and the Government's failure to provide them with 7 sq m as a decent home. This is the chain effect created by the Government as a result of conniving at property speculation to enable some people to manufacture living coffins to continue to make profits at the expense of others.

A dog's tail can never move a dog's head, right? Intense speculation at the dog's head has even spread to the dog's tail. I know many people who live in living coffins. They share the same characteristics of being very poor and having no skills. Hence, they have to work in places near their homes. Moreover, they are mostly elderly persons. Although a government adopting a policy of benevolence must care for all these people, they choose to earn their own living. Though some of them might be Comprehensive Social Security Assistance (CSSA) recipients, their situation is even worse because the Government makes them surrender all their CSSA payments and housing subsidies to those people who make profits at the expense of others. The situation of those who choose to earn their own living is the same. Although they work day and night and sleep in coffins when they return home, the rents

they pay already take up half of their income. President, they might as well sleep in coffins, for they might then be able to receive paper offerings.

I am not talking about you; you need not be afraid. I will not treat you with disrespect, because you are the only one who can expel me from this Chamber.

PRESIDENT (in Cantonese): Mr LEUNG, we are now discussing the Buildings (Amendment) Bill 2010.

MR LEUNG KWOK-HUNG (in Cantonese): Yes. In view of Ms Starry LEE's mention of sub-divided units, I have asked him to propose an amendment in this connection. He has not proposed an amendment in this regard, right? There is nothing we cannot discuss in this Council, only that we cannot stray too far from the subject. I was just following Ms Starry LEE in talking about the sub-divided units. The President was so brilliant that he thought I was straying from the subject. But actually, one can never stray from the subject. The issue of sub-divided units actually leads to another issue. I was only making some casual remarks just now. I was speaking on the same topic as Ms Starry LEE. Hence, I will definitely not stray from the subject.

Now, I would like to say a few words about the HAD or Home Affairs Bureau, that is, the Policy Bureau managed by your brother. Of course, this has nothing to do with you, President. You only need to convey to him what you heard here. Talking about the Home Affairs Bureau, what do home affairs mean? During the era of the British Hong Kong Government, kaifong welfare associations began organizing the communities and then the Secretary for Chinese Affairs was created, marking the beginning of Chinese people managing Chinese people. This is the origin. But after the riots, the Government considered the performance of the Secretary for Chinese Affairs too poor. As a result, the Secretary was renamed the Secretariat for Home Affairs, which was again renamed the Home Affairs Department as the Secretariat for Home Affairs was considered not pleasing to the ears. Later, owing to the reorganization of the government structure, the Home Affairs Department was renamed the Home Affairs Bureau.

Speaking of home affairs, what do home affairs mean? All sorts of things which are related to people's livelihood are considered home affairs, right? Concerning the four aspects of clothing, food, housing and transportation, let us now talk about housing. This has something to do with him, but what has the Home Affairs Bureau done? I have experienced it personally, and that is, its bid to host the East Asian Games ended up like a broken rusty halberd buried in sand. Members should all understand what I mean by its bid to host the East Asian Games, but what does "a broken rusty halberd buried in sand" mean? To put it bluntly, it means dying without a burial place. The bid to host the East Asian Games has wasted a lot of our time. Had the Secretary have a sharp nose, he should have sniffed out the bad smell of the pork, namely sub-divided units, swept under the carpet. He only needed to ask Donald TSANG, who has the same surname as his — Donald TSANG to be accompanied by TSANG Tak-sing, not Jasper TSANG — to join him to take a look and tell him that the situation was no good. Even the former Chief Executive, TUNG Chee-hwa, found the caged homes unacceptable when he saw one. Had Donald TSANG personally looked into the situation, do you think the problem would have been resolved easily?

The Government has all sorts of initiatives, such as building inspections, window inspections, minimum wage, and so on. As all these have been mentioned by Ms Starry LEE, I will definitely not stray from the subject. All these measures are bound to trigger changes to the livelihood of the people, whether they are givers or takers. What has the Home Affairs Bureau done? Is the Bureau responsible for national education? Does national education not cover people's livelihood? What does "民國" mean? It means the nation of the people. Therefore, the people are the main body. What matters most is the lives of the people, not telling the people what a country or people means. Have Members read the story "The Prince and the Pauper"? The Prince had no idea of the situation of the people until he went into and among the people, whereas the Pauper had no idea of the court until he became a prince. Hence, it was very important for "imperial officials" to tell the emperor of the sufferings of the people. The Government has to retain the ministerial system of nine-provincial procurators

PRESIDENT (in Cantonese): Mr LEUNG, you have strayed from the question under debate.

MR LEUNG KWOK-HUNG (in Cantonese): I have not strayed from the question. I was referring to the Secretary for Home Affairs. LEE Wai-yi Starry LEE said that the Home Affairs Bureau was short of manpower and unprofessional, not delivering efforts where they are due. If she could say this to the Secretary, I certainly can do the same.

My conclusion is very simple. The problem of buildings, which is outside your portfolio, should originally be taken charge of by the Home Affairs Bureau. Moreover, the various problems caused by the Bill to either givers or takers should first be considered by the Government before arrangements are made by the Bureau to rationalize the problems. Isn't "rationalize" a catchphrase nowadays? You have nearly become a target of "rationalization", too. I am actually referring to you, or TSANG Tak-sing, because you are well-versed in the situation of the Architectural Services Department. I will put these "coffin units" aside for the time being. Have you asked TSANG Tak-sing whether he has adequate manpower? You have already carried out five major life-and-death reforms, and as a result, both givers and takers will get hurt. During the morning prayer sessions, apart from saying prayers and having breakfast, have you told TSANG Tak-sing that the Home Affairs Bureau should make preparations for this, just as in the case of shortage of columbaria?

President, I have absolutely not strayed from the subject. It has been proven that this Government would only do bad deeds rather than good ones. Although no one in Hong Kong has ever mentioned a replacement mechanism, the Government has introduced one. Yet, it has not come up with any follow-up measures for a reform that has been planned for several years. Perhaps Secretary Carrie LAM has not instructed Jasper TSANG to give consideration — excuse me, I should have said TSANG Tak-sing rather than Jasper TSANG — otherwise, TSANG Tak-sing must have received the instruction but failed to give consideration. Or perhaps the Chief Executive is basically lame and incapable of keeping things under control. Hence, he did not deal with the matter even though he was well aware of its gravity. The Chief Executive, however, should not be blamed, for he is more competent than Antony LEUNG, who disclosed during an Executive Council discussion that he had forgotten to make a declaration about his car purchase. In contrast, the Chief Executive could even say that he did not know whether or not there were any illegal structures in his property on McDonald Road. Now, when I think about this again, I realize that

you two should not be blamed. The Chief Executive is already very upset by the UBW problem in his own property.

President, I have not strayed from the question. This is the place for us to monitoring the Government. I am here today to monitor the Government. This Bill on buildings is devoid of details on enforcement, policies and complementary measures.

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

PROF PATRICK LAU (in Cantonese): President, I must thank as a matter of course Mr IP Kwok-him, Chairman of the Bills Committee on Buildings (Amendment) Bill 2010 (the Bills Committee), which has held more than 20 meetings. Just now, Ms Audrey EU explained why we had spent so much time on dealing with the Buildings (Amendment) Bill 2010 (the Bill) and whether the contents of the Bill can really be enhanced. Today, the Second Reading of the Bill can eventually be resumed.

President, Mr WONG Kwok-hing was right in saying that the building collapse incident on Ma Tau Wai Road had shocked Hong Kong people. Of course, as a representative of the architectural sector in this Council, I had the opportunity to rush to the scene of the tragedy immediately for an inspection. In my opinion, adequate efforts must be made in this regard. Hence, after the inspection, I proposed in this Council the establishment of a Building Safety Subcommittee, and got the agreement of Members. In view of this, I think that all Members are very much concerned about the problem of building safety in Hong Kong, and such concern is extremely important. I must also thank the Development Bureau for its complementary efforts, and it has done a lot of work in this regard. Most importantly, the Development Bureau can expend substantial funds to assist many problematic old buildings to carry out maintenance and repair works.

President, actually, I wish to point out here that, insofar as the problem of building safety is concerned, it is very important that members of the public and all owners must pay attention to the design of the buildings in which they live. President, I have been teaching building design for 31 years. Just now, many

Members mentioned how my students work. However, I am disappointed with the remarks made by those Members just now because they do not understand that it takes a very long time to train professionals, and their experience can also help their future work. Similarly, we have a number of doctors and legal professionals in this Council — be they barristers or lawyers — it takes a very long time before they can acquire their professional qualifications. In terms of morality, they must also demonstrate a very high standard of integrity, or else we do not have to establish such a large number of institutes for monitoring purposes. Therefore, I hope that Mr LEE Wing-tat, who mentioned just now that one of my students had done certain improper things, can pinpoint that person. Our institute welcomes him to lodge a complaint and will seriously review the relevant issues.

Just now, a number of Members also pointed out the problems targeted by the legislation in respect of building safety. I also hope to discuss these problems *seriatim* within my limited speaking time. President, I certainly support this Bill because, without the enactment of this piece of legislation, the MBIS and MWIS will not come into being, for mandatory building inspections makes it possible for records to be kept on building safety. Just now, Mr Ronny TONG asked whether the Government needed to do anything after producing the records. In my opinion, this piece of legislation is enacted in the hope that all owners can shoulder their own responsibility and carry out maintenance and repair works when their buildings are found to have any problems. This is the original legislative intent of the Bill. Otherwise, if there is spalling of concrete on the external wall of a building or a loosened window falls onto the street, then the safety of residents cannot be protected. Moreover, the safety of others will be jeopardized. Therefore, it is very important to implement this piece of legislation.

In fact, President, I am quite disappointed because the Hong Kong Government has seldom educated members of the public on the design of buildings in Hong Kong and the existing safety problems. I have repeatedly proposed to the Town Planning Board that Hong Kong needs to set up a building planning gallery to make the public understand the design of different buildings and their safety, such as the safety of fire escapes, or the building safety issues that warrant attention. All these are very important. Hence, I hope that the Secretary can make more efforts in public education. If even a museum cannot

be built, there is no way for many members of the public to understand the design of the buildings in which they live, their living environment, and so on.

To understand this problem, we must know that Hong Kong has all along been developing very rapidly, and there have been considerable changes in building designs in the past five decades. Members should recall that, in a major fire that occurred in Shek Kip Mei in the 1950s, all the wooden huts were destroyed and many new arrivals lost their homes. Fortunately, the then colonial government had already introduced a public rental housing (PRH) policy. Under the policy, Hong Kong people who could not afford private housing could opt for PRH flats. This is an excellent policy.

Just now, a Member — Mr LEUNG Kwok-hung — also mentioned these social problems. If he has no knowledge of Hong Kong's history, he will not understand the problems brought about by our rapid development.

Actually, all these buildings we are discussing today, that is, buildings aged 30 years or 50 years, share one characteristic. They all have the problem of fire escapes, to which we must pay more attention. In the building on Ma Tau Wai Road, where a fire occurred recently, some occupants were killed as a result of the blockage of a fire escape, which made it impossible for them to know about the situation of the smoke.

Just now, Ms Starry LEE also mentioned the problem of sub-divided units. I also wish to say a few words here about this problem. I think all Members will understand that this is a social problem. For financial reasons, some people live in sub-divided units because they can only afford to live there or they have not yet been allocated public housing.

So, where is the problem? Actually, the sub-division of flat units does not necessarily render the building concerned incapable of bearing the associated load. The most important issue is actually fire prevention. In respect of the regulation of dormitories or other aspects by legislation, it is very important that sound fire installation, such as sprinklers and at least one smoke detector, must be provided.

In the event of a fire, the dense smoke will trigger the alarm of the building, so that the occupants will be alerted to the fire. Had this been the case,

the occupants would not be unaware of the occurrence of a fire because they were asleep and were subsequently burnt to death in the fire that occurred in a building on Ma Tau Wai Road. This is the problem we must strive to address.

Now, I would like to say a few words on why the deliberations of the Bills Committee have taken such a long time. I am very grateful to the Development Bureau for subscribing to our view that the provision on the requirement for obtaining a court warrant for entry into premises should be removed in order to avoid ambiguous legal issues. All members of the Bills Committee have expressed great support.

As pointed out by Ms Audrey EU, even the Legal Adviser of the Legislative Council has clearly indicated that the proposed warrants for entry into premises appear to involve measures concerning enhanced building safety outside the MBIS and MWIS that might not necessarily be covered by the Bill. The Bill actually seeks to prevent buildings from becoming unsafe by providing for regular inspections and related repairs for the buildings. This is the spirit of the Bill.

Hence, during the inspections, the exteriors of the buildings or the projections on external walls must be examined to ascertain whether or not there are any risks. In this regard, I think that we should the Secretary's withdrawal of the clause on the warrant for entry into premises.

Of course, there is also an amendment proposed by Mr KAM Nai-wai to the Bill. Just now, the two barristers already gave a very clear explanation pointing out the problems with Mr KAM's amendment. I will explain in detail again when he proposes his amendment later on. Both the Hong Kong Institute of Architects and the Hong Kong Institute of Surveyors (HKIS) have given their professional opinion explaining clearly why the amendment is problematic.

President, apart from this problem, a Member has pointed out that building safety and building management are closely related. Of course, building management has a certain important role to play. Members should understand that the management of this type of old buildings is mostly plagued with problems, such as the "three nos" problem mentioned by an Honourable colleague. I wish to point out that we have made a lot of efforts in this regard. Very often, urban renewal will be carried out for old buildings in Hong Kong.

In respect of urban renewal, the Secretary has now made a lot of physical and mental efforts and formulated new approaches in the hope of rationalizing these problems.

In the past, urban renewal actually posed a major problem because, in many places selected by the Urban Renewal Authority for renewal, many owners only waited for acquisition or compensation, reluctant to carry out repair works for their buildings. I have seen many problems of building neglect getting increasingly worse.

Hence, in this regard, I consider mandatory building inspections a key element. We have discussed numerous times at the meetings of the Bills Committee whether there is adequate manpower to undertake the work in this regard and discussed many associated issues.

The HKIS has boosted our confidence, saying that they have adequate professionals to cope with such a mammoth task. I trust they have a clear idea of the number of building surveyors who are available to undertake such work. Without smooth support in this regard, this piece of legislation can hardly succeed.

Regarding the question raised by a number of Members just now as to why there are so many problems with maintenance, I will explain this in detail again later. In this regard, since my discussion with the ICAC, relevant efforts have been stepped up and some problems have, to a certain extent, been resolved.

President, the most difficult thing is that everyone believes in the "lowest bid gets the tender". Should we review this concept? This is the point. Actually, we are in desperate need of more professionals to properly perform their tasks.

Thank you, President.

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

(No Member indicated a wish to speak)

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

SECRETARY FOR DEVELOPMENT (in Cantonese): President, first of all, I sincerely thank the Chairman, Mr IP Kwok-him, and Deputy Chairman, Dr Raymond HO, as well as other members of the Bills Committee for giving many valuable opinions on the Buildings (Amendment) Bill 2010 (the Bill). The Bills Committee has held a total of 22 meetings. During the scrutiny of the Bill, the Bills Committee has invited a number of organizations in relevant industries to give their views and thoroughly discuss the details of the implementation and operation of the Bill. We have incorporated the views of the Bills Committee and the stakeholders and proposed relevant amendments to perfect the provisions of the Bill.

The Bill seeks to introduce a mandatory building inspection scheme (MBIS) and a mandatory window inspection scheme (MWIS) through the amendment of the Buildings Ordinance, in the hope that the building neglect problem in Hong Kong can be addressed at root. In his speech earlier, Mr WONG Kwok-hing said that the resumption of the Second Reading on the Bill today evoked some feelings in him, and I must say that I share his feelings. Members may recall that this Bill was read the First time on 3 February last year and on that day, an adjournment debate proposed by Ms Starry LEE was held in the Legislative Council because about 10 days before 3 February, an incident occurred in Ma Tau Wai Road where a building collapsed, resulting in heavy casualties. Therefore, on the same day as I introduced the Bill on the MBIS and MWIS, I also responded to Members' concerns about the safety of old buildings in Hong Kong. The resumption of the Second Reading debate on the Bill in the Legislative Council today is a milestone of our work to enhance the safety of buildings. It is because if owners do not have the awareness and culture of regular inspection and timely maintenance of their properties, the enforcement departments will only be working to the point of exhaustion, not being able to thoroughly address this problem which is inextricably linked with public safety. Today, the Second Reading on the Bill is resumed and I hope the Bill will be passed later. It is now the most opportune time because during the past few years, as also mentioned by several Members earlier on, the Development Bureau, the Buildings Department (BD) and even our partner organizations have

indeed carried out a lot of work to provide support and matching measures. In this connection, Mr LEUNG Kwok-hung can rest assured because in fact, in anticipation of the Bill coming into operation, we have carried out a lot of matching initiatives during the past few years to dovetail with the implementation of the MBIS and MWIS, with a view to providing support to owners in need.

Building ageing and dilapidation is a long-standing and increasingly serious phenomenon in Hong Kong. At present, there are about 18 000-odd buildings aged 30 years or more in Hong Kong, of which about 4 000 aged 50 years or more. After the Ma Tau Wai Road building collapse incident in January last year that I have just mentioned, the BD has inspected over 4 000 buildings aged 50 years or more and found defects of different extents in 25% of them, or about 1 000 buildings, for which a repair or investigation order has to be issued to the owners. To obtain a clearer picture of the situation of buildings in Hong Kong, the Urban Renewal Authority (URA) conducted last year an in-depth study on old buildings aged 30 years or more in Hong Kong. The study was conducted in two stages. First, the URA studied the information collected in some similar surveys and then, an on-site study was conducted to look into the conditions of buildings by, among other things, carrying out site investigation of buildings and questionnaire surveys among households. With regard to building investigation, visual inspections were conducted of target buildings, focusing on the external walls, rooftops and common parts of the buildings as well as the interior of some flats, while more detailed investigations and tests were randomly conducted in selected buildings to gauge the extent of concrete carbonation, erosion by chloride and reinforcement corrosion. Preliminary findings showed the problem of carbonation in some of these old buildings where unprotected reinforcement was resulted from increasingly serious corrosion. Besides, many of the buildings were not serviced by elevators and exhibited such problems as concrete spalling, dilapidated facilities, water leakage, and the lack of building management and maintenance. According to these findings, coupled with the fire that broke out early this month in an old building on Ma Tau Wai Road which resulted in heavy casualties and the recent spate of incidents relating to unauthorized building works (UBWs) and building neglect, I firmly believe it is imperative to take actions to enhance building safety.

We must adopt more effective measures to ensure that owners take up the responsibilities of carrying out properly repairs and maintain of their properties, thereby enhancing the safety of their buildings and preventing the recurrence of

accidents. The MBIS and MWIS are precisely introduced on the principle that prevention is better than cure, whereby owners of old buildings are required to regularly inspect their buildings. The objective is to identify problems early and carry out proper repair works, thereby assuring building safety at root. Mr IP Kwok-him drew an analogy between buildings and our own bodies earlier on, stressing the need to carry out regular check-ups in order to protect our health. In fact, compared with body check-ups, it is more difficult to carry out regular inspections of buildings given such a large number of owners in high rise buildings in Hong Kong, and it is not easy indeed for them to act in unison and carry out an inspection of their building.

In fact, the policy of mandatory inspection of buildings and windows has been in the brewing for many years and there has been extensive consultation and discussion in society. Various professional bodies and the public generally agree that it is a correct policy direction to make it a statutory requirement for owners to inspect and maintain their buildings regularly. Members of the Legislative Council are also generally supportive of the implementation of this proposal as soon as possible.

Under the MBIS, except domestic buildings not exceeding three storeys in height, owners of private buildings aged 30 years or more will be required to carry out inspections and repair works in relation to the common parts, external walls and projections of buildings once every 10 years. Under the MWIS, except domestic buildings not exceeding three storeys in height, owners of private buildings aged 10 years or more will be required to conduct inspections once every five years and carry out repair works on a need basis. The Bill has provided for an appropriate legal framework to this end.

To give effect to these schemes, the BD will select 2 000 and 5 800 target buildings every year respectively for mandatory building and window inspections, taking into account such factors as building age, building conditions, repair records and location. In selecting the buildings, the BD will make reference to the views of the selection panel comprising representatives from the public and professionals. To minimize the inconvenience caused to owners, we agree with Members' view that buildings selected for mandatory building inspection should also be selected for mandatory window inspection under the same cycle as far as possible, such that the owners can carry out inspection and repair works under both schemes concurrently.

The implementation of the MBIS will also facilitate the enforcement work of the BD against UBWs. Under the Bill, a Registered Inspector (RI) appointed to carry out a prescribed inspection in respect of the common parts and external walls of a building is required to identify UBWs in the common parts and the external walls of the building, assess the safety conditions of these UBWs, and report to the BD in the inspection report. Making reference to such information, the BD will take appropriate actions in accordance with the prevailing enforcement policy. Since April this year, the scope of enforcement has been extended to cover UBWs on rooftops, podiums, light wells and back alleys of buildings where these UBWs neither constitute an imminent danger nor pose a serious hazard. This will certainly be helpful to this area of work.

The MBIS and the minor works control system introduced last year can also achieve synergy. As it is more convenient and economical to remove the UBWs in the course of other repair works being carried out in the common parts or external walls of the buildings, we encourage owners to participate in the Household Minor Works Validation Scheme under the minor works control system, whereby owners may retain some small-scale household UBWs that can meet the specifications, including supporting frames for air conditioners, drying racks and small canopies over windows for continued use, after safety inspection and completion of necessary remedial works. Validated UBWs will be subject to inspections under the MBIS in the future cycles.

On the problem of subdivision of flats which has aroused concern in the community recently and is particularly of concern to Ms Starry LEE, we have explained to the Bills committee that requiring inspection of the interior of every individual unit under the MBIS may cause serious disturbance to owners and practical difficulties. As the units are private premises and RIs, being not public officers, do not have the statutory authority to enter private premises, not all the owners will be willing to grant entry of these appointed RIs into their units, and this will slow down the compliance with the statutory requirements by the building as a whole. We consider that individual units should be inspected and necessary follow-up actions be taken after receiving referrals from statutory bodies. In fact, if the subdivision of flats has adversely affected the structural integrity of a building, signs should be detectable in the common parts and on the external walls of the building, and building professionals and the industry have agreed to this point. If RIs observe any sign of distress or other indications during their inspection of the common parts or external walls of the building,

which show that the subdivision of flats has adversely affected the structural integrity of the building, they are required to report to the Building Authority (BA) in the inspection report or immediately in case of emergency. We believe this arrangement will enable us to identify most buildings in which the subdivision of flats is serious. Other than the statutory duties of the RIs, we will also stipulate in the Code of Practice that if an RI sees further signs of suspected subdivision of flats, such as the presence of many flat door openings, door bells, mailboxes, drainage connections, and so on, they should also inform the BA for follow-up. Moreover, as Members all know, in the series of new measures for building safety enhancement in Hong Kong, the BD is requested to step up inspection of "subdivided flats" and promptly take follow-up actions after receiving the reports of RIs. For the regulation of subdivision of flats, we will introduce some amendment regulations at a later stage to incorporate the works involved in subdivision of flats into the minor works control system.

During the discussions of the Bills Committee, I noticed that Members are particularly concerned about two key points in respect of the operation of the mandatory schemes. As also mentioned by Mr IP Kwok-him, the first is that the Government must ensure that there will be adequate service providers and their quality is monitored; and second, the Government must provide full assistance to owners who lack the expertise or financial resources to carry out inspections and repair works.

In fact, sufficient manpower is very important to the smooth implementation of the MBIS and MWIS, and it is right for Members to express their concern. As a matter of fact, Members expressed the same concern when the legislation on the minor works control system was introduced for scrutiny back then. I am glad to report to Members that the minor works control system has generally operated effectively and recorded a significant number of registrations since it was introduced about half a year ago. As at May this year, the BD had received 12 774 applications for registration as minor works contractors, of which 5 351 were applications made by individuals. The BD has approved 7 780 applications for registration as minor works contractors. Therefore, there should be sufficient contractors for carrying out minor works.

In respect of the MBIS and MWIS, we will endeavour to ensure an adequate supply of inspectors and contractors in the market for owners to choose from. In respect of the MBIS, the pool of inspectors will be extended from

Authorized Persons (APs) registered under the Buildings Ordinance and Registered Structural Engineers to registered architects, registered professional engineers and registered professional surveyors of the relevant disciplines. With the registration of relevant professionals as RIs, the pool of RIs is expected to significantly increase from 1 800 to about 6 500. As for the MWIS, the pool of inspectors will be further expanded to cover registered general building contractors and registered minor works contractors. The number of qualified inspectors is expected to reach 30 000. Under the Buildings Ordinance, a new register and regulatory mechanism will be introduced and an Inspectors Registration Committee will be set up to assess and monitor the professional standards of inspectors. The BD will issue detailed guidelines on the requirements and standards for building inspection, window inspection as well as repair and maintenance works. The BD will randomly review the inspection reports submitted by inspectors and impose suitable punishment where irregularities are identified.

Various relevant professional institutes generally agree that the qualification requirements for inspectors are appropriate and envisage that the supply of practitioners should be adequate to meet the market demand after the MBIS is brought into operation while facilitating competition in the market. The BD will closely co-operate with various professional institutes to encourage qualified building professionals to register as RIs to provide inspection and repair services for building owners.

Members are also very much concerned about the details relating to the hiring of building and window inspectors by owners, especially the accountability of the relevant professionals to owners. At the request of Members, we will propose amendments to the Bill and add provisions in future regulations to provide greater protection for owners.

To allow greater flexibility for owners in their choice of Qualified Persons (QPs) under the MWIS, we propose to delete the requirement in the Bill that the same QP must be engaged to carry out the prescribed window inspection and repair, so as to allow owners to appoint different QPs to carry out inspection and repair works. We will also require RIs to submit a copy of the inspection report to building owners in future regulations. We will add provisions to require that the necessary prescribed repair works under the MBIS and MWIS should be clearly set out. On this point, Mr TONG reminded us earlier that such works

should be prescribed as clearly as possible to minimize possible disputes. Such works will be distinguished from additional works that an owner corporation (OC) or co-owners may wish to carry out at the same time. The necessary repair works are intended to bring buildings in line with the statutory standards at the time when they were developed or the upgraded standard as required by legislation enacted thereafter.

The tendering process is also an issue of great concern to Members. Although this is not a building safety issue under the statutory purview of the Buildings Ordinance, in order to assist owners in handling the tendering process, we will issue guidelines on best practices on tendering procedures in the form of Practice Notes by making reference to the guidelines on repair and maintenance works issued by the Hong Kong Housing Society (HKHS) and the URA in consultation with the Independent Commission Against Corruption in respect of Operation Building Bright. We propose that open tenders should be conducted to select the inspectors and repair works contractors under the MBIS and MWIS. We will remind owners to include in the tender documents ethical commitments and require RIs, QPs and contractors who have submitted a tender to sign a declaration on compliance with the ethical commitments and disclosure of any conflict of interest.

The Practice Notes issued by the BD will provide clear guidelines to the industry for compliance by RIs and QPs throughout the whole tendering process for the MBIS and MWIS. The relevant professional institutes have confirmed that complaints concerning non-compliance with ethical commitments by their members will be handled, while complaints on unethical practices in tendering will be dealt with in accordance with the respective professional codes or constitutions. Disciplinary proceedings will be initiated if there is evidence showing that members of the professional institutes have infringed the relevant codes against misconduct or caused disrepute to their professions.

Regarding Mr KAM Nai-wai's proposal to make it mandatory for practitioners to comply with the Practice Notes relating to the best practices on tendering procedures and add relevant provisions to the Buildings Ordinance, we consider his proposal inappropriate as the tendering process is business conduct and a building management issue and its regulation is not within the scope of the Buildings Ordinance. I will expound our views and the points made by one or two Members at the Committee stage.

Building owners will be informed before the statutory notification is formally issued to give owners time to make preparations and planning. Arrangements will be made for each building to have a contact point where owners can make "one-stop" enquiries and access support services. We will arrange for briefings to be held in districts to explain to owners the details of the MBIS and MWIS as well as various support schemes. The Government, the HKHS and the URA will proactively contact and liaise with building owners, especially owners of buildings without an OC, to encourage and assist them in organizing inspections and repair works and setting up their own OC in the long term.

We understand that if owners do not have sufficient expertise or financial means to fulfill their responsibilities for their buildings, the making of legislation on mandatory building inspection and repair is bound to face immense difficulties. In view of this, the Development Bureau has continuously strengthened and enriched the provision of suitable support services to owners in need over the past few years through our partner organizations. The most effective result is the consolidation of partnership among the BD, the HKHS and the URA in the promotion of building safety through the implementation of Operation Building Bright. The BD is at present mainly playing a statutory role in enforcement actions, while the HKHS and the URA provide practical advice and technical assistance to owners. Drawing on the experience of this partnership, we will provide owners with the advice and support that they require for compliance with the two mandatory inspection schemes.

The HKHS and the URA will provide a comprehensive range of support to OCs and owners, including technical advice on the tendering process, selection of inspectors and contractors, as well as monitoring of the progress of works. They will also particularly remind building owners of the procedures for the prevention of corruption and tender-rigging. We notice that many building owners may not have the experience of carrying out large-scale building maintenance and repair works and may not be conversant with the tendering procedures and in particular, assessing the tender prices submitted. To provide convenience to owners in this respect, the HKHS has developed a Building Maintenance Tool Kit which contains guidelines, standard templates and checklists for tendering procedures for the use of building owners. The Hong Kong Institute of Surveyors (HKIS) has also published a set of "Standard Form of Contract for Decoration, Repair and Maintenance Works" with the essential terms and conditions for building owners.

Building owners who have queries can seek advice from the offices of the HKHS or the URA in various districts across the territory. In the meantime, we are currently discussing with the HKIS the drawing up of a reference price list as an objective reference to owners in respect of the prices of various items of repair works.

To address the problem of building neglect, the new Urban Renewal Strategy has given the URA a greater task of building rehabilitation. As a core business of the URA, building rehabilitation will receive an injection of \$1.3 billion by the URA in the next five years to facilitate the rehabilitation of more than 2 000 buildings. This year, the URA will set up in Tai Kok Tsui a three-storey Urban Renewal Resources Centre (URRC) to provide services relating to redevelopment and rehabilitation to residents in the old districts. We will hold discussions with the URA to ascertain if it is possible to, as mentioned by Prof Patrick LAU, provide more information or hold exhibitions in URRC, so that owners of old buildings will know the situation of their buildings. The URA is identifying suitable locations in other districts for setting up more URRCs to provide services to the public.

In respect of financial assistance, we have secured the undertaking of the HKHS and the URA to subsidize eligible owners the full cost of first inspection under the MBIS, and about 80% of owners are expected to receive subsidies. Mr KAM Nai-wai mentioned that the rateable values may need to be reviewed following an increase in property prices in recent years. In fact, the HKHS has regularly carried out reviews and will conduct a new round of review based on the latest rateable values provided by the Rating and Valuation Department. Ms Starry LEE should be pleased to know that the previous cap of 400 units under the MBIS has been lifted and we are making continuous efforts to improve the measures for providing financial assistance to building owners, with a view to providing greater convenience to them. The HKHS and the URA have consolidated the five existing assistance schemes and amalgamated them into the Integrated Building Maintenance Assistance Scheme (IBMAS) which was introduced on 1 April 2011. The IBMAS will have unified application criteria and terms and conditions for all buildings in Hong Kong. Through completion of just one set of application forms, building owners can access a comprehensive range of assistance. Besides, the eligibility criteria of some schemes have been relaxed and the scope of works eligible for assistance extended. As I said earlier, the restriction on the number of units of a building, which is not more

than 400 units, has already been lifted, while the Building Maintenance Grant Scheme for Elderly Owners and Comprehensive Building Safety Improvement Loan Scheme will continue to provide subsidies and loans to eligible owners.

If owners of old buildings have serious practical difficulties in organization and it is ultimately still impossible for them to carry out inspection and repair works on their own despite of the assistance provided to them on various fronts, the BD will intervene and carry out the works on behalf of these owners and then apportion the cost and recover the apportioned cost from each of the owners, in order to protect public safety. To prevent abuse of this arrangement by owners, the original Amendment Bill provided for the imposition of a fixed surcharge of 20% on the cost incurred by the BD to be recovered from an owner who has failed to comply with the statutory notice. At the request of Members, we will propose an amendment to the clause to give the BA the discretion to impose a lower surcharge subject to a ceiling of 20%.

To deter unco-operative owners from refusing to take up their responsibilities and obstructing the progress of works carried out by OCs, we proposed in the original Bill that an owner who, without reasonable excuse, refuses to contribute his share of cost of inspection or repair works that is required for the purpose of complying with the statutory notices under the MBIS and MWIS will be subject to criminal sanctions and be liable to a fine at level 3, that is, \$10,000, and to imprisonment for six months. Having considered the concern expressed by some Members who consider the proposed imprisonment penalty too harsh, we have proposed to remove the imprisonment term but increase the fine to level 4, that is, \$25,000.

Lastly, the Committee stage amendments (CSAs) will also include some technical amendments to enable the Buildings Ordinance, including the MBIS and MWIS, to operate more smoothly.

After the completion of the legislative exercise on the Bill which serves to amend the principal ordinance, our next step is to proceed to the drafting of the relevant subsidiary legislation. As we explained to Members in the Bills Committee, we will prescribe in the subsidiary legislation technical issues including the detailed qualifications and experience required of RIs, the detailed scope of buildings covered by the inspection and repair schemes, the procedures of inspection and repair, and the submission of documents. We will continue to

listen to the views of the industry in the drafting process. We will also step up publicity and table as soon as possible the relevant regulations for the scrutiny of the Legislative Council.

I would like to take this opportunity to say that the MBIS and MWIS are only part of the series of measures adopted by the Government for improving building safety. Our strategy is to take a multi-pronged approach, and in replying to debates or questions in the Legislative Council, I have repeatedly explained in detail the measures relating to the legislative exercise, law enforcement, provision of assistance to owners and public education. Incidentally, I would like to point out that some of the new initiatives will require legislative amendments, and in order to facilitate the early implementation of these measures, the Development Bureau tabled the proposed CSAs to the Bills Committee in February this year after consulting the Subcommittee on Building Safety and Related Issues of the Panel on Development early this year, proposing the introduction of new measures. These measures include imposing a surcharge on owners for failing to carry out works required under the Buildings Ordinance, imposing a penalty on individual owners for refusing to share the cost of works incurred by the OCs, the application for warrants for entry into private premises by the BD, introducing a signboard control scheme, and requiring RIs to report UBWs on the external walls of the building but within private premises. At the many meetings of the Bills Committee from February to May this year, Members discussed in detail the various proposed amendments. With the exception of the warrant proposal about which reservations were expressed by some Members who considered that more detailed discussion would be necessary and new provisions be added to explicitly state the objective of the Government, Members generally support the principles and details of the other amendments.

Although many members of the Bills Committee, including members who have spoken today, have expressed support for the various proposals including the warrant proposal, some Members hold that this amendment should not be included in an Amendment Bill drafted for the purpose of implementing the MBIS and MWIS after making reference to counsel of the Assistant Legal Adviser of the Legislative Council. While the Administration holds a different view, I fully respect the opinion of Members. The previous proposal made by us was not intended to infringe the basic rules of the Legislative Council in scrutinizing this Bill, just that after consulting the Subcommittee on Building Safety and Related Issues of the Panel on Development, we thought that most members supported the introduction of additional legislative amendments as early

as possible. But since some Members hold a different view, I fully respect it and meanwhile, in order not to affect the legislative exercise on the MBIS and MWIS, we, therefore, decided to remove all the relevant proposed CSAs from the current legislative exercise and introduce as soon as possible a separate Bill containing these proposed amendments in the latter part of the year, so as to provide the legal basis for the smooth implementation of other measures. As most of these additional amendments have been examined by Members over the past few months, we will closely work with the Legislative Council in the hope that the new Bill will be passed as soon as possible for implementing more comprehensive measures for improvement of building safety.

Lastly, President, the implementation of the MBIS and MWIS is an integral part of the Government's commitment and strategy to improve building safety in Hong Kong. Having said that, these schemes are no panacea, and I do appreciate the need to work on a lot more areas in order to effectively improve building safety. As Members said in their speeches today, it involves the work of building management which is closely related to the repairs and maintenance of buildings on the one hand, and there are also the housing problems arising from the subdivision of flats on the other. In this connection, in response to the request of Ms Starry LEE, I have conveyed Ms LEE's view to the Chief Secretary for Administration, that the co-ordination of the work of various bureaux and departments should be elevated to a higher level. The Chief Secretary for Administration told me that he would be happy to provide co-ordination at an appropriate time. As I have worked in the Home Affairs Bureau for a brief period before and from my previous posting as the Director of Social Welfare, I have a good understanding of the situation of old buildings in Hong Kong, I am going to draw up an outline of the overall safety control of old buildings as well as problems in other aspects when my work schedule is less tight or perhaps during this summer and then submit it to the Chief Secretary for Administration for high-level co-ordination.

President, buildings in Hong Kong are ageing rapidly, and the implementation of the MBIS and MWIS can brook no delay. I implore Members to support the Bill and the amendments that I am going to propose later on, so that these two schemes for raising building safety standards can come into operation early.

Thank you, President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Buildings (Amendment) 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)

Mr Albert CHAN rose to claim a division.

PRESIDENT (in Cantonese): Mr Albert CHAN has claimed a division. The division bell will ring for three minutes.

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

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

Mr LEE Cheuk-yan, Mr Fred LI, Dr Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr LEUNG Yiu-chung, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Kong-wah, Ms Miriam LAU, Ms Emily LAU, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr Frederick FUNG, Ms Audrey EU, Mr Vincent FANG, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr Ronny TONG, Prof Patrick LAU, Mr KAM Nai-wai, Ms Cyd HO, Ms Starry LEE, Mr CHAN Hak-kan, Mr Paul TSE, Mr CHAN Kin-po, Dr Priscilla LEUNG, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr IP Kwok-him, Mrs Regina IP, Dr PAN Pey-chyou, Mr Paul TSE, Dr Samson TAM and Miss Tanya CHAN voted for the motion.

Mr Albert CHAN and Mr WONG Yuk-man abstained.

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

THE PRESIDENT announced that there were 44 Members present, 41 were in favour of the motion and two abstained. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

CLERK (in Cantonese): Buildings (Amendment) Bill 2010.

Council went into Committee.

Committee Stage

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

BUILDINGS (AMENDMENT) BILL 2010

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Buildings (Amendment) Bill 2010.

CLERK (in Cantonese): Clauses 1, 2, 3, 5, 7, 8, 9, 12, 15 to 18, 20, 21, 22, 28 to 35, 37 to 43, 45 and 46.

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 as stated. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 4, 6, 10, 11, 13, 14, 23 to 26, 36 and 44.

SECRETARY FOR DEVELOPMENT (in Cantonese): Chairman, I move the amendments to the clauses read out just now. The amendments are set out in the paper circularized to Members. I have briefed Members on some of the amendments during the resumed Second Reading debate.

As I have just explained, in order to achieve a deterrent effect on owners who refuse to fulfil their responsibility and pose obstruction to the OC to carry out the works, we have proposed in the original Buildings (Amendment) Bill 2010 to provide for an offence where an owner in the absence of any reasonable ground obstructs an OC in carrying out or refuses to contribute to the costs of inspection and repair works prescribed by the statutory notice under the Mandatory Building Inspection Scheme (MBIS) or the Mandatory Window Inspection Scheme (MWIS), a fine at level 3, that is, \$10,000 and imprisonment for six months may be imposed.

Having considered the concern expressed by Members about the proposed penalties and the view that the penalty of imprisonment may be too severe for owners, we have proposed to remove the penalty of imprisonment. But instead we have revised upwards the proposed fine to level 4, that is, \$25,000. The proposal is endorsed by the Bills Committee on the Buildings (Amendment) Bill 2010.

Clause 25 of the Bill originally proposes amending section 39B of the existing Buildings Ordinance (the Ordinance) to provide for a criminal offence where an owner obstructs an OC in carrying out or refuses to contribute to the costs of inspection or repair works incurred by notices issued by the Building Authority (BA) for common areas of the building concerned under the MBIS or the MWIS. The offender is liable to a maximum penalty of a fine at level 3, that is, \$10,000 and imprisonment for six months.

The amendment we are making now is to separate the offence from section 39B of the existing Ordinance and handle it under a new section 39(1A). In view of the abovementioned separation, a consequential technical amendment is made to section 39B(1). I understand that the Committee will deal with the new amended penalties after votes are cast on this part.

Clauses 10(16), 11(1), 13(6) and 14(1) are about the time limit for RIs and contractors lodging appeals with the High Court in respect of their application for registration and disciplinary proceedings.

Our original intent is to allow the persons concerned to lodge an appeal of the decision or order concerned within 28 days after the written notification of the decision or order is served. After taking reference of the advice of the Assistant Legal Adviser of the Legislative Council and with the consent of the Bills Committee, we propose that these provisions be repealed. The relevant time limit for appeal will be dealt with under the Rules of the High Court (Cap. 4A).

At the same time, in order to delineate our policy intentions, we will make it clear that registered minor works contractors may appeal against an order made by the disciplinary board of the registered minor works contractors. We propose adding the term "registered minor works contractor" to clause 13(6) of the Bill to amend section 13(7) of the Ordinance.

Clause 23(3) of the Bill proposes adding new section 38(1)(kg)(ii) to the Ordinance to vest powers in the Secretary for Development to make subsidiary legislation on the scope, standards and requirements of a prescribed inspection or prescribed repair in respect of a window in a building.

The Assistant Legal Adviser of the Legislative Council has pointed out that the term "building" in the proposed new section I have just read out in effect

covers the windows of a building, we agree with this view and so we propose to delete the above provision.

The Buildings (Amendment) Ordinance 2008 which has introduced the minor works control system came into full effect on 31 December 2010 and the relevant provisions in the Bill have to be updated and technical amendments have to be made to them. We therefore propose removing the references to the Buildings (Amendment) Ordinance 2008 in clauses 10, 13, 24, 26 and 44 of the Bill.

At the same time, we propose to amend part of the provisions in the Chinese text of clauses 4(6) and 23 of the Bill to amend section 2(1), section 38(1)(ka)(ii), (iii) and (iv), and section 38(1)(kd)(ii) of the Ordinance, by deleting "類別" and substituting "類型". This is to ensure consistency in the terminology used in the Ordinance and the Buildings (Minor Works) Regulations.

Lastly, other provisions in the amendments also include some changes to the wording and of a technical nature, including the Chinese text of clauses 6(18) and 36 of the Bill so as to achieve greater clarity and accuracy.

Chairman, all of these amendments have been discussed in detail in the Bills Committee and endorsed by it.

I implore Members to support and pass the amendments. Thank you, Chairman.

Proposed amendments

Clause 4 (see Annex II)

Clause 6 (see Annex II)

Clause 10 (see Annex II)

Clause 11 (see Annex II)

Clause 13 (see Annex II)

Clause 14 (see Annex II)

Clause 23 (see Annex II)

Clause 24 (see Annex II)

Clause 25 (see Annex II)

Clause 26 (see Annex II)

Clause 36 (see Annex II)

Clause 44 (see Annex II)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 4, 6, 10, 11, 13, 14, 23 to 26, 36 and 44 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the clauses read out as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

CLERK (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 19 and 27.

CHAIRMAN (in Cantonese): The Secretary for Development has given notice to move amendments to clauses 19 and 27. The Secretary's amendments to clause 19 seek to amend the heading of proposed section 30A and delete subsection (1) of that section, amend subsections (5), (6) and (11) of section 30B, subsections (8) and (9) of section 30C and subsections (1) to (8) of section 30E, as well as to add subsection (1A). The Secretary's amendments to clause 27 seek to amend subsections (1), (2), (5) to (10) and (13) to (15) of the section, and to add subsections (14A) and (16).

In addition, Mr KAM Nai-wai has also given notice to move amendments to clauses 19 and 27. Mr KAM Nai-wai's amendment to clause 19 seeks to add subsection (2A) to section 30D and subsection (1B) to section 30E. Mr KAM Nai-wai's amendment to clause 27 seeks to add subsection (2ADA) before section 40 subsection (2AD).

Irrespective of whether the amendments of the Secretary for Development to clauses 19 and 27 are passed or not, Mr KAM Nai-wai may move his amendment to clause 19. If the amendment of Mr KAM Nai-wai to clause 19 is

passed, he may move his amendment to clause 27; otherwise, he may not move his amendment to clause 27.

CHAIRMAN (in Cantonese): Members may now have a joint debate on the original clauses 19 and 27, and the amendments of the Secretary for Development and Mr KAM Nai-wai. I will first call upon the Secretary to speak and move her amendments.

SECRETARY FOR DEVELOPMENT (in Cantonese): Chairman, I move the amendments to clauses 19 and 27 as set out in the paper circularized to Members. In the resumed Second Reading debate earlier, I have briefed Members on the amendments proposed by the Administration and I talked about some of them. I will first brief Members on the parts to be amended by the Administration, then I will explain our opinion on the amendment proposed by Mr KAM Nai-wai.

First of all, as I have mentioned in the Second Reading debate earlier, if there are owners of old buildings who have great practical difficulties in organizing repair works and eventually, despite assistance on many fronts, they are unable to carry out any building inspection and repair works, then in the interest of protecting public safety, the Buildings Department (BD) will intervene and carry out the works on behalf of the owners. The costs involved will later be apportioned and recovered from individual owners. However, in order to prevent any abuse of the relevant arrangement by the owners, the original Buildings (Amendment) Bill 2010 specifies that for owners failing to comply with the statutory notice, the BD will impose a fixed surcharge of 20% on top of the costs to be recovered by the Department. It is the view of Members that this surcharge should not be made uniform. The Administration should take into account the gravity of the case and consider imposing a lower surcharge in some less serious cases. In response to Members' request, we will amend the relevant provision and allow the Building Authority (BA) to be vested with the discretion to impose a lower surcharge, capped at 20%.

We propose to amend clause 19 of the Bill and in the proposed new sections 30B(11) and 30C(9) of the Buildings Ordinance to amend the surcharge to be imposed on owners who do not comply with the notice issued under the

MBIS or the MWIS and for whom the BA has paid for the costs, from a uniform 20% to not exceeding 20%.

We have also responded to Members' request and proposed to remove the requirements in the Bill about the same QP must be appointed to carry out a prescribed inspection or supervise prescribed repairs of the same window. This would leave some flexibility to the owners who can then appoint different QPs to carry out window inspection and supervise window repairs.

We propose to delete the requirement under new section 30E(1) of the Ordinance on the requirement under the MWIS that the same QP must be appointed to carry out a prescribed inspection and supervise the prescribed repairs of the same window. The section will be substituted by a provision permitting different QPs to carry out separately a prescribed inspection and prescribed repairs. As a result, consequential amendments should be made to proposed new sections 30C(8) and 30E(2) to (8) under clause 19 of the Bill and new section 40(2AD) under clause 27(8) of the Bill.

The Bill stipulates that the scope of mandatory building inspection includes the common parts of a building, external walls and projections. The Bills Committee has agreed that it would be more appropriate to lay down in the relevant subsidiary regulations the definition of "projection" as mentioned in proposed new section 30A in clause 19 of the Bill. We therefore propose to repeal the definition of "projection" in new section 30A(1). A consequential amendment will be made to the heading of that section and in new section 30B(5) the words "other than a signboard" will be substituted by "as prescribed in the regulations".

The Committee has just passed the amendments to clause 25 of the Bill to add new section 39(1A) to the Ordinance and separately deal with the proposal on making it a criminal offence if owners refuse to share the costs payable by an OC for compliance with a notice served by the BA and carry out inspections and repairs for common parts of the building pursuant to the MBIS and the MWIS. Now I propose that with respect to refusal to share the inspection and repair costs for common parts, the originally proposed penalty of imprisonment in new section 40(4C) of the Ordinance will be removed, while the fine imposed shall be revised upward from level 3 in the original proposal to level 4, that is, to \$25,000.

Lastly, similar to the amendments passed by the Committee earlier, we propose to introduce some technical amendment to clause 27 of the Bill to remove the relevant references in the Bill to the Buildings (Amendment) Ordinance 2008 which recently came into force, as well as amending the relevant provisions in the Chinese text of section 40 of the Ordinance to ensure consistency in terminology used in the Ordinance and the Buildings (Minor Works) Regulations.

Chairman, all of these proposals have been discussed in detail in the Bills Committee and we have obtained the support of the Bills Committee. I implore Members to support and pass the relevant amendments.

Meanwhile, Mr KAM Nai-wai has proposed amendments to clauses 19 and 27 of the Bill, requiring that the building professionals specified in the Ordinance shall comply with the Practice Note on best practices in tendering procedures, non-compliance of which is an offence. We have explained many times in the Bills Committee that these practice notes are of an administrative nature and if laws are enacted to require professionals to comply with these practice notes, it is inconsistent with the original legislative intent of the Ordinance and technically, it will also be incompatible with the operation of the Ordinance. As with Ms Audrey EU, we also have reservations of various degrees about the three amendments by Mr KAM. With respect to criminalization, we have great reservations about it, or we even oppose it. As to writing the practice note into the law, as Ms EU has pointed out, in many other pieces of legislation, such as the Lifts and Escalators Bill introduced by this Bureau recently, there are similar provisions specifying the issuance of this kind of code of practice. So it would be difficult for us to strongly oppose it in principle. But I would think that at this stage, if this is applied to the tendering procedures, I am afraid Mr KAM has not made any in-depth consideration of it. There is a need for extensive consultations and discussions in the industry before it can be put into practice. In any case, let me explain the three-tier structure we have in building regulation and why I think it is not appropriate to enact laws to provide for practice notes.

Building safety standards and requirements in Hong Kong have all along been regulated by a three-tier framework. The system is proven throughout the years. The first tier is the principal legislation which provides for the major legal framework, that is the Ordinance. The second tier is the subsidiary legislation enacted under the Ordinance where detailed procedures and technical

details are specified. These are also statutory requirements. The third tier includes the practice notes, codes of practice and guidelines issued by the BD which are administrative in nature. These serve to inform the industry and the public those procedures, technical standards and the latest details and best practices in operation required in the relevant principal and subsidiary legislation. These administrative documents will from time to time issue guidelines and make suggestions on matters which are not covered by the Ordinance but will be touched upon in the course of execution of building works. Examples of these are the prevention of noise nuisance, reduction of the use of wood and also tendering procedures regarding mandatory schemes on building and window inspections which are matters of enormous concern to the Bills Committee. The intention of issuing these administrative documents is to inform the practitioners of the relevant practices and encourage compliance by them. The aim is not to make these best practices outside the scope of building safety and design mandatory requirements in law. These best practices are ideal standards which we would encourage practitioners to follow on top of the statutory requirements. As a matter of fact, since documents like practice notes are administrative in nature, should building professionals not comply with these guidelines or if they do not adopt the best practices specified in these documents, it will not and should not constitute any contravention of the Ordinance.

The legislative intent of the Ordinance is to achieve building safety through the regulation of planning, design and construction. The amendments proposed by Mr KAM are specifically on the tendering procedures. This is a kind of commercial conduct between practitioners and building owners. In our opinion, it would be inappropriate to cover this kind of commercial conduct and the conduct of the parties concerned, and other matters about building management, in the Ordinance.

The practice note referred to in Mr KAM's amendments is issued by the BD after making reference to the Maintenance Guidelines issued by the HKHS and the URA. These Guidelines are based on the experience gained by these two organizations during Operation Building Bright over the past few years. It is obvious that the tendering procedures are not the main statutory professional duties required of professionals like Authorized Persons and contractors in respect of building construction and maintenance. The practice note compiled by the BD is aimed at encouraging various stakeholders to accept the best practices in tendering procedures derived from the experience gained by the

HKHS and the URA. This is because the BD is well aware of the fact that good building management will help improve the maintenance and repairs of buildings. Members have expressed support for the relevant proposals.

The practice note suggests that when carrying out inspections and repairs under the MBIS and the MWIS, all tendering procedures regarding the procurement of services by RIs, QPs and registered contractors should be in the form of open tenders. Any bid submitted by RIs, QPs and registered contractors must be accompanied by a declaration on ethical commitment and anti-collusion, pledging that they will not take part in any tender-rigging.

In our opinion, matters arising from the tendering procedures in the context of the MBIS and MWIS do not fit in the legislative intent of the Ordinance. Rather they belong to the commercial conduct of professionals and building management. Building owners have the right to make the final decision on the tendering procedures to select inspection or repair practitioners, whether such procedures should be carried out and in what manner. In some circumstances, it may not be possible for some building professionals to take part directly in or exert any control over these procedures. Therefore, amending the Ordinance to criminalize non-compliance with the best practices regarding these tendering procedures and to impose the liability on the relevant building professionals is simply not fair. I know that the Hong Kong Institute of Architects (HKIA), the Hong Kong Institute of Engineers (HKIE) and the Hong Kong Institute of Surveyors (HKIS) all have great reservations about or oppose the amendments proposed by Mr KAM. They have expressed their strong views by sending submissions to the Legislative Council.

Moreover, the practice note does not have any legal basis in the Ordinance. To date, all practice notes issued by the Building Authority are administrative in nature and non-compliance by any building professional will not directly constitute an offence under the Ordinance. It is therefore not appropriate to regard non-compliance with the practice note which is an administrative document on tendering procedures as a direct offence under the Ordinance. This may reduce the incentive of building professionals in taking part in registering for the MBIS and the MWIS to provide services. It is therefore not favourable to the implementation of these two schemes.

We will take active steps in carrying out public education and publicity, making suggestions to owners that they should follow the relevant best practices. We believe the relevant administrative guidelines will be able to provide useful reference to owners in making arrangements for tendering and deciding to award contracts. The relevant professional bodies such as the HKIA, the HKIE and the HKIS have confirmed to us that any deviation from or non-compliance with that practice note which results in negligence or breach of professional conduct will render the relevant RI or QP liable to disciplinary proceedings from his own professional body or registration authority.

All in all, we consider it inappropriate to make the best practices in the practice note which is a well-established administrative document statutory requirements. The move will bring an undesirable effect of great magnitude. I therefore implore Members to vote against the amendments by Mr KAM Nai-wai.

Thank you, Chairman.

Proposed amendments

Clause 19 (see Annex II)

Clause 27 (see Annex II)

CHAIRMAN (in Cantonese): I now call upon Mr KAM Nai-wai to speak. But he cannot move any amendments at this stage.

MR KAM NAI-WAI (in Cantonese): Chairman, concerning the amendment today, the Democratic Party finds that in the past — perhaps many District Council members have also pointed this out — in the relevant tendering process, the behaviour of repair consultants aroused suspicions in many aspects. One important part of this amendment is to give legal effect to the Practice Notes on Best Practices on Tendering Procedures (Practice Notes). The principal aim is to protect small owners, so that they can hire professionals with integrity to provide building and window inspection services to them. This is the most important point. First, let me talk about the background, then respond to several points raised by the Secretary just now.

Concerning inspections of buildings, when conducting a review, we can make reference to the Operation Building Bright (OBB) now under way. We often say that there are many problems involving "maintenance rats". What are "maintenance rats"? For example, a consultant may recommend various kinds of unnecessary repairs works, so as to raise the fees charged by the project consultant; the method of tender-rigging is used to jack up the project cost, and some unscrupulous consultants even colluded with contractors to put in low bids to secure consultant contracts first, then, through the recommendation of a contractor preordained by the consultant, the latter receives part of the project cost, so ultimately, owners have to pay even higher project costs. Since the consultant and the contractor are partners, there are also serious doubts about the supervision of projects and the quality of the works.

Concerning the OBB mentioned just now, as of 4 March 2011, the scheme has offered assistance to 2 020 buildings. Of the buildings directly under the supervision of the Government and those under the supervision of the HKHS and the URA, 48 cases were suspected to have violated the requirements of the OBB, so warning letters and reminders had to be issued to them. And 23 cases were referred to the Independent Commission Against Corruption for follow-up action. In 20 of these cases, the OCs concerned decided to terminate the service contracts that they had entered into with the errant consultants.

In the implementation of the OBB, we can also find some strange phenomena. Of the 985 projects, one consultant got 143 contracts, accounting for 13.6% of the projects under the OBB, whereas another consultant also secured 9.6% of the contracts, or nearly 10% of all projects. Why could individual consultants secure so many projects? Have this couple of contractors who bid successfully for the consultant projects quoted unreasonable project cost estimates, tender prices, and so on, for the projects? All these beg very serious doubts.

We mentioned earlier on that often, in our work in the local communities earlier on, I heard a Member say that the consultancy fee was only \$2,000 or \$3,000 but these project consultants have to work for the owners concerned for a whole year, so we wonder how that is viable. But small owners have no professional knowledge at all, so how should they choose their repairs consultants? I believe it is necessary to step up regulation. Just now, the Secretary said that under the MBIS, it is mandatory for small owners to carry out

inspections of their buildings and there are many restrictions and penalties. Just now, Members have read out a number of them, so I feel worried about the small owners. If owners contravene the requirements on building and window inspections, they are liable on conviction to a maximum fine of \$50,000, one year's imprisonment and a daily fine of \$5,000. If owners contravene the requirements on window inspection, the fixed fine is \$1,500 and if they are prosecuted, they are liable on conviction to a maximum fine of \$25,000 and three months' imprisonment. Just now, it was also mentioned that the original penalty for owners who refuse to share the cost is a term of imprisonment but it has now been changed to a fine. If any owner refuses to share the cost and the Government has to handle this matter on his behalf, the owner will have to pay an additional 20% in surcharge. All these are the penalties imposed on small owners who are unwilling to or do not take part in the MBIS and MWIS, but with regard to professionals and repairs consultants, that is, people who are called QPs or RIs in the law, what are the penalties for them? We have only talked about them briefly.

On the relevant amendment, today, I have proposed some best practices on the tendering procedures — I did not make it up myself, rather, they owe their origin to the best practices of the BD. I think small owners sitting in front of the television now have no idea at all that the Government has such best practices. For example, when RIs (that is, project consultants) are appointed, they have to give owners a letter signed by them declaring whether or not they have been convicted of any offence relating to corruption or fraud in connection with any project. In fact, repairs consultants have to write to owners to tell them whether or not they have been involved in such matters. This is one of the points in the Practice Notes and I am not going to read out all of them. Small owners have no idea at all that such information is available. If they are not made provisions in law, may I ask how project consultants would put them into practice?

Chairman, the Secretary said just now that it is commercial conduct and that tendering procedures are not the responsibility of professionals. However, if they are not their responsibility, whose responsibility is it then? If the BD does not oversee the actual implementation with reference to the Practice Notes, who will monitor whether or not these people have followed the procedures prescribed in the Practice Notes? If we do not give the Practice Notes legal effect, they may be tantamount to a piece of waste paper, serving no purpose at all.

Why do I say so? In the discussion last week, on 15 June, Mr IP Kwok-him raised a question concerning signboards. Part of Mr IP Kwok-him's question says that under the existing legislation, erecting overhanging signboards on the exterior of buildings is not subject to the regulation of the Deed of Mutual Covenant, nor does it require the approval of OCs. Therefore, we can see that signboards are erected everywhere. I found that part of the reply of the Secretary was like this: The BD has reminded the parties concerned — that is, contractors or consultants assisting in the erection/installation of signboards — in the practice notes related to the erection of signboards, that it is necessary to seek the consent of the relevant building owners or OC separately on the erection of signboards.

Frankly speaking, you can ask all members of local representative councils as well as Mr IP Kwok-him if these project consultants have ever followed the practice notes in their work? Sorry, they have not. The practice notes are tantamount to a piece of waste paper. The reply of the authorities points out that they have set down the practice notes but they are tantamount to being non-existent. Therefore, if we do not make the Practice Notes part of the principal legislation if the Secretary says that this is not the duty of professionals, that is, repairs consultants, why does she introduce the Practice Notes? I find this really strange.

Furthermore, Secretary Carrie LAM also pointed out that owners could decide not to adopt the approach of tendering. I understand that when owners hire a professional, they can state clearly and tell the professional that the method of tendering will not be adopted. It is only necessary to put this down clearly in the Practice Notes and so long as the consent of owners is obtained, there is no need to adopt the Practice Notes. In this way, there will be no violation of the law. You can add this provision to the Practice Notes and this is not a problem. Why did I choose not to include the entire Practice Notes in the legislation? Because this part of the Practice Notes can be amended in due course. With the agreement of owners, the appointed person does not have to adopt the Practice Notes. Therefore, I think that if the Practice Notes are not added to the principal legislation, obviously, they are tantamount to being non-existent.

Chairman, I am grateful for the ruling made by you earlier on. Earlier on, the Government said that my amendment would incur government expenditure, that is, it would have a charging effect, so this proposal should not be approved.

What example did it cite? The Government said that if the amendment was passed, compliance with the Practice Notes would become a statutory requirement for RIs and QPs, that is, the statutory requirement for repairs consultants, and that the statutory duty of the BD would have to be expanded to cover this new area of work. The Administration submits that the BD does not have staff with the required expertise to take up this new area of work involving building management and ethical and private contractual matters. This precisely shows once again that the Practice Notes are tantamount to being non-existent, a piece of waste paper. The BD has no intention whatsoever of carrying out inspections or taking follow-up actions because this is beyond its remit at all. I really do not quite understand why the BD draws up the Practice Notes in the first place.

Moreover, the three professional bodies — the HKIS, the HKIA and the HKIE — have voiced opposition together. May I ask if, over the years, these bodies have ever taken any professional disciplinary action in relation to problems involving project consultants undertaking building repairs? How many complaints did they receive in the past? After receiving the complaints, how many professionals were subjected to disciplinary action? Sorry, I have never heard of any. Have these professional bodies ever performed their functions? I said earlier on that some people would act as project consultants for just \$2,000 and that some people would borrow licences. Have such instances ever been investigated? Who is responsible for monitoring this group of people called "maintenance rats"? The BD has drawn up the Practice Notes, but it turns out that it does not pay any heed to the situation or carry out any management, so whose duty is this actually?

Concerning the actual situation, the Secretary also said just now that if there were so many restrictions, no one would be willing to undertake the projects and this would also reduce the number of people providing building and window inspection services. President, the Secretary's mentality is tantamount to telling the sector that lawlessness prevails, that it does not matter if you are a "maintenance rat" that defrauds small owners, that there is no problem with this and that no matter what you do, there is no problem. Is that so? Do you want such a situation to arise in the market?

Frankly speaking, I am really worried. I said just now that in the past, there were 1 800 authorized persons and now, the number of people known as RIs

will increase to 6 500. I hope I will be proven wrong, but the Secretary has to review how many people will be active in the sector at that time. I am worried that at that time, both good and bad elements will be found in the sector, a host of problems will arise and no one will be responsible for supervision.

Therefore, what I propose is an equitable course of action. There are penalties for small owners: If they do not comply with the legislation on mandatory building inspection, the relevant penalties will be imposed and a imprisonment term and a fine will be imposed on them; similarly, if any repairs consultant or QP does not follow the tendering procedures, he should also be penalized. It is not justified to impose fines and imprisonment on owners but when those people claiming to be professionals do not follow the tendering procedures and collude with contractors, they can escape punishment. How can this be justified? I only wish to propose a more equal status, so that under the MBIS and MWIS, more small owners can hire professionals with integrity to provide professional services to them.

Thank you, Chairman.

PROF PATRICK LAU (in Cantonese): Chairman, the reason I have to speak is to express my agreement with the comments made by the Secretary just now but most importantly, I have to oppose the amendment proposed by Mr KAM.

Concerning Mr KAM's proposal to incorporate the Practice Notes on Best Practices on Tendering Practices (Practice Notes) into the legislation and require RIs and QPs to follow the legal requirement of complying with the Practice Notes, which are originally just "administrative guidelines", and the criminalization of non-compliance, my sector and I both strongly oppose it.

I wish to explain clearly to Members that the aim of the BD in providing practice notes, codes of practice and guidelines is to provide reference for best practices to professionals and the public. I stress that all of them are just reference. So long as the people concerned act accordingly, they will have complied with the statutory standards and requirements on planning, design and construction prescribed by the Buildings Ordinance, and compliance is not mandatory. According to this rationale, it is practically impossible to mandate that professionals "comply with" the relevant codes or guidelines intended for

their reference when they design buildings. So long as the people concerned can cite reasonable defence, flexibility can be exercised and they will not be regarded as having violated the legislation. This is the more preferable approach.

Mr KAM's amendment proposes to incorporate the Practice Notes into the legislation and impose penalties for non-compliance. This will have profound implications on the work of building professionals. Most importantly, if Mr KAM's amendment is passed and statutory requirements on RIs and QPs are added to the legislation, these people will have to assume duties relating to building management, ethics and private contracts. In that event, I am afraid many building professionals will not be willing to undertake building and window inspections and this will lead to a shortage of manpower and increased fees. In the end, owners will be victimized as they have to pay high inspection and repair fees.

Chairman, the HKIA has made it clear that it does not support Mr KAM's amendment. Here, I quote their views, "..... does not support the Honourable KAM Nai-wai's proposed amendments to include registered inspectors (RI) and qualified persons (QP) (in the form of fines) The draft PNAP for RI and QP requires a declaration to be signed by the RI/QP to confirm the proper tendering procedure, as well as a letter to confirm on the compliance of various ethical commitments on corruption, conflict of interest and disclosure of confidential information, and so on, and a previous nil record of offence regarding corruption and fraud, and so on, These measures are to regulate the RI/QP and hence to protect the owners and the home owners' associations. Moreover, if the RI/QP is an AP/RSE, he/she will face penalty under the Buildings Ordinance in case of non-compliance/violation of the law. In addition, if the RI/QP is a registered professional, he/she will also face disciplinary actions under the respective professional institutes Therefore, we do not support the above amendment to include the penalty in the Bill."

In addition, the HKIS has also expressed similar views, "Whilst we share the view of the Honourable Mr KAM that Practice Notes may be issued to provide guidelines on good practice on tendering procedures, we do have strong reservations in making the violation a criminal offence. Unlike the statutory instruments, Practice Notes are advisory in nature, and their issuances are for reference by the building professionals. We do not consider that Practice Notes the correct venue to control or regulate the conducts of the building professionals

under the MBIS On the other hand, the Registered Inspectors (RIs) shall be registered professionals observing their respective registration bodies, established rules and disciplinary actions, which are working effectively. In any event, the Prevention of Bribery Ordinance has been in place for years and ostensibly the law enforcement agents have spared no effort to combat corruption in the industry."

Chairman, I think the most important thing is public education, as pointed out by the Secretary. I hope various strata of Hong Kong society can take complementary action, with a view to implementing the MWIS and MBIS as soon as possible and the Government should also take complementary action by committing more resources, so as to expedite the enhancement of building safety and create a safe, comfortable and enhanced living environment for the public.

Thank you, Chairman.

MR WONG KWOK-HING (in Cantonese): Chairman, first of all, I wish to express welcome to the Government's amendment.

The Government accepted the proposal put forward by us during the scrutiny by the Bills Committee on Buildings (Amendment) Bill 2010, that is, if individual owners have genuine financial difficulty in meeting the cost of repairs to common areas rather than deliberately refusing to bear the cost, they should not be sentenced to imprisonment. The Government accepted this proposal and introduced an amendment to delete the relevant provision and replace it with a heavier fine. We also proposed that the Building Authority (BA) recover a surcharge from a defaulting owner, to be capped at 20% of the cost payable. I welcome the acceptance of our views by the Government.

In fact, many elderly owners in old buildings have difficulties in living and finance, which are understandable and deserves our sympathy. Therefore, I welcome the Government's acceptance of our views and its decision not to send owners with difficulties in living to prison, as this measure will not solve the problem.

Chairman, as regards the proposal in Mr KAM's amendment, I do not consider it feasible, nor does the FTU support it. Why? Just now, the

Secretary also cited the ground of continuity in her speech. Why do we consider Mr KAM's amendment unacceptable? The reason is that the Practice Notes only suggest the best practices to contractors and their employees to enable them to meet the administrative requirements.

This being so, if contractors, consultancies or bidders fail to follow the Practice Notes and adopt the best practices, should they be regarded as having committed a criminal offence? The commission of a criminal offence is a very serious matter. If such instances are really elevated to the level of criminality, I believe it is necessary to scrutinize the contents and details of the relevant laws very stringently and lay down the definitions of various kinds of operations and acts, rather than thinking that adopting some simple wording would do, as in the case of this amendment proposed by Mr KAM.

To criminalize non-compliance with the Practice Notes, there must be exhaustive justifications. I believe the amendment proposed by Mr KAM cannot meet the stringency requirement. At the same time, it is actually somewhat excessive to criminalize the relevant instances. At the present stage, we consider it unacceptable to criminalize this kind of instances.

Moreover, criminalization will cause a lot of people to be caught by the law. The wage earners in the sector often have no knowledge of matters of tendering, or they are not involved in such matters. They are only responsible for surveying, inspection or the preparation of proposals. However, Mr KAM's amendment will make them implicated in criminal offences inadvertently and for no reason.

On this matter, the trade unions in the sector have also voiced strong opposition. Apart from technicians and front-line employees, there are also quite a number of engineering workers in these trade unions. They also do not support the criminalization of these matters in such a rudimentary manner because they consider this unfair and unjust. They cited the Democratic Party, which enjoys a high status and clout, as an example, saying that even its Chairman could not assure or guarantee to the public that all of its members have high moral and ethical standards.

Coming back to our present question, how can companies putting in tenders ensure that all their employees have high moral and ethical standards?

The comparison suggested by these workers is most apt. On the question of whether or not such a stringent requirement should be imposed, I believe it is necessary to give this matter careful consideration instead of dealing with it in a manner so rudimentary.

In addition, many wage earners also told their trade unions that if criminalization was really necessary, in-depth and detailed consultations must be carried out. In this connection, it seems the authorities have not yet consulted them. We must not adopt double standards, and these wage earners also find this unacceptable.

We believe that at this stage, the criminalization of instances of non-compliance with the best practices is neither feasible nor practical. For this reason, we will oppose Mr KAM Nai-wai's amendment.

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

MR IP KWOK-HIM (in Cantonese): Chairman, although the DAB will not support Mr KAM Nai-wai's amendments, concerning his amendment on the repairs and maintenance carried out in the local communities, we found that many consultancies or engineering workers were really crude when carrying out supervision or implementing major repair projects, and many issues of such projects that local residents have little knowledge of and found incomprehensible have arisen.

Therefore, concerning the question of strict enforcement, we are very concerned about how it can be ensured that all technical and engineering staff members or consultancies observe the Practice Notes strictly. The DAB believes that we must attach sufficient importance to this point and also further consider how best to step up supervision and apprise OCs or individual owners of the contents of the Practice Notes, so that they can ensure compliance by technical workers. We think this is very important in the efforts in local communities.

Although Mr KAM Nai-wai stressed fairly strongly the issue of tender-rigging, I believe this is not the only issue that the Practice Notes need to

deal with, rather, it is just one of the many issues because the Practice Notes prescribe a number of technical requirements in various areas. Therefore, concerning the issue of tender-rigging, from my personal experience or my experience as a District Council member, we may have to rely on the enforcement of other laws, including the fair competition legislation now under discussion and the anti-corruption legislation, to deal with tender-rigging more satisfactorily. I believe the problem of tender-rigging can be dealt with step by step.

For this reason, the DAB cannot support simply elevating the Practice Notes to the level of principal legislation and the proposal to criminalize non-compliance with the best practices in the Practice Notes. However, we hope that even though we have expressed strong views on the Practice Notes today, does it mean that this matter has come to an end? I believe not. I hope the Secretary and the Policy Bureau concerned can pay attention to the implementation and enforcement of the Practice Notes, so that engineers and technicians can comply with and implement the Practice Notes with a strong sense of responsibility.

Certainly, I also understand that professional ethics are set out in the Practice Notes, so supervision can be exercised on and punishment meted out to the relevant parties. In this connection, I hope the authorities can perfect the relevant mechanism. Apart from letting the professional institutes implement the Practice Notes, can the authorities also enable owners or OCs to gain an understanding of them or to strengthen their supervision in this regard through relevant mechanisms? I believe that it is necessary for us to continue to discuss all these issues in the future.

Therefore, although we do not support the amendments proposed by Mr KAM Nai-wai, we hope that these areas can be further examined in the future.

Thank you, Chairman.

MR LEUNG KWOK-HUNG (in Cantonese): Chairman, this is really laughable. No matter what kind of legislation we discuss, it is always said that a consultation must be carried out. It has been said that a consultation is necessary. He has already left his seat. However, on the electoral replacement mechanism, it was said that there was no need for any consultation and that it would do just for the

majority to "thump their chest" and say they support it. However, it is a shame that even the person who put forward the proposal was not as tough as Carrie LAM, so he made irresponsible remarks over and again, saying one thing today but quite another tomorrow

CHAIRMAN (in Cantonese): Mr LEUNG, please speak to the question on the amendments being dealt with now.

MR LEUNG KWOK-HUNG (in Cantonese): I understand. Therefore, in fact, I

CHAIRMAN (in Cantonese): We have entered the Committee stage. As Members all know, at this stage, Members can speak on the relevant amendments more than once. Precisely for this reason

MR LEUNG KWOK-HUNG (in Cantonese): We can speak for more than once at this stage?

CHAIRMAN (in Cantonese): when you speak, you must not stray from the question.

MR LEUNG KWOK-HUNG (in Cantonese): I understand.

CHAIRMAN (in Cantonese): You must focus on the clauses and amendments being dealt with now, otherwise, I cannot allow you to speak.

MR LEUNG KWOK-HUNG (in Cantonese): In fact, when it comes to personal ethics, naturally, this is a question of personal moral. Ethics is a moral issue, so how can it be regulated? Of course, in some instances, ethics are regulated, for example, by a "moral reform society" or professional bodies such as the Bar

Association. The Bar Association talks about ethics, but if a barrister has an ethical problem, other people cannot impose any regulation on him and only the Bar Association has the power to do so. If a barrister commits a criminal offence and breaks the law, of course, he will be sanctioned by the law. Therefore, the regulation of other people's ethics must first be carried out by the relevant professional body, and one must be empowered by the Government and all

CHAIRMAN (in Cantonese): Mr LEUNG, what is the relevance of your remarks now to these clauses?

MR LEUNG KWOK-HUNG (in Cantonese): Because other Members have all talked about this. Some Members talked about ethics. Mr WONG Kwok-hing talked about ethics and Mr IP Kwok-him also said he was very concerned about ethics and I am also very concerned about ethics. He said that after the passage of the Bill today, it was hoped that follow-up actions could be taken, so I am explaining how ethics can be upheld, but I have not finished yet. What I want to say is that in the future, the registered persons for these small-scale works projects may form a body and resolve these ethical issues on their own, for example, by banning someone from joining their body. However, this approach would not work because these registered persons cannot be considered professionals, that is, the Government has not given it the approval to deal with such matters. Therefore, if we want those registered persons to impose self-regulation on their ethics, no such mechanism exists. Chairman, you do not understand what I am talking about and that is really

I think there is no reason you do not understand what I am saying

CHAIRMAN (in Cantonese): You do not quite understand the amendments we are dealing with now.

MR LEUNG KWOK-HUNG (in Cantonese): Anyway, everyone is talking about ethics. Mr IP Kwok-him complicated the matters, saying that after the passage of the Bill, there would be no problem but he appreciated Mr KAM Nai-wai's concern, so he hoped the Secretary could follow up. However, he did

not talk about how this can be followed up, but you still let him speak. What he said was also nonsense because he should either voice his support or opposition. If what I am saying is nonsense, what he said was surely also nonsense, that is, those remarks were irrelevant. I really

MR IP KWOK-HIM (in Cantonese): Chairman.

CHAIRMAN (in Cantonese): Mr IP, what is your point?

MR IP KWOK-HIM (in Cantonese): I do not know why the remarks made by me just now were nonsense. May I seek an elucidation on the meaning of "nonsense"? I did not say anything nonsensical.

CHAIRMAN (in Cantonese): Mr LEUNG, please speak to the question on the clauses and the amendments being examined now.

MR LEUNG KWOK-HUNG (in Cantonese): I am just following up the issue discussed by Mr IP Kwok-him. My memory is very good. He said that he would not support Mr KAM Nai-wai's amendment but on Mr KAM Nai-wai's concern about tender-rigging, the DAB also kept a keen interest in it, so he said that even if he voted in favour of it, the Secretary still had to be vigilant. This is the thrust of his speech, although I have changed it somewhat. This being so, we have to think of a way. Therefore, I am trying to help him think of a way. He called on the Secretary to think of a way, so I suggested a method to the Secretary. What is wrong with that?

Out of such an intention I also think that Mr KAM Nai-wai's proposal is too harsh, just like "killing all members of a family in one stroke". This would not work. Therefore, I really know what I am talking about

CHAIRMAN (in Cantonese): Do you know what the amendment moved by Mr KAM Nai-wai is about?

MR LEUNG KWOK-HUNG (in Cantonese): Of course, I know. Of course, I know. What I mean is that, from the professional hold on. Do you know then? Maybe you can speak on it first. I have just jotted it down. It was because you spoke so poorly that I had to correct you. Even the Chairman of the Bills Committee has spoken in such a way.

That is to say hold on. Chairman, I jotted it down just now.

CHAIRMAN (in Cantonese): Mr KAM's amendment seeks to add a provision to require that RIs and QPs comply with the Practice Note.

MR LEUNG KWOK-HUNG (in Cantonese): Yes, he is seeking criminalization. I have been listening to the whole debate. The officials said that in fact, the Practice Note is not law and it only sets out the best practices. I have been listening but I just could not find the words "Practices Note". He said he wanted it to be criminalized. What is so laughable? Even though I did not attend the meetings, I can still speak better than you. I did not take part in the scrutiny. Even though I have been only a listener here, I know what it is all about.

CHAIRMAN (in Cantonese): Please come back to your views on the provision.

MR LEUNG KWOK-HUNG (in Cantonese): Well, that is because you asked me. Now I have forgotten it. I did not take part, I only kept

CHAIRMAN (in Cantonese): Please express your views on the provision.

MR LEUNG KWOK-HUNG (in Cantonese): He said that criminalization was Mr WONG Kwok-hing said that many people in labour unions had said — I do not know if that was true — he said that not only front-line workers but skilled workers also said that they could not have any say in the process, nor were they informed of it, so they could fall foul of the law inadvertently. This is what he said.

Now, in fact, I have been sitting here and listening, so how possibly could I not understand? Mr IP Kwok-him is the Chairman of the Bills Committee. He said that I do not know what he was trying to say. He said that he could not agree with Mr KAM Nai-wai's proposal, but he thought that they were also very concerned about this problem, so he told the Secretary to think of ways to make the Practice Note achieve the desired purpose. I was explaining this, but you interrupted me. The Practice Note talks about ethics and we often talk about ethics — Dr Margaret NG is now back — the Bar Association is the body overseeing the conduct of barristers. What I say is correct. If those people are not professionals or the Government has not given them the power to expel or disqualify any person, how can ethics be found? Are we supposed to find them in paradise? If we really want to take this step, we have to enact legislation to prescribe the statutory status of these people and let them establish an autonomous organization, unlike The Real Estate Developers Association of Hong Kong (REDA), which claims to be self-regulatory but in reality, there is no governance and as a result, there is hardly any ethics. Therefore, my discussion is an informed one. What I am saying is: If the Secretary has not thought about this problem, today, after she has secured enough votes and after she has left, no follow-up action would be taken, simple as that.

Moreover, I have received two complaints. Just now, the Secretary talked about registered minor works professionals, saying that their system was proven. Someone rang me up immediately, saying that a lot of people had really registered. However, it is necessary to make a report 14 days after completion of a project but after the implementation of this new measure, the department concerned cannot handle the cases in time, so those people cannot receive their wages after finishing their work because the Government requires them to report the completion of a project. The Development Bureau, the Buildings Department or the Building something, cannot issue the papers in time at all. He asked me to say to you, Secretary, that you know a little bit but not the underlying reasons. I once requested your political secretary to invite you to go to the Ante-Chamber for a discussion with me.

The legislature is where we speak up for the public and I know Members think that I have strayed from the question, but frankly speaking, COLUMBUS also said that we only had to sail directly ahead in a certain direction and we would get back to where we had started. In fact, I am speaking on behalf of all people.

If we really want to solve this problem, first, I think the standard answer for the Secretary should be: This is not the place to tackle the "tender-rigging" problem at all and that the tender-rigging problem has to be tackled by the Independent Commission Against Corruption (ICAC) because it is illegal. Most of the people who came to my office to lodge complaints would say, almost in tears, that the ICAC had asked them to gather evidence before approaching it on such matters, so buddy, if you really care about these small owners, why do you not urge the officers of the ICAC to do something? When you met the people from the ICAC, no one said anything. You did not question whether or not their Community Officers had worked hard and if they had taken the initiative to contact small owners and victims.

To speak in the Chamber is tantamount to not saying anything at all. Someone who claimed himself to be the Chairman of the Bills Committee scrutinizing the Bill I am now saying, Chairman, and I am saying it once again, that I am talking about the issue of ethics. First, the workers concerned must be professionals; second, after they have gained their professional qualifications, the Government must give them the power to impose self-regulation rather than being allowed to do whatever they like, as in the case of REDA.

If the Secretary does not do so, the people discussing the regulation of ethics here are all talking nonsense and bull. This is categorically clear. Do you understand now?

The second thing is, the problem of tender-rigging has to be tackled by the ICAC. If we think that we need to tackle the problem of tender-rigging today, we have to know that this cannot be solved through this piece of legislation. Rather, we have to adopt approaches that are proven or actually proven not to work by reporting acts of tender-rigging and strengthening the financial support for the ICAC, so that more manpower and Community Officers can be hired.

Third, when people approach the District Offices under the Home Affairs Bureau for assistance, these District Offices should not let disputes arise. At the Sunway Gardens in North Point, I saw personally how an old man surnamed LEUNG slapped a woman and at that time, an officer of the District Office was also present. The woman who had been slapped asked the officer to be a witness, but he went so far as to say that he had not seen what had happened.

How can such an official of the "imperial court" inspire confidence in the public? He saw a woman being slapped, but he dared not testify so that the other party could be arrested, because he did not want any trouble. This is how the Government tackles problems

CHAIRMAN (in Cantonese): Mr LEUNG, you have strayed from the question again.

MR LEUNG KWOK-HUNG (in Cantonese): What I want to say is: If we really want to put forward proposals to the Secretary, we have to put forward better ones rather than talking bull. Frankly speaking, if what I have said is irrelevant, what the other Members said just now was surely irrelevant, too.

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

MR FREDERICK FUNG (in Cantonese): Chairman, concerning the main provisions of this amendment, Sorry, since I had to attend to other matters just now, I missed the opportunity to speak in the debate on Second Reading, but I am going to talk about this amendment now.

CHAIRMAN (in Cantonese): Mr FUNG, at this stage, please do not raise any view that should have been raised in the Second Reading debate.

MR FREDERICK FUNG (in Cantonese): I know. That is why I made a clarification first, so as to put the mind of the Chairman at ease.

Here, I will expound on some principles. In principle, I agree with the spirit of the entire piece of legislation, for example, building and window inspections. At present, there are many buildings with or without OCs and it is indeed necessary to impose management or regulation on them, particularly in districts with a large number of old buildings. The Secretary knows that all along, I have advocated small community management but of course, we are not

talking about small community management now. Concerning this amendment, I wonder if this document that I am holding now, which published by the BD, is absolutely necessary. It is called "Practice Note for Registered Inspectors and Qualified Persons" (Practice Note). If the Chairman permits, I wish to read out a small part of it to let Members know what the Practice Note is about. Basically, this Practice Note is the valuable experience gained by the Government, the HKHS and the URA in the course of implementing the Operation Building Bright (OBB) and it is intended to educate the public (including building owners and building professionals) on the appropriate appointment procedures. In this connection, the HKHS and URA, in close connection with the Independent Commission Against Corruption (ICAC), published the guidelines on maintenance works (the guidelines) to explain the roles and responsibilities of various parties, the best practices in anti-tender-rigging and the appropriate procedures for the selection and management of consultancies and contractors. The guidelines have been uploaded onto the webpage of the HKHS. The guidelines say that

CHAIRMAN (in Cantonese): The contents that you are reading out now have already been mentioned in the debate on Second Reading earlier. If Members do not know what has been previously discussed due to their absence from the meeting for a certain period of time and on returning to the meeting, they just keep reading out the contents that they want to read out, this is not a desirable course of action, so I hope Members will refrain from doing so by all means in the future.

MR FREDERICK FUNG (in Cantonese): OK. In view of the comments made by Mr LEUNG Kwok-hung just now, I considered it necessary to read out this Practice Note because it can clarify the main best practices on tendering procedures and the fact that the Government has the Practice Note for all people's reference, in particular, the ways of appointing RIs and QPs as well as registered contractors have been spelt out.

I think the Practice Notes on Best Practices on Tendering Procedures (the Practice Notes) are important and significant to owners and OCs in that it can help them ensure that the whole repair process is conducted properly and fairly, make them rest assured that the people or company appointed or awarded the

tender in the future are selected through a reasonable selection process to minimize instances of corruption. I think this is important and merits our serious attention.

The question now is that the Practice Note is not part of the legislation, that is, this is only a set of guidelines or reference and the degree of importance attached to it depends very much on the people at two levels, one being the people appointed to implement the Practice Note, the other being the OC or owners who appoint the people concerned. The point is whether or not, in the course of carrying out repairs, they attach importance to or knows that they should attach importance to the Practice Note and fully implement the tasks and work procedures prescribed in the guidelines.

The only area that I am concerned about is that this Practice Note is not part of the legislation, so it is difficult for it to be binding and there is also difficulty in ensuring full compliance of the Practice Note by the people appointed. We know that if the Practice Note is made part of the legislation, another difficulty may arise. This will pose problems to the sector, so how should we strike a balance? If the Practice Note is made part of the legislation, it will become very powerful but, looking at this from another angle, if this aspect is prescribed, there will be a lack of flexibility because at present, when it comes to some areas, it may be necessary to give professionals some leeway to deal with some problems. Another situation is that they may be penalized twice, that is, they may be fined, then charged with a criminal offence, but are the problems involved really so serious? This is the concern we heard some members of the sector voice about the Practice Note being made part of the law.

In these circumstances, what approach is actually the most desirable? I wonder if it is feasible to make the Practice Note part of the legislation without carrying any criminal liability. However, no matter what, as a representative of public opinion who has worked for small owners in the old districts for long periods of time, I think that in any event, it is desirable if the legislation can offer assistance to them, so that the people concerned or the sector are more concerned about and careful with strict compliance with the guidelines. This is because most small owners and OCs in the old districts do not quite understand this problem, nor do they know how they can deal with it. Therefore, concerning this amendment, I support dealing with the Practice Note from a legislative angle, but I have some reservation about the sanctions.

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

MR PAUL TSE (in Cantonese): Chairman, just now Prof Patrick LAU highlighted several reasons for his reservations about Mr KAM Nai-wai's amendments. I would also make some additional remarks in respect of a point raised by Mr KAM Nai-wai.

The so-called concept of equity raised by him means that if a party concerned has a legal responsibility and will face criminal liability if he has failed the responsibility, then the professionals who have carried out inspection, monitoring or audit checks for him, irrespective of whether they are RIs or QPs mentioned in the legislation, should similarly and equitably bear criminal liability if they have not fully complied with the Practice Notes. I have great reservations about this concept.

As a professional, I understand that similar problems exist in all professional sectors. There would be endless trouble should this gate be opened. On many occasions, accountants, lawyers and people in the engineering sector have to help or even monitor some kinds of work in our daily life and they have to shoulder certain responsibility of audit checks in accordance with the law. If the professionals have violated their professional ethics, they may have to face some professional consequences. However, if the so-called concept of equity is frequently applied so that they are forced or ensured to fully comply with the rules, then I am afraid our society will stop running. So, in this respect, such an approach should not be considered unless there are good reasons or outrageous phenomena keep on occurring in such a manner that they cannot be resolved by the existing professional mechanism. Otherwise, this gate should not be opened arbitrarily because criminal liabilities and criminal consequences may be very serious.

In this regard, some Honourable colleagues have mentioned that the Practice Notes are for reference only and a professional mechanism has already been put in place to deal with non-compliance. As Prof Patrick LAU has also pinpointed, if such a requirement were written into law, many relevant professionals may be deterred from participating in the MBIS and MWIS, thus resulting in higher costs for these works. Such views are justified and I think the problems warrant our attention. Most importantly, however, I am afraid the

so-called principle of equity is unacceptable. Insofar as the professional sectors are concerned, it is a kind of concept that should not exist and should not be accepted.

Thank you, Chairman.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Mr KAM Nai-wai, you may speak again.

MR KAM NAI-WAI (in Cantonese): Chairman, some Honourable colleagues have commented that my amendments are not refined enough. I have also heard the Secretary say that I have not made careful consideration. I would like to ask: How many Members here, as the Secretary said, have read the Practice Notes? Do the viewers sitting in front of the television know the contents of the Practice Notes? Do they know whether it is related to ethics? In fact, I mentioned just now only one point. In order to set the record straight and let everyone know whether the so-called Practice Notes are very simple and professionals should comply with them, I would like to read out some of the points: "Any RI/QP (that is, the repairs consultants we have referred to) who is interested in the tender should provide a declaration signed by the RI/QP and his company when submitting the tender, which confirm that before any tendering result is announced by the owner(s) (that is, the people who have engaged them), he (that is, the repairs consultant), the directors and employees of his company, agents and sub-consultants have not and will not: — first, disclose tender price to any persons other than the owner; second, adjust the tender price by arrangement with any other persons; third, make any agreement on tendering with any other persons; and make any fraud in any way or with any other persons in respect of the tender."

Chairman, these are in fact very basic requirements. In other words, given that the RI/QP is entrusted by the building owners to arrange for tendering on their behalf, they shall not disclose any tender price to any persons because the

tendering result has not been announced by the owners. Is this not a very basic and very humble requirement? Anyone who is being engaged to perform a job should not disclose the price to others, let alone professionals. This is a very basic requirement.

Furthermore, I have also mentioned the following points: "When arranging tendering for prescribed repair, the maintenance consultant should also observe the best practices stipulated in the Guidelines and ensure that all tendering procedures should be conducted by open tendering. In addition, all tender documents should be issued on behalf of the owners and any details of the maintenance consultant (that is, the RI/QP) and his company should not be disclosed."

As the repairs consultants are not required to publish their names during the Operation Building Bright (OBB), do you know how they make their names public? What they have to do is to announce that tender is being invited by a particular OC and interested parties may contact a responsible person. In that announcement, the telephone number of the responsible person is also attached. The fact is that when people in the same trade see the telephone number, they will know that the project is being handled by a particular consultant even though the consultant's name is not revealed. Then they will know how to set the tender price.

Why should they be prohibited from disclosing their names? Why should announcements be issued on behalf of the owners? Why? Why are the requirements set out in such details? The reason is very simple and this is not due to ethical considerations. Just now some Members have made long speeches on ethical issues. These are very simple tendering procedures in which some simple rules have to be complied with.

Some Members have criticized that the wordings of my amendments are not refined enough. Indeed they are because I have requested this stuff is not invented by me. Mr Frederick FUNG just now read out the introduction and was stopped by the Chairman. The foreword has explained that the Practice Notes was drawn up on the experience gained through the implementation of the OBB. I have definitely taken a very serious attitude and I have been most stringent. If the Secretary thinks that I have not made careful consideration, she should ask colleagues in the BD why the Practice Notes has been drawn up

without careful consideration. This stuff is written by government officials not me.

Some Members opine that it is not fair to the professionals who are unaware of the requirements and penalties are now imposed, let alone the lack of consultation. Just now some Honourable colleagues also mentioned under what circumstances consultations should be needed and *vice versa*. In fact, extensive publicity is necessary after the legislation has been passed. A one-year consultation at least is necessary just like the replacement mechanism proposed by Secretary Stephen LAM. Perhaps, one year may be too short since the targets now include the elderly people. As we all know, many of the residents of buildings aged 30 years are elderly people, who may still know nothing despite publicity.

Therefore, frankly speaking, if the Practice Notes is not incorporated into the law in order to impose penalties, the vulnerable elderly people who, in the face of these "maintenance rats" which will scramble for a share of such a lucrative business as each year 2 000 buildings will be subject to compulsory I wish to emphasize that this is a mandatory scheme, and this is a very important point. It was not mandatory in the past, and this is the difference. No inspection was required in the past if there was no problem even though the building aged 100 years. But now, a 30-year old building is required to be inspected even though it looks pretty well. Now, inspection is made mandatory.

Why is inspection made mandatory? It is for the introduction of more regulation. Is the existing regulation appropriate from the perspective of repairs consultants? I think it is necessary to launch extensive publicity so that the trade will know I have read out all the contents so as to tell the repairs consultants: Do not think that you can refrain from carrying out the inspection personally. Mr WONG Kwok-hing may later say, "The workers do not know that they have to carry out the inspection by themselves in being brought into the fold, and the Government has neither conducted extensive publicity nor consultation. I do not know whether the workers know that they have to carry out the inspection by themselves, or else they may have to 'borrow a licence'."

Chairman, Mr Paul TSE mentioned just now the concept of equity. In other words, penalties should not be imposed on professionals who are entrusted to perform a job. I understand that professionals in Hong Kong have their

respective professional regulatory systems. Under such professional regulatory systems, a professional in breach of the relevant codes of practice will be subject to sanction under the system.

However, may I ask who will effect enforcement if no penalty is imposed? The HKIS? The HKIA? Or the HKIE? Will they enforce the law? Will they exercise monitoring?

As I have mentioned, there were many examples in the past. In the examples I cited just now, there were so many complaints concerning the OBB in which many projects had to be terminated or suspended since I have quoted the figures, I am not going to repeat them What on earth have these professional institutes done? Can they tell me the past figures because minor maintenance projects for buildings can these three professional institutes tell me how many people have been penalized? How many people have their licences suspended? What are the amounts of fines imposed on them? Sorry, the answer is zero. Who will be responsible for monitoring?

Now, the BD says that this is not its responsibility and it is commercial conduct rather than a professional duty. Then, who should be responsible for monitoring? This is exactly the question in my mind. Should we expect that "heaven is watching"? The Bills Committee has held more than 20 meetings, most of which I have attended. You may ask the Chairman of the Bills Committee about this. I am very anxious about it because I have always paid site visits in my district and I have been engaged in community work for 20 years, in which my main job is to help these buildings arrange for repairs and maintenance. Whenever I met the repairs consultants, they would be scolded by me. It was like a routine. What have these professional institutes done? We have advised the people to lodge written complaints to the HKIA, but only in vain. It is indeed in vain.

Now we have a very clear procedure for imposing regulation. To put it simply, the tender price should not be disclosed to any third party because the tendering result has not yet been announced. Even this is not allowed? You will tolerate such a practice? In my opinion, this is not only a question of equity. It is a case of lack of regulation.

Chairman, my amendments seek to provide protection to building owners under the MBIS and MWIS which will soon be implemented in the future. I hope Members will support my amendments.

(Dr Margaret NG raised her hand in indication)

CHAIRMAN (in Cantonese): Dr Margaret NG, do you wish to speak?

DR MARGARET NG (in Cantonese): Chairman, I know I should have spoken earlier, but I am not sure whether I should speak now because I would like to briefly comment on Mr KAM Nai-wai's remarks, in particular, those concerning professional ethics.

Chairman, my point is not about whether the Practice Notes is important or specific, or whether it should be subject to ethical regulation — this is tantamount to saying whether professional ethics should be subject to ethical regulation or criminalization. But rather, to put it simply, we have a very important principle in lawmaking, that is, no criminal provision should be enacted indirectly. In other words, we should not specify in any particular provision that a breach/violation of the provisions of a code of practice, irrespective of whether it is professional ethics or practice notes, will face criminal consequences. If we want to lay down some regulations in a particular set of professional ethics or practice notes that any violation of such regulations, which are considered very important, will lead to criminal consequences, we should point out such provisions (or items of professional ethics) and enact legislation explicitly to that effect.

Sometimes, we in the legal profession would also encounter this kind of problem. Regarding professional ethics, as lawyers will come into regular contact with the public in their work, we sometimes consider that we cannot solely rely on professional ethics to cope with some problems and criminal consequences are necessary. If criminal consequences exist and a relevant requirement is the same as some provisions on professional ethics, then it will be incorporated into the law through formal enactment so that violation of the requirement will become a criminal offence.

Chairman, I raise this point because we have also encountered such situations in dealing with some Bills in the past. For instance, some subsidiary legislation may empower some organizations to draw up some codes of practice which will specify criminal consequences in case of non-compliance. Generally speaking, we are most reluctant to allow the existence of such enabling provisions. In spite of that, such provisions will require authorization in an express manner and become subsidiary legislation after enactment.

Therefore, Chairman, it is not that I think the contents of the Practice Notes are not precise or stringent enough to lead to criminal consequences. Rather, we should abide by a very crucial principle in lawmaking, that is, no criminal provisions can be enacted in an indirect way. Thank you, Chairman.

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

PROF PATRICK LAU (in Cantonese): Chairman, I would like to tell Mr KAM Nai-wai that when I was President of the HKIA, our members would be subject to very severe penalties if they were convicted on the basis of conclusive evidence. I take regrets to tell Members that I have once visited my student in prison.

Mr KAM Nai-wai just now mentioned that no penalty had ever been imposed. But my student committed an offence related to a tender. Of course, the offence is very serious and, as Dr Margaret NG said just now, a person will be convicted if it is a very serious offence. And his membership would also be suspended by our institute. This is a very grave matter.

Members should understand that the situation is unlike the one described by Mr KAM Nai-wai. Today, I am very glad to hear the speech of Mr LEUNG Kwok-hung. To my surprise, his views concur with mine: professionals should be respected. I do not understand why Mr KAM Nai-wai did not make a rebuttal after hearing Mr LEUNG Kwok-hung's speech. Nor do I understand why he did not refute after hearing LEUNG Kwok-hung's remark, which is, in my opinion, disrespectful to him. But I think somebody may tell me that it is quite "cutie". I am really baffled.

Therefore, I hope he can really understand that professionals are facing very great pressure. I felt very sad when paying that visit to my student in prison. But it is a hard fact that he has committed an offence. It is not true that, as Mr KAM Nai-wai said, no penalty has ever been imposed on offenders. He said that he had never heard of any penalty. However, I had really come across such things when I was President of the institute. Thank you, Chairman.

MR KAM NAI-WAI (in Cantonese): Chairman, I would like to clarify one point. In my speech just now, I asked whether there were any examples concerning some minor building maintenance works in the past. In some very large-scale projects, there may be instances of violation of professional ethics, or the so-called unethical violation of professional codes of practice.

What I am saying is that we are facing some small owners or elderly owners. We all know what kind of people are living in a building aged 30 years. We all know that the majority of them are elderly people. What I am saying is we have this question before us. Are there any examples concerning maintenance works in the past? I hope that Prof LAU, as a representative of the sector, can explain to us whether there were any examples in the past in which offenders had been fined or imprisoned due to an offence in relation to these minor maintenance works or building maintenance works? Let us forget about imprisonment. Are there any examples concerning imposition of fines or suspension of licence for a period of time? I wish to hear Prof LAU's response.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now call upon the Secretary for Development to speak again.

SECRETARY FOR DEVELOPMENT (in Cantonese): Chairman, earlier I explained why the Government cannot support the amendments proposed by Mr KAM Nai-wai. Now I would like to add some points.

First of all, as Mrs IP said earlier, we understand why Mr KAM Nai-wai has proposed the amendments although we do not support them. During the Operation Building Bright (OBB) which was launched two and a half years ago, we came across many cases concerning maintenance of old buildings through the Hong Kong Housing Society (HKHS) and the Urban Renewal Authority (URA). We were also aware of some phenomena which had infuriated Mr KAM. These phenomena were unreasonably low tender prices and, possibly, tender-rigging.

Therefore, we soon realized that apart from helping owners of old buildings to carry out maintenance and creating job opportunities through the OBB, we should also summarize our experience through the OBB and share it with each other so that owners of old buildings will know how to carry out maintenance works when they are required to do so in the future.

As for some of the terms used in today's discussion, such as "without careful consideration" and "not stringent enough", I hope Mr KAM will understand that they do not mean to target at his purpose behind the proposed amendments. Mr KAM need not read out the Practice Note drafted by the Director of Buildings either. Of course, the contents of the Practice Note are based on the lessons learnt by the HKHS and the URA. It is a good guideline indicating the best practices and we hope it can be promoted to all.

But insofar as today's amendments are concerned, we consider that the Practice Notes has not met the stringent standard required by legislation. We consider that there is a lack of careful consideration in the amendments because no consideration has been given to the overall complementary measures which are prerequisite to giving legal status to the Practice Note. Moreover, we consider it unreasonable to impose criminal liability on professionals.

If we really want to introduce the Practice Note as a regulatory measure, we should carefully consider other complementary measures as a whole, as well as the impact on other provisions and the operation of the Buildings Ordinance (the Ordinance) rather than simply adding several provisions and penalties as the amendments have proposed.

Although the Ordinance does not provide that the Building Authority can issue practice notes, we have proposed that provisions be added to the Lifts and Escalators Bill, which is now under deliberation by the Council, in order to

empower the Director of Electrical and Mechanical Services and persons authorized by him to issue codes of practice in accordance with the relevant ordinance. I do not want to waste Members' time by reading out the relevant provisions. There are one and a half pages in the Bill explaining under what circumstances the Director will issue a statutory code of practice. Put simply, it must be related to safety lifts and escalators. There is clear stipulation that non-compliance with any provision of the code of practice, as Ms Audrey EU has mentioned earlier, will not lead to prosecution by civil or criminal proceedings.

Some people may ask: What is the use of the code of practice if no prosecution will be initiated? Then, it pointed out that in some legal proceedings, consideration will be given when the court is satisfied that the code of practice or any other part of it is subject to dispute. Therefore, there must be very stringent complementary measures before any proposal can be made to give it a statutory position or status.

The Administrative Practice Note of the Buildings Department (BD) does not enjoy the same legal status and arrangements under the Ordinance. Thus, it is inappropriate to incorporate a Practice Note into the provisions of the Ordinance without any complementary measures which should have been carefully considered or supported by stakeholders. In fact, if we really have to consider giving it legal status one day, I will have great reservations about including tendering procedures in a Practice Note and giving it legal status. The reason is that it must be related to the objectives, which are related to building safety, of the Ordinance, rather than matters concerning procurement of services.

Just now, I asked my colleagues who have attended meetings of the Bills Committee on Buildings (Amendment) Bill 2010 (the Bills Committee) and learnt that the Practice Note was drawn up by the BD at the request of Members. The BD, with a little bit reluctance, has incorporated matters which are unrelated to building safety into the Practice Note for extensive publicity purpose in the hope that professionals will observe it. Hence, it will cause impacts on the status of other existing practice notes issued by the BD if the best practices in tendering procedures are specified as the professionals' direct legal responsibility. It may even be contradictory to the principle of proportionality.

As the BD has issued a lot of practice notes for compliance by the trade, we have to consider how to deal with other practice notes. We have indeed great reservations about the approach to be adopted for tendering procedures alone.

The targets of the best practices for tendering procedures include all professionals involved in the tender, their companies and registered contractors. In accordance with the recommendations on best practices, all the above-mentioned parties should submit a declaration of anti-tender-rigging and a statement of ethical commitments. However, the relevant statutory duties and penalties proposed by Mr KAM are confined to RIs and QPs who are ultimately appointed. Even though the professionals' companies are independent corporations, they will not be criminally liable, not to mention other parties who have participated in the tendering. This is unfair.

As the name suggests, the best practice *per se* is not the only viable approach. The tendering procedures may have to be adjusted according to the actual condition of the building concerned. The best practice is unable to serve as and is not intended to be a general guideline which can cater for all conditions. Thus, the proposal that any person who fails to effect full compliance with the best practices is guilty of an offence is contradictory to the realistic needs. It is also unfair to professionals of the construction sector.

Over the past few years and regarding building safety and maintenance work, we have been making efforts in the hope that we can educate and encourage building owners to recognize that building management and maintenance is ultimately the responsibility of owners who should have the right to make the final decision in the tendering procedures. If through this amendment, criminal liability is shifted onto the professionals who have assisted in the tendering procedures, this may slightly run counter to the purpose of education of owners mentioned by me just now. This is also the reason why we have reservations about it.

In any case, many Members consider that there is room for improvement concerning the tendering of building maintenance and procurement services at present. Their views have been heard. In the days to come, we will continue to join hands with the HKHS and URA in launching public education. Just now in the resumed Second Reading debate, I mentioned several items of work, including discussion with the HKIS on the building up of a database on prices of

various items of repair works. I believe this will help owners better handle tenders in the future.

Finally, in response to the Bills Committee's request, we have liaised with three professional institutes, namely the HKIA, the HKIE and the HKIS, in recent months. They will seriously confirm and also adopt a solemn attitude towards non-compliance by their members with the ethical commitment provisions in the best practices concerning tendering procedures to be issued by the BD. They will also solemnly deal with complaints against unethical practice in tendering procedures in accordance with their own professional codes and charters. Should evidence show that any member has committed misconduct provided in the relevant codes or caused damage to their professional reputation, disciplinary proceedings will be commenced by the relevant institute and the registration authority concerned.

Therefore, I implore Members to consider the Government's position and the speeches of several Members just now and vote against the Mr KAM Nai-wai's amendments.

Thank you.

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

(Members raised their hands)

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

(Dr Philip WONG raised his hand)

CHAIRMAN (in Cantonese): Dr Philip WONG, we are now voting on the Secretary for Development's amendments.

(Dr Philip WONG indicated that he was not voting against the amendments)

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 KAM Nai-wai, you may now move your amendments.

MR KAM NAI-WAI (in Cantonese): Chairman, I move that clause 19 be further amended by adding subsection (2A) to the proposed section 30D and subsection (1B) to the proposed section 30E.

Proposed amendment

Clause 19 (see Annex II)

CHAIRMAN (in Cantonese): Before I put to you the question on Mr KAM Nai-wai's amendment, I wish to remind Members that if Mr KAM Nai-wai's amendment is negatived, he may not move his amendment to clause 27.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr KAM Nai-wai 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 KAM Nai-wai rose to claim a division.

CHAIRMAN (in Cantonese): Mr KAM Nai-wai has claimed a division. The division bell will ring for three minutes.

CHAIRMAN (in Cantonese): According to the usual practice, I shall suspend the meeting at around 10 pm until 9 am 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 Margaret NG, Mr CHEUNG Man-kwong and Dr Joseph LEE voted for the amendment.

Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Ms Miriam LAU, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Jeffrey LAM, Mr WONG Ting-kwong, Prof Patrick LAU, Mr Paul CHAN, Mr CHAN Kin-por, Mr IP Kwok-him, Dr PAN Pey-chyou and Mr Paul TSE voted against amendment.

Geographical Constituencies:

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

Mr CHAN Kam-lam, Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr WONG Kwok-hing, Ms Starry LEE, Mr CHAN Hak-kan, Dr Priscilla LEUNG and Mr WONG Kwok-kin voted against the amendment.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 18 were present, three were in favour of the amendment and 15 against it; while among the Members returned by geographical constituencies through direct elections, 26 were present, 17 were in favour of the amendment and eight against it. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendment was negatived.

CHAIRMAN (in Cantonese): As Mr KAM Nai-wai's amendment has been negatived, he may not move his amendment to clause 27.

CLERK (in Cantonese): Clauses 19 and 27 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clauses 19 and 27 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 10A	Registers of contractors, and so on.
New heading before new clause 45A	Fire Safety (Commercial Premises) Ordinance
New clause 45A	Offence to disclose information obtained officially
New heading before new clause 47	Fire Safety (Buildings) Ordinance
New clause 47	Offence to disclose information obtained officially.

SECRETARY FOR DEVELOPMENT (in Cantonese): Chairman, I move the Second Reading of the new clauses and new headings read out just now, as set out in the paper circularized to Members. In order to facilitate professionals who have been appointed to conduct building inspection and repairs in checking whether improvement works on fire safety measures in buildings have been carried out so as to confirm the standards of inspection and repairs, we propose that new clauses 45A and 47 be added to the Bill in order to introduce consequential amendments to the Fire Safety (Commercial Premises) Ordinance and the Fire Safety (Buildings) Ordinance so that the designated public officers may be given lawful authority to disclose information of building works related to fire safety improvement for purposes of the Buildings Ordinance, including the MBIS and MWIS.

In addition, we propose that new clause 10A be added to the Bill so that section 8A of Ordinance be amended, in the Chinese text, by deleting "類別" and substituting "類型" to ensure consistency of wordings in the Ordinance and the Building (Minor Works) Regulation.

Chairman, these new clauses have been discussed and endorsed by the Bills Committee. I urge Members to support and pass the new clauses.

Thank you, Chairman.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 10A, heading before new clause 45A, new clause 45A, heading before new clause 47 and new clause 47 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 as stated. Will those in favour please raise their hands.

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clause 10A, heading before new clause 45A, new clause 45A, heading before new clause 47 and new clause 47.

SECRETARY FOR DEVELOPMENT (in Cantonese): Chairman, I move that new clause 10A, heading before new clause 45A, new clause 45A, heading before new clause 47 and new clause 47 be added to the Bill.

Proposed additions

New clause 10A (see Annex II)

New heading before new clause 45A (see Annex II)

New clause 45A (see Annex II)

New heading before new clause 47 (see Annex II)

New clause 47 (see Annex II)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the new headings and new clauses read out just now be added to the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bills

PRESIDENT (in Cantonese): Bill: Third Reading.

BUILDINGS (AMENDMENT) BILL 2010

SECRETARY FOR DEVELOPMENT (in Cantonese): President, the

Buildings (Amendment) Bill 2010

has passed through the 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 Buildings (Amendment) 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): Buildings (Amendment) Bill 2010.

Resumption of Second Reading Debate on Bills

PRESIDENT (in Cantonese): We now resume the Second Reading debate on the Communications Authority Bill.

COMMUNICATIONS AUTHORITY BILL**Resumption of debate on Second Reading which was moved on 30 June 2010**

PRESIDENT (in Cantonese): Mr LAU Kong-wah, Chairman of the Bills Committee on the above Bill, will address the Council on the Committee's Report.

MR LAU KONG-WAH (in Cantonese): President, in my capacity as Chairman of the Bills Committee on Communications Authority Bill, I now report the deliberations of the Bills Committee.

The object of the Communications Authority Bill is to establish the Communications Authority (CA) and transfer the functions of the Broadcasting Authority (BA) and the Telecommunications Authority (TA) to the CA, and to stipulate provisions for incidental and connected matters.

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

The Bills Committee has held 11 meetings with the Administration, and exchanged views with representatives of the BA on the establishment of the CA, the provisions in the Bill and connected matters. The Bills Committee has also received views from the broadcasting and telecommunications industries as well as a number of trade associations. The Bills Committee generally supports the legislative intent of the Bill to establish the CA as a single unified regulator to take over the existing functions of the BA and the TA in regulating the broadcasting and telecommunications sectors.

In the course of deliberations, some Members thought that in order to meet the challenges brought about by rapid technological convergence, a comprehensive review of the relevant outdated ordinances and regulations governing the broadcasting and telecommunications sectors should be conducted in parallel with the setting up of the CA. The Administration has explained that combining the two would be a very complex and protracted exercise and would delay the establishment of the CA. The phased approach would be more pragmatic. After the establishment of the CA, the Administration and the CA will accord priority to conducting a review of the Telecommunications Ordinance and the Broadcasting Ordinance. In view of that, the Secretary for Commerce and Economic Development will speak on the relevant arrangements in his speech later.

A Member has suggested that the Administration should spell out in the long title of the Bill that the CA is "an independent Communications Authority" and specify in the provisions on the functions of the CA that the CA is to "carry out its functions under the Ordinance without interference from the Government". The Administration has advised that the Bill provides that the CA "is not a servant or an agent of the Government nor does it enjoy any status, immunity or privilege of the Government". The powers conferred on the CA through the Bill and various related legislation clearly allow the CA to exercise its powers in its own right. The Administration has advised that while it is the policy intention for the CA to act as an independent statutory body, the Administration is not aware of any enabling ordinance in respect of any existing local statutory body being formulated to include the word "independent". Moreover, the CA would depend on the Office of the Communications Authority (OFCA) Trading Fund for its finance, and it would also rely on the Director-General of Communications (DG Com) as well as the OFCA to enforce its decisions. If the amendment proposal is accepted, it may raise questions such as whether the CA would rely on government funding or whether the CA would rely on the future OFCA to discharge its functions. As such, the Administration considers that the amendment cannot be accepted.

Some Member thought that the Bill should be amended to include the public mission of the CA, in particular, its mission of upholding the freedom of expression. In this connection, the Administration has advised that it will move a Committee stage amendment (CSA) to set out the following matters to which the CA must have regard in performing its functions:

- (i) to foster an environment that supports a vibrant communications sector to enhance Hong Kong's position as a communications hub in the region;
- (ii) to encourage innovation and investment in the communications market;
- (iii) to promote competition and the adoption of best practices in the communications market for the benefit of the industry and consumers; and
- (iv) to act in a manner consistent with the provisions of the Hong Kong Bill of Rights Ordinance.

The Bills Committee in general has expressed concern about the power of the Chief Executive in making appointments to the CA. Many Members have suggested that, to enhance transparency and public accountability, appointments to the CA should be endorsed by the Legislative Council. In their view, the Bill should also be amended to require the chairperson-designate of the CA to attend a pre-appointment hearing at the Legislative Council. However, the Administration has advised that the existing appointment mechanism has been well-established and functioning smoothly. The Chief Executive would adopt the same mechanism for appointing CA members whereby appointments would be made in a fair, open and transparent manner to ensure impartiality and avoidance of conflicts of interests.

To enhance the transparency of the appointment mechanism, many Members thought that the Administration should consider allowing industry bodies and different sectors of the community to nominate members to the CA. This should comprise a certain number of non-official members to be nominated or elected by community groups. In the opinion, the Administration should consider appointing academics and younger practitioners of the industry to the CA, but the appointment mechanism should prevent people of the same view from being appointed to the CA. Given the uniqueness of the electronic communications industry, the DG Com and members appointed to the CA should possess the requisite industry knowledge and expertise. In this connection, Members suggest that the Bill should clearly spell out the criteria for appointment to the CA.

The Administration has advised that as the CA will be an industry regulator, nominations from the industry will likely give rise to conflicts of interest. Nevertheless, to allay Members' concerns, the Administration has proposed to move CSAs to include additional criteria for appointment, namely, the non-official members to be appointed by the Chief Executive must have extensive knowledge of, experience in or exposure to, communications services; or knowledge of or experience in management, accounting, finance, education, law or community service, or such professional or other experience as would render the person suitable for appointment.

Many Members have queried that with its small membership, the CA might not be able to effectively and efficiently perform the complex and heavy duties of the TA and BA after the merger. The Administration has advised that to address public concern, the proposed number of non-official members of the CA has been increased from five to "no fewer than 5 and no more than 10" (including a non-official chairperson). The CA will also include a public officer and the DG Com. Moreover, the Bill provides for the delegation of powers by the CA to its committees, the DG Com or any public officer in order to maintain the efficiency and effectiveness of its work.

A Member has expressed concern about the possible conflicts of interest if there are non-full-time members from the industry. The Member suggested that full-time and remunerated CA members should be appointed and they should have the requisite professional expertise and experience to deal with the more complex industry-specific issues. The Administration has advised that the CA will be serviced by a civil service executive arm (that is, the OFCA) providing secretarial, legal and technical support. The Chief Executive would take into account the concerns and workload of the CA when appointing members to the CA. If a decision is made for the appointment of a full-time chairperson of the CA, the Information Technology and Broadcasting Panel will be informed of such. The Administration will move a CSA to provide for the Chief Executive's power to determine the remuneration and the terms and conditions of employment to the CA.

A Member has suggested that the Bill should specify the criteria for the revocation of appointment of the chairperson and vice-chairperson. The Administration has accepted the suggestion and will move a CSA to the effect that the Chief Executive may revoke any appointment of the chairperson or

vice-chairperson due to reasons mentioned in the relevant provisions or he has sufficient grounds to believe that the chairperson or vice-chairperson is unable or unfit to perform the functions of chairperson or vice-chairperson.

Another Member has urged the Administration to undertake that the appointment of members to the CA would be in compliance with the six-six rule and the principle of gender mainstreaming. The Administration has confirmed its commitment to adhering to these policies.

Regarding meetings, many Members have requested the Administration to consider opening the meetings (except when sensitive information is involved) of the CA and its committees to the public, and posting the minutes of meeting on the website of the CA to enhance transparency. The Administration has advised that given the vast amount of commercially sensitive information it would handle, the CA should have the flexibility to decide whether and when its meetings would be open to the public.

On participation in meetings by telephone, video conferencing or other electronic means, some Members of the Bills Committee have expressed concern about possible abuse of such means by the CA members, and the confidentiality issues involved. Members have proposed that some provisions be amended to provide for the CA to set specific rules/standing orders governing the conduct of such meetings. The Administration has agreed to move CSAs to the effect that the CA is to make standing orders. The Administration will inform the Information Technology and Broadcasting Panel of the rules/standing orders made by the CA for the purpose of regulating the number of meetings to be held by the CA in any year and the meeting procedures.

The Administration has informed the Bills Committee that the requirement for the disclosure of interest as originally drafted applies to members of the CA only in matters under discussion at meetings of the CA and its committees. The Administration will move CSAs to remove the discrepancy so that the disclosure requirements also apply to members of committees who are not members of the CA.

The Bills Committee has noted the arrangements limiting a member's participation in a meeting of the CA if he has disclosed interest in respect of a matter under discussion. The person presiding over a meeting may decide on

the requirements for a quorum, withdrawal from discussion and withdrawal from voting. Some Members consider that such powers of the member presiding may give rise to concern. The Administration has agreed to move a CSA to propose that the decision should be made by a majority of the other members present instead of by the member presiding.

The Administration has also agreed to move CSAs to establish a register for recording the interest of CA members or members of its committees and the Chief Executive may declare the vacancy of the office of a member should he fail to comply with a disclosure of interest requirement. As to the requirement to withhold documents from a member if the member has disclosed an interest in respect of a matter under discussion, the Administration considers that such matters should be addressed in the standing orders to be made by the CA. The Administration therefore proposes to amend the Bill to the effect that the standing orders to be made by the CA will also regulate matters in this regard. The Administration has undertaken to inform the Information Technology and Broadcasting Panel in future of the standing orders made by the CA in respect of disclosure of interest.

A Member has considered that the executive arm of the CA should be an independent organization rather than a government department staffed by civil servants. The Administration has advised that it would be unwieldy to go for the establishment of the unified regulator and the creation of a non-civil service organization concurrently, and this is a complex and controversial subject. It is premature at this stage to discuss this idea. Nevertheless, the Administration does not rule out the idea of setting up an independent executive arm as a longer term proposition. It would examine this idea in light of the operational experience of the CA and the OFCA in future.

Some Member has opined that the statutory committees to be appointed by the CA should be clearly spelt out in the Bill. According to the Administration, the only committee to be established by the CA on a mandatory basis would be the Broadcasting Complaints Committee. The Administration will move a CSA to specify that the CA may appoint other committees to support its operation and another CSA to provide that the chairperson of a committee appointed by the CA should be a member of the CA.

The Bills Committee also notes that the Bill provides for immunity of the CA and persons acting in good faith in connection with the performance of any functions of the CA. No civil liability would be incurred by them. The OFCA Trading Fund would be responsible for the future funding for litigation costs. Members have expressed concern about whether the Government would inject funds into the OFCA Trading Fund in the event that it would be depleted by litigation costs. The Administration has advised that where necessary, it is prepared to seek the approval of the Finance Committee for a standby loan facility to the OFCA Trading Fund. The Administration will move a CSA to provide that the litigation costs incurred by the CA will be met by the OFCA Trading Fund.

The Bills Committee will support the amendments to be moved by the Administration to address concerns expressed by Members of the Bills Committee. Thank you, Deputy President.

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

MS EMILY LAU (in Cantonese): Deputy President, I speak in support of the resumed Second Reading of the Communications Authority Bill. Deputy President, as Mr LAU Kong-wah has just reported, we have examined many matters in detail in the Bills Committee. As Members will agree, with the rapid developments in technology and the convergence of the telecommunications and broadcasting markets, there is a need for the authorities to reorganize the regulatory framework and fully examine the Telecommunications Ordinance and the Broadcasting Ordinance. The Administration has agreed to do so.

Deputy President, in March 2006 the Administration issued a consultation paper and organized some consultative sessions. One of these was held in the new office of Joseph YAM. I believe Secretary Gregory SO — congratulations on your assuming the post of the Secretary and now you have great tasks to perform — did not join the Government at that time, but I took part in the matter. It has been four or five years since 2006 and now we are discussing the matter again. But the replacement mechanism is to be passed in one month's time.

Later this evening at 9 pm the Secretary and the Chief Secretary will meet the press and I hope they will announce that the Bill will be withdrawn.

So there are some matters which take such a long time for consultation. During the consultation exercise at that time, there was a consensus and we all thought that after the consultation, we could finalize the matters that we wanted to do and that was to conduct a review of these two ordinances, to see if there were any problems and propose that these two organizations be merged. To our surprise, now it is 2011 and they are still talking about making gradual and orderly progress. Deputy President, is this not what Mr LAU Kong-wah said just now? It is like going backwards. There will be no review of these two ordinances but a new regulatory authority is to be set up. Then this authority will collaborate with the Administration in conducting the review. This is really bad. Deputy President, that is why many Members do not feel happy. Why does it have to take such a long time, from 2006 to the present? It beats me, and many Members are asking where has the efficiency of the SAR Government gone.

But when it comes to handling some other matters, the Government is most efficient indeed. It wants to complete it in one month's time. And now hundreds of thousands people have been forced to take to the streets. But when it is to handle this matter, it has made such a long delay. Anyway, as with every new official, I hope the Secretary can have the fiery passion and from now on until the middle of next year — he may retire or stay in office, that I do not know — but I want to ask him to handle this matter well. Although they fail to meet our requirements, they have undertaken that they will conduct a review and put in their best efforts. What does that review include? Deputy President, at that time the Government made a pledge to the Bills Committee that a review would be conducted of issues like cross-media ownership, restrictions on ownership by foreign companies, licensing authority, appeal mechanism, and the regulatory regime of the Telecommunications Ordinance and the Broadcasting Ordinance. And the Government has also undertaken to give us a timetable. Deputy President, would you please pay attention to these items and see when a review of these will take place. If it is unlucky, we may have to wait another five or six years and that will be really bad.

Therefore, we are really very unhappy. But Mr LAU Kong-wah said just now that since they are willing to make certain amendments, so we have also said

that these issues should be dealt with as soon as possible after the CA is established. The amendments proposed by Dr Margaret NG will serve to realize the independence of the CA. Actually, the Government has said that it is independent and Dr Margaret NG has suggested writing this point into the law, specifying that it will not be subject to any government interference. But the Government refuses. But Deputy President, apart from writing it into the law to state that the body is not subject to any interference, how then can the independence of an agency or organization be realized? Of course, it is a matter of the utmost importance how people in the CA come to assume their posts. But these people will be appointed by the Chief Executive. What is more ridiculous is that the Government tells us that the procedures will open, fair and impartial. I just do not know how these people can be appointed in a manner that is open, fair and impartial.

Deputy President, let us look at how this is done overseas. There are two countries which do not have to go through any formalities in their national assemblies, and they are Canada and Australia. But the Parliament in the United Kingdom and the Congress in the United States does have a part to play. This is especially the case of the United States and it is the United States President who will make nominations for endorsement by the Senate. There are checks and balances. In the United Kingdom, there is a requirement though without any legal effect and that is, when someone is appointed, he has to go to the House of Commons to answer questions. A hearing is held before he assumes office.

But we have none of these. The Government says that the procedures are open, fair and impartial. We hope that there can be a system and that there is more transparency and the legislature can play a part in it. So what Mr LAU Kong-wah has just said is dead right. Many Members think that the legislature should take part and identify the right candidates. Why? This is because, as we know, the new CA has great powers. Just as some Honourable colleague has described it, it is a fat piece of meat and a lot of interests are at stake. What the community is concerned about is whether or not its staff can perform their duties in a fair and impartial manner. So I am glad to see that the Administration will move CSAs on matters like the disclosure of information and interests. But we do not think that the CA is independent.

Deputy President, apart from the appointment of members, is there an independent executive arm of the CA? Mr LAU Kong-wah has said very clearly

earlier that the executive authority will be the DG Com at the rank of D6. The CA will seek funding from the Finance Committee, saying that salaries will be paid to its staff who are all civil servants. He says that this is similar to the situation in some overseas countries. If the senior staff of the CA are appointed by the Chief Executive and the subordinate staff are all civil servants, how can we be convinced that the CA is very much independent? I hope the new Secretary can persuade us with his great eloquence.

Deputy President, a more ridiculous point is that these officers are appointed by the Chief Executive. At first, the legislation specifies that the Chief Executive can revoke the appointment of the chairperson and the vice-chairperson at any time. It is only later that the Government agreed to amend it, and specified the criteria to be applied to revoke the appointment of these officers and on very strong grounds. But this makes us see that these people are those who will come and go purely at the whims of the Government. Deputy President, I hope I am wrong about this.

These officers will be appointed soon after the passage of the Bill. We are worried that the workload of the CA is so heavy that if these people are not working full-time, and if these people have to attend to a lot of business — the Government loves to appoint people who are rich and has to assume a number of offices — I really do not know how they will discharge their duties. We are very concerned about this. We hope that the Administration can appreciate our concern and will not do anything which will later on make us think it is not up to our expectation.

In addition, Deputy President, as also mentioned by Mr LAU Kong-wah earlier, we are very concerned about the six-six Rules. We hope that these Rules can be observed. But now there are still 30 or 40 of this kind of bodies in which the six-six Rules are not complied with. This is certainly a new rule and I hope there can be a new beginning and everyone can observe it. Moreover, with respect to gender mainstreaming, now the BA has more than met the requirement. I hope that the CA will meet the requirement, too. The standard set by the Administration is 30%, that is, the male or female members of a committee should not be less than 30% of the total. We hope this can be raised to 40% or 50%. I hope the Administration can achieve that.

Deputy President, I will propose an amendment later on. I have referred to the practices in other countries and I want to make it clear that the CA should have a mission and objectives, and these should be stated. We care most about our freedom here in Hong Kong. In the areas of communications and broadcasting, we are referring to the freedom of speech, expression and the press. So I have proposed that amendment.

Moreover, we are also very much concerned about market development. There should be fair competition and we should care about the rights of the consumers. I notice that the Secretary has proposed an amendment, but according to him, that is not about objectives. It is about matters that should be considered when performing the functions. Mr LAU Kong-wah has read out those four points earlier. One of them is that the Bill of Rights should be taken into account. This is something we care very much about. We hope that the Administration can see the point that the people are scared by the Government to death. And so anything that has anything to do with human rights and freedom would be our concern.

Deputy President, I have said that I feel happy because the Administration will move some CSAs in respect of conflicts of interest. I will support these amendments.

Another issue is about opening up the meetings to the public. The Administration says that the relevant arrangements will be modelled on those in the BA. Currently, the BA will open some meetings to the public. I hope the new CA will do the same and it can make public some important decisions and agendas of meetings. And for such information that can be disclosed, it can be made public on its website.

Deputy President, there are actually great misapprehensions about the formation of the CA. A countless number of people have said to us that too many interests are at stake and there are questions about how problems in this respect will be solved. There may be bias and transfers of interests to the developers or the friends of the developers. This is not what we want to see. But the trend now is convergence and the formation of new frameworks. But the Government has not conducted a due review of the relevant issues, having reversed the order. Sometimes, we are frustrated by the Administration. No attempts have been made to address them for such a long time. But now of all a

sudden, it is said that a new governing body is to be set up. Then the review will follow. We are worried that now the CA is set up first and the review is not yet conducted, can its operation be rationalized in future?

We would ask this question: How is work in personnel matters be made smooth, can the new governing body bridge over and do its job, will there be conflicts of interest, who will be hired and do they have to work full-time and is the CA truly independent? Also, it does not have the help of an independent secretariat. All these give people the impression that the CA is born defective.

I hope that the Administration will deal with these issues soon. This is especially the case because we know that the Secretary does have supporters here in this Council. But many people would like you to iron out some problems first. We are concerned about the competition law and so is the new Secretary. We agree that there should be such a law, and we hope that a good competition law acceptable to society can be passed within this term. Deputy President, this is a really important piece of legislation. We hope that there can be some good developments before the end of this term.

I so submit.

DR MARGARET NG (in Cantonese): Deputy President, the object of the Communications Authority Bill is to merge the existing Broadcasting Authority (BA) and the Telecommunications Authority (TA) into the Communications Authority (CA) as a unified regulator for such services as television, radio, telephone and the Internet. This is a mega supervisory authority and it has great powers. Matters like how the CA is to be formed, how it is to operate and who will take its helm will all have great implications on the life of Hong Kong people and in areas like information, entertainment as well as their basic rights like the freedom of speech and information. So the Bill today is of very important.

To a very great extent, the broadcasting and telecommunications services have converged nowadays and it is really not so desirable if they continue to be subject to the management of the BA and the TA separately. The present trend in the world is for an integration of services and unified regulation. So the Civic Party supports the merger exercise.

But at the same time, we need to have a communications policy which will clearly and soundly uphold the freedom of speech and information. And this should be enforced by an independent agency with credibility. This CA must have a clear mission and principles and be headed by people with commitment to public interest and endowed with capabilities.

An ideal approach is to conduct a review of the existing laws and policies first and then formulate a comprehensive policy based on the relevant laws, and finally to set up a statutory body to enforce the policies. This would be a logical approach to take. But the Government decided to take forward the reform in stages for its own reasons. I heard someone say earlier that this is gradual and orderly progress. I do not see how it can be called gradual. This is actually done in stages all of a sudden and it is not logical at all.

The approach now taken is to first handle the legislative work regarding the merger, and to leave policy formulation to the newly established CA in collaboration with the Government. This is putting the cart before the horse and it will only produce a lot of uncertainties. It is all very difficult to judge what kind of a CA is to be formed and whether it can meet public expectations. But if there is a policy in place and this policy has undergone public consultation and gained endorsement by the Legislative Council, then there would not be any uncertainties because the CA will enforce the stated policy.

This Bill before us is really a lame Bill. If we do not refuse to pass a Bill like this, we can only try our best to make it better. Therefore, we have to add provisions on the mission of the CA, including those that stipulate that the CA has the mission and principle to promote and uphold the freedom of speech. Also, when the CA performs its duties in furtherance of its mission, it will act in an independent manner and without any interference from the Government. For if not, if the CA is relegated into an instrument of the Government in restricting the freedom of speech, our passage of this Bill today will become a great disservice done to the people.

I will therefore propose two amendments later to add the principles of independence and freedom from government interference to the legislation. Actually, the Government had indicated repeatedly during the deliberations on the Bill that these two principles were consistent with the legislative intent. The

Government had also stated that the CA was independent and free from government interference. In the Legislative Council Brief, it is also stated that the work of the CA is to promote and uphold the freedom of speech. Since this is the case, the Government should agree to my amendments. But unfortunately, the Government is not willing to spell this out and the grounds it holds are strange indeed. The first is that clause 3 of the existing Bill has stated that the CA is not part of the Government and it has its own corporate name and it is not an agent or servant of the Government and it does not enjoy any status, immunity or privilege of the Government. So, in the view of the Government, this is enough. But all of these are the basic provisions in the formulation of a statutory body, albeit we are well-versed in them actually.

But the Government points out that since the CA is independent and there are many similar bodies operating independently, if we add such provisions, there would be impacts on other bodies. But that is not true. So I just do not understand why, despite the Government's approval of this principle, it does not want to write it down boldly and unabashedly in the law.

Deputy President, another item to note is the clear stipulation of the criteria for appointment of the chairperson and vice-chairperson of the CA. Now clause 8 of the Bill only stipulates that these members will be appointed by the Chief Executive and their numbers should be no less than five and not more than 10. And later on the Administration will move a CSA to this effect. But what I wish to point out is that clause 8 only states that these persons will be appointed by the Chief Executive and nothing is said on the criteria for appointment.

There are many statutory bodies with important missions and tasks. If we hope that these bodies can represent public interest in an independent manner and act according to their principles, the appointment of their members must go through an open and transparent procedure, and there must be clear criteria. An example is that the relevant candidates should meet some conditions and there should be an open recruitment. Even if in the end it is the Chief Executive who appoints these persons, the process of appointment must be objective.

Next, the clause also says that the composition of the CA shall have five to 10 persons. We have pointed out many times while deliberating on the Bill that the existing BA has so many members — and as I recall it, there are eight to nine

persons. On the other hand, if this CA is to perform the duty of regulating broadcasting affairs as well, it is worrying to note that it has only five to 10 members.

It is more worrying if there are only five persons as members of the CA and one of the members is a public officer appointed by the Chief Executive and there is also the DG Com, then the independence of the CA will be called into question.

Also, we should pay attention to the executive department. It is interesting to read clauses 14 and 15 on this. Clause 14 states that policies and decisions will be made by the CA. But the DG Com will implement the decisions made by the CA. Clause 15 states that the Office of the Communications Authority (OFCA) will support and assist the DG Com. This is a most indirect arrangement. Actually, this is simple enough: members of the CA have no way to order the DG Com and the OFCA. Members of the CA have no say in their appointment and dismissal.

We are therefore convinced that it must be stated that the CA is independent and free of interference from the Government. Otherwise, it will only become a government department, only that there are a few non-official members at the policymaking level.

Deputy President, why do I think that these points are so important? This is because the question of whether the CA can act in public interest would to a very large extent depend on what kind of persons are appointed as the chairperson, vice-chairperson and members of the CA. Some Members of this Council think that the workload of these persons is very heavy and they must be suitably remunerated and they must be paid and be required to work full-time.

But I do not believe this will make some suitable persons ready to take up this responsibility. It is because the work involved has got a number of characteristics. It is definitely very complicated work and speaking from a legal perspective, there must be great complexities and the decisions made will touch on the interests of some large corporations. And many complaints from the public will have to be handled and there must be credibility in the handling of these complaints. At this time and age, when these big companies and ordinary members of the public feel that the decisions made are unfair, they will resort to

judicial review. So the CA must understand this point in making decisions and considerations must be made very carefully and soundly. Then what kind of persons should be found to do the job?

It is often the case that some senior member of the legal profession will be found. But will that person be willing to take up the job and work full-time if he is given a lot of money? And will that person be willing to give up his professional practice? I do not think he will.

Then under what kind of circumstances will he take up the job? If he thinks that it is worthwhile and if he has commitment to public service, then he will be willing and he will not mind the time and efforts he may have to spend on the job. But he must be assured that he can do these things independently and free of interference from the Government, and he can really achieve his aspirations and goals.

If the Administration does not make these things clear and if the person is not given the freedom to decide on what kind of executive arm he should have to support him, that is, whether it should be staffed by civil servants or non-civil servants, I am sure many people will not want to take up the job. What can the Government do if people do not accept an appointment? Then the replacement mechanism may come into play and if the best candidate cannot be found, then go for the next best on the list. And if no suitable person can be found, then go for the next one, and the one after the next. In the end, a most mediocre person may be found. If this is the case, even if the CA has got great powers, it will not do any good for public interest.

So, Deputy President, these raised by me today for the attention of the Administration are definitely not trivial matters. When we find that there are shortcomings in the system, we must find some very capable persons and those with principles to take up the job. The only thing which the Government can do to make these persons willing to take up the job is to convince them that the work is worthwhile and the mission is a lofty one and there is a chance that they may be able to achieve it. It is when the Government respects their professional autonomy and their objectives that they will be willing.

Deputy President, I will move some amendments later on. And the Government will move some amendments, too. Although I am not satisfied

with every one of these amendments, it would be better than not moving any at all.

Thank you, Deputy President.

MR WONG TING-KWONG (in Cantonese): Deputy President, thanks to the advancement in technology, it is now commonplace to employ digital technology in media broadcasting or communications. For instance, radio and television broadcasting on the Internet is now possible. Broadcasting of video clips and communications links are also possible on news websites. When we are on the streets or taking public transport, we can often see many members of the public constantly scrolling and tapping on their mobile phones, iPods, and so on, immersed in the cyber world by constantly receiving and transmitting broadcasts and information. In fact, I am learning very hard in order to catch up with these new technologies.

In view of the merging and convergence of the telecommunications and broadcasting markets, it has become imperative to reorganize the relevant regulators and review the regulatory system and the relevant legislation governing the two markets. The DAB considers the proposed enactment of the Communications Authority Bill (the Bill) to consider transferring the functions of the BA and the TA to the new CA as well as the enactment of the relevant provisions a move to keep abreast of the times and, hence, will render it our support. We will also support this Bill and the amendments proposed by the Administration.

Ms Emily LAU has proposed an amendment to include in the Bill the objects of the CA, namely to promote and uphold freedom of expression and freedom of the press; to promote the long-term development and fair competition of the communications market; and to further the interests of consumers in the communications market. On the other hand, the Administration has also proposed an amendment to clause 4 by adding subclause (4) which provides for the fostering of an environment that supports a vibrant communications sector to enhance Hong Kong's position as a communications hub in the region; the encouragement of innovation and investment in the communications market; the promotion of competition and adoption of best practices for the benefit of the industry and consumers; and acting in a manner consistent with the provisions of

the Hong Kong Bill of Rights Ordinance (BORO). In fact, these additions already embrace Ms LAU's proposed amendment.

Meanwhile, we consider the amendments proposed by the Administration more comprehensive. Among others, Ms LAU stipulates that the objects of the CA is to promote and uphold freedom of expression and freedom of the press with no regard for the essence of freedom of expression and freedom of the press being underpinned by authenticity. On the other hand, the amendment proposed by the Administration stipulates that the CA must have regard for and act in a manner consistent with the provisions of the BORO in performing its functions. In this connection, paragraph (2) of Article 16 of the BORO, which concerns freedom of opinion and expression, provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." We can thus see that the right to freedom of expression is more extensive than freedom of expression and freedom of the press. Paragraph (3) of that Article also requires that the exercise of the relevant rights carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as for respect of the rights or reputations of others; or for the protection of national security or of public order, or of public health or morals. This shows that the right to freedom of expression carries with it ethics and integrity, which are even more comprehensive than promoting and upholding the freedom of expression and freedom of the press. Article 16 of the BORO is in line with international standards because it was drafted with reference to Article 19 of the International Covenant on Civil and Political Rights. Hence, we do not consider it necessary to make any further amendment to it.

As regards Dr Margaret NG's proposed amendment to add "Establish an independent Communications Authority" to the long title of the Bill and add subclause (1A) to clause 4 to provide that the CA shall carry out its functions under this Ordinance without interference from the Government, the DAB agrees with the Administration that the CA "is not a servant or an agent of the Government nor does it enjoy any status, immunity or privilege of the Government". Furthermore, it is clearly spelt out in the Bill that the CA can exercise all the incidental powers. Hence, we believe that the relevant provision is more practical and concrete than the wordings of the amendment. Moreover, there is no marked difference in the meaning conveyed.

Furthermore, the main objective of the Bill is to merge the functions of the BA and the TA into a unified regulator, namely the CA, and the difference between the actual work to be performed and the existing work is not at all substantial. Hence, we consider it most important to ensure the existing regulatory and licensing regime to continue to take effect and be implemented after the merger of the BA and the TA. It appears that the addition of such wordings as "independent" and "interference" is far-fetched. There is indeed no need to add what is superfluous.

Furthermore, I wish to point out in particular that under the Bill, the OFTA and the Television and Entertainment Licensing Authority will be deleted and replaced by an executive arm, the OFCA. In respect of complaints against the Television and Entertainment Licensing Authority and the OFTA, the Office of The Ombudsman will introduce relevant legislative amendments to provide that the relevant complaints can continue to be filed with The Ombudsman after the passage of the Bill. Although the Administration indicates that the functions of the newly established CA and OFCA will be explained through publicity, it is still unknown as to how specific publicity work is to be carried out. I hope the authorities can launch the publicity work expeditiously after the passage of the Bill to, apart from giving the relevant sectors and members of the public an understanding of the overall changes and operation of the regulator, ensure that the relevant sectors and members of the public are clearly informed of the complaint methods and procedure and any differences from the past methods and procedure.

With these remarks, Deputy President, I support this Bill and the Government's amendments but oppose the amendments proposed by Ms Emily LAU and Dr Margaret NG.

DR SAMSON TAM (in Cantonese): Deputy President, the Bill has been discussed for nearly six or seven years. Why did it take such a long time to discuss the Bill? Why could other countries do so expeditiously? I think that it is really worthwhile for the Government to conduct a review in this regard. I know that a new authority has been set up in the United Kingdom and Taiwan one after another to enable their overall telecommunications policies to better complement their national and regional development.

It is now proposed that the TA and the BA be merged. What was the past performance of these two authorities? Frankly speaking, these two authorities, especially the TA, served a lot of functions in the past. With the opening up of telecommunications management and the introduction of competition during the past decade or so, the TA has turned Hong Kong into the most open and competitive place, and now a high quality and yet relatively less expensive place. Although we often criticize the TA for putting more emphasis on the technical level or unified regulation, its effectiveness is remarkable.

In contrast, I am quite disappointed with the BA. What the BA did in the past was to get its job done. While this was acceptable in the past, we have now entered the Internet era. The BA acts as if one of its hands has been tied, purely regulating some licensed bodies. With Internet broadcasting completely out of its reach, it is like a "toothless tiger". If the TA and the BA are not merged into a unified body, it is imaginable that troubles will occur in future. With more and more troubles, the overall development of Hong Kong will also become an international laughing stock. Therefore, I am in favour of the merger of the TA and the BA.

Although the Bill, if passed, will definitely bring about the immediate merger of the TA and the BA in Hong Kong, a merger is still not forthcoming in our Motherland. Triple play, which is managed by several departments, is still adopted by our Motherland. However, I am convinced, if Hong Kong can deal with this issue properly, the Mainland can definitely borrow our experience.

Deputy President, I would like to present two observations I have made about the Bill. First of all, many Members just now mentioned the six-six Rules of appointing members. Although there will only be five to nine members, they play an extremely important role in enabling the CA to perform its functions in the future. I once visited Taiwan to meet the members of the authority established there. As they had enormous powers in their hand, many people were trying to influence them in an attempt to change their views, thereby altering the policies. Therefore, it is absolutely necessary to deal with the appointment of members carefully.

As far as I know, some of these members in Taiwan are paid, but some are not. From the strategic point of view, I think that it is better for members of the CA to be remunerated should we wish to look for some suitable talents to work

for a long period of time. Dr Margaret NG often says that we can look for some people who have the zeal to do something but do not necessarily need to be paid. However, if these people have already retired, the CA would then be made up entirely of retirees. This is my greatest concern. That is why I hope, when the Secretary formulate the policy in appointing talents in the future, he could, as I said in the past, refrain from recommending for appointment some highly respected and well experienced people. What does "well experienced" mean? Does it mean 30 years or 40 years of experience? If the CA is made up entirely of well experienced members, it would become a club for the retired elderly.

The CA will have to face new media and networks and everything new in the future. That is why I hope the Secretary can appoint people from different age groups, especially people who are relatively young and have a new vision. Although they might not have rich experience in management, they can definitely bring a new angle to the CA. I hope the Secretary can listen to views in this regard in respect of appointments.

My second concern is the manpower arrangement. The staff of the TA and the BA will work in the newly established CA after the merger. So, what will happen to the manpower arrangement? In fact, I have held discussions with some colleagues of the TA. It is pointed out in papers that they are basically satisfied with the arrangement. But still, I hope that the Secretary can be more cautious and caring in dealing with the establishment during the merger of the TA and the BA because, in addition to changes at the management level, there will be changes in posts and work, too.

Can the staff perform their roles very well and work wholeheartedly? Some colleagues of the TA reflected their views earlier that the TA had already started to freeze certain posts and stopped employing such a large number of engineers. Instead, it has employed some professionals in the business or legal field, thus stirring up quite a lot of disturbances. It is because if everything is handled with a business mindset, the professional standard will be lost. Is this sort of "de-professionalism" a good thing? I hope the Secretary can give us an account in the future.

In my opinion, we must not pursue "de-professionalism" for the sake of pure commercialization because a lot of professional knowledge is involved in the telecommunications and broadcasting sectors. Moreover, it is definitely not

a good thing if there are no professional engineers to converge with the international community. Therefore, I hope that the manpower arrangement can retain an adequate number of professional posts during the merger of the BA and the TA to enable the new authority to have the business management ability and capacity to maintain its usual professional standard. I support the resumed Second Reading of the Bill.

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 Commerce and Economic Development to reply. This debate will come to a close after the Secretary has replied.

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): Deputy President

(Mr LEE Wing-tat entered the Chamber and indicated his wish to speak)

DEPUTY PRESIDENT (in Cantonese): Mr LEE Wing-tat, please.

MR LEE WING-TAT (in Cantonese): Deputy President, I am sorry because Secretary for Justice WONG Yan-lung's remarks on the replacement mechanism are being broadcast live on television.

Deputy President, from the perspective of technology, the new legislation and the new authority are in principle understandable, because we all understand the world is developing in such a way that there are fewer and fewer boundaries between media in general, such as television, radio and the Internet. Therefore, there is a need for the manner of regulation to be revised accordingly. In fact, many countries have moved faster than Hong Kong in making changes to their regulatory frameworks.

What sort of principle must we hold when we want to establish a new authority? Insofar as the issue of broadcasting and communications are concerned, there is a very important principle, that is, the upholding of freedoms of speech, expression, information and broadcasting. The debates conducted over the years in Hong Kong actually involved such freedoms. Very often, the debates could serve to remind the Government that the freedoms of communications, broadcasting and speech were extremely important core values in Hong Kong. Let me cite Radio Television Hong Kong (RTHK) as an example. Its repeated corporatization bids over the years have failed. However, the crux of this incident has underlined the question of whether a government department can play the dual roles of undertaking government missions as a government department and manifesting total freedom of broadcasting and expression, and even the freedom of criticizing the Government.

Over the past decade, this question can almost be said to be the most debated topic in society. Among other things, the freedom of speech is involved here. Despite the fact that RTHK is publicly-funded, members of the public are adamant about this. Furthermore, we can also re-examine the situation of television stations. Every time when we discuss matters concerning licence renewal I believe the Under Secretary has also read the report. He might have even listened to the views expressed by some members of the public participating in the discussions on licence renewal for television and radio stations. In fact, the most frequently mentioned of course, they would sometimes talk about the quality of the programmes of the Television Broadcasts Limited (TVB) and the Asia Television (ATV), and so on. Nevertheless, people participating in the licence renewal consultation forums and public hearings have actually reflected the principle regarding the question of whether or not the television stations can maintain autonomy and independence of the press.

Every time when the television stations applied for licence renewal in the past couple of years — I had participated in one or two discussions and heard some views at panel meetings — the ATV was often criticized for keeping its line of press coverage closely after the central authorities and nearly turning itself into another CCTV. Meanwhile, the TVB has also been criticized in recently years for turning itself into another CCTV, too. Of course, to a certain extent, these criticisms might not reflect the entire situation. However, the members of the public or the masses expressing such views have evidently reflected that they are

very anxious about the impartiality and true independence of the television stations in news reporting.

Therefore, when we mention the work performed by the CA to be set up in the future of course, it is not an independently operating television station or radio station. I wish to cite some examples to illustrate to the Secretary that members of the public have great expectations for this new authority. They hope that it can operate independently and have a very clear vision — upholding the freedoms of the press, expression and communications. It is because the members of the CA will in future have many functions, including issuing and renewing licences, regulating such bodies as television and radio stations, and so on. Therefore, the more independent and free from government influence its members are, the more confidence they can give members of the public.

In my opinion, if the members of a broadcasting authority are appointed by the Government, the authority will definitely follow the Government closely in terms of its ideology, views on social policies or practice. This also applies to all countries in the world, only that the ruling parties in other countries are elected. This means that in their case if an appointed authority behaves too bad, the people may choose not to elect a certain person as president or a certain political party to be the majority party in the next election. However, the Hong Kong Government is not elected. That is why I have always treated the authorities appointed by the Government with great caution. I have also told some Bureau Directors or Under Secretaries with whom I am familiar this. If the views held by the majority of members of an appointed organization are the same as the Government's views, the organization will then be rendered meaningless.

Sometimes, I would think about this: What benefit will the Government gain from inbreeding or by looking for similar views in the authority? Only a foolish government would like to do so. The authority or other statutory bodies must have different noises before they can help the Government solicit most, if not all, dissenting views in society when addressing problems. When the policy introduced or being conceived by the Government differs substantially from the mainstream views of society, people holding dissenting views in the authority can at least sound a warning and express their views. Only in this way can the Government benefit enormously. What is the point of finding people with the same views to set up an authority? In particular, Members must bear in mind that this authority will possess a lot of functions in issuing and renewing licences,

regulating the operation of organizations, and so on. All this is very important. Hence, Deputy President, I wish to emphasize that it is very important for the authority to be independent.

Second, will this authority have a strong and powerful conviction to uphold the freedoms of the press and expression? This is a very important point. As my Honourable colleague, Ms Emily LAU, will propose an amendment later on, I will not repeat it here.

I would like to cite one more example. I have been a member of the Panel on Information Technology and Broadcasting for almost a term (only three years or so), and this is the first time I have joined a panel. In this Panel, an issue repeatedly discussed again and again has reflected the Government's intention to influence, if not control, the authority. When the Government holds a different view, there are many ways for it to pose obstruction.

The Citizens' Radio is one such example. Every time I talked about the Citizens' Radio, some people would say that I spoke for "Bull". I hope they would not think in that way. There are many radio stations in most of the advanced regions and cities around the world — there is no need for me to repeat their names. Hong Kong is among the very few world cities to have only a few radio stations. The number of radio stations in Taipei, Taiwan and even Moscow, Russia is even greater than that in Hong Kong. The Government will ask: How can there be so many radio stations? The Government is definitely wrong. Deputy President, the existing technology can already do so. With the implementation of digitization, many radio stations can be set up. Moreover, they need not be subject to so meticulous regulation as before. This is my point of view. Furthermore, there is no need for the Government to worry about doing so will only benefit certain people. We have a pluralistic society — people have different preferences, namely music, drama, religion, arts, reading or talking about politics. There are many different groups of people, including small or medium-sized groups of people, in society, though I have no idea of the number of these groups. Mainstream television and radio stations might not be able to satisfy their interests. This issue has been discussed numerous times in the Panel on Information Technology and Broadcasting. During discussions on this issue, the Government indicated that the BA had discussed this issue before and considered it not impossible to set up many radio stations in Hong Kong, though a lot of restrictions would have to be imposed. In fact, I think that the

Government's policy has directly or indirectly affected the BA and as a result, the BA has formulated such a stringent policy in respect of opening up the airwaves. This illustrates that, in respect of the freedom of expression, Hong Kong as a modernized society is actually immature.

So, what if a radio station is set up for Falun Gong? It will not work if no one tunes into it. I once argued with someone and said that we would not object even if a radio or television channel was given to Donald TSANG so that he could talk from day to night. First, he could not have so much to say. Second, would anyone listen to him? There are some newspapers in Hong Kong, such as *Ta Kung Pao* and *Wen Wei Po*, which publish a certain kind of views. I have no objection to these newspapers because society needs to be pluralistic. But do these newspapers have any readers, how much do the readers read, and do they believe in the newspapers? This is another issue. So, what is the problem if people with a certain kind of ideology, even though they are at the forefront of politics or unpopular, are allowed to set up radio stations? Of course, the Government will say that there is no problem if Internet radio stations are set up instead, but then, such radio stations should not be regulated.

The third main point I wish to raise concerns the problems expected to be encountered by the new authority in its future work. I have mentioned repeatedly in the Bills Committee that from my observation, there were more and more tasks handled by the BA and the OFTA over the past couple of years. As a member of the Bills Committee, I asked the BA the number of meetings held per annum, the duration of each meeting and the agenda items discussed. Why did I ask these questions, Deputy President? In fact, it is not the case that I do not trust those eight or 10 members. Honestly, I have not been appointed to many statutory bodies because the Government considers me too "noisy". I was "mistakenly" appointed to the Housing Authority (HA) by the former colonial government. I wonder if the government had any regrets. It was pretty tough for me to be a member of the HA because I was working nearly full-time as a Member of the Legislative Council at that time. I had to spend a lot of time before I could handle the HA's business and felt confident that I had fulfilled my responsibility.

There seems to be eight or nine non-official members in the BA — I have forgotten the exact number. However, the BA is now coping with more and more affairs and it is getting increasingly busy. In addition to renewing licences

for television stations, regulating the television stations and doing a lot of other work, it even has to handle the complaint lodged by the ATV against the TVB for monopolizing the entire television media. Although members of the BA are very diligent, they still have to work very hard. Is there a need to appoint more members to share the work?

Second, in some countries, there are more commissioners specially appointed to take full charge of certain authorities. Insofar as the current *modus operandi* is concerned, I am a bit worried because the BA will handle more and more tasks and manage more and more business, whereas the time it can spend is getting shorter and shorter. That is why I hope the situation can be reviewed from time to time to determine if the BA has done enough to impress people that it is efficient in handling its business. When I asked its chairman, Mr Ambrose HO, in the Bills Committee why it had taken so long to handle the complaint lodged by the ATV against the TVB, the reply given to me was that "we are extremely cautious". This I agree. However, the impression given to the public is that there are still no results although eight or nine months, if not a year, have already passed since the complaint was lodged by the ATV. Deputy President, it is still not known when all this will come to an end. Hence, I hope that the new authority can pay attention to this point when taking up this challenge.

These are the three points I wish to raise. 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 Commerce and Economic Development to reply.

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): Deputy President, first, I have to express my sincere gratitude to the Chairman of the Bills Committee on Communications Authority Bill (the Bills Committee), Mr LAU Kong-wah, and members of the Bills Committee. The

Bills Committee has held 11 meetings to study the Communications Authority Bill (the Bill) in detail and completed the scrutiny of the Bill after one year. During the course of scrutiny, Members have expressed general support for the Bill and put forward many valuable and constructive views. We have adopted most of the views of the Bills Committee and proposed amendments to the Bill. Later on, I will move the relevant amendments at the Committee stage.

Our aim in establishing the Communications Authority (CA) is to set up a unified regulator to regulate the entire electronic communications sector. Rapid advancement in technology is blurring the traditional boundaries between telecommunications and broadcasting, leading to convergence of the two markets. Many advanced economies have already established a unified regulator for the telecommunications and broadcasting sectors or have merged their separate telecommunications and broadcasting regulators into unified regulatory bodies. Hong Kong, being at the global forefront of technological application and media convergence, needs to restructure its regulatory institutional arrangements to keep abreast of the times. The establishment of the CA is the first step in restructuring our regulatory regime for the broadcasting and telecommunications sectors. We undertake to immediately set out to prepare for the review of the Telecommunications Ordinance (TO) and the Broadcasting Ordinance (BO) upon the establishment of the CA and will devise a more detailed plan together with the CA on the areas to be reviewed and the relevant timetable, and then the review will be conducted as soon as possible. We noted that during the deliberations on the Bill by the Bills Committee, a Member suggested that the Administration should review the two Ordinances as soon as possible. I totally agree with the Member and hereby make an undertaking to this effect.

Apart from immediately reviewing the TO and the BO, I also wish to take this opportunity to spell out clearly the policy intention of reviewing the TO and the BO. When the TO and the BO were separately enacted, their technical settings and regulatory regimes were vastly different from those at present. Therefore, there are many differences in the legislation regulating telecommunications and that regulating broadcasting, including differences in cross media ownership and foreign ownership restrictions and inconsistencies in the arrangements concerning licensing authorities, appeal mechanisms, and so on. Although the two regulatory regimes for the telecommunications and broadcasting sectors have been brought up to date and revised over the years, in the light of convergence, there is really a need to conduct reviews and carry out

integration. Therefore, when reviewing the legislation, priority will be accorded to dealing with the foregoing issues and we will start with ironing out the inconsistencies between the two Ordinances, so as to respond to technological development and keep pace with new trends.

Being a telecommunications and broadcasting regulator, the functions to be performed by the new CA are those performed by the Telecommunications Authority (TA) and the Broadcasting Authority (BA) at present. The Bill will empower the CA to enforce the TO, the BO, the Broadcasting (Miscellaneous Provisions) Ordinance and the Unsolicited Electronic Messages Ordinance. The CA will also play a role in policymaking. Under clause 4, the CA is tasked to tender advice to the Secretary for Commerce and Economic Development on the policies under its regulatory purview.

In performing its functions, the CA should foster an environment that supports a vibrant communications sector to enhance Hong Kong's position as a communications hub in the region; to encourage innovation and investment in the communications market; to promote competition and the adoption of best practices in the communications market for the benefit of the industry and consumers. And in regulating the sectors, the CA shall act in a manner consistent with the provisions of the Hong Kong Bill of Rights Ordinance to protect the core values of Hong Kong. After careful consideration, the Administration decided to heed the views of Members by including the above points in the Bill and making them matters to which the CA must have regard in performing its functions, so as to further affirm the commitment of the CA to its functions. Later on, I will move an amendment in this regard.

The CA will comprise mainly non-official members. The Chief Executive will make appointments having regard to the abilities, qualifications or professions of these people. The Bill provides that the CA can have no more than 10 non-official members, and together with one public officer to be appointed by the Chief Executive and the Director-General of Communications as an ex-officio member, the CA will have no more than 12 members. I noted that during the scrutiny of the Bill by the Bills Committee, Members were concerned about the fact that the duties of the CA cover both telecommunications and broadcasting, so its workload will be heavy. For this reason, they suggested that the CA should have a full-time chairperson or members to cope with its work. Here, I wish to respond to this suggestion. First, we wish to explain that the CA

will have a team with many years of experience in regulation to help it discharge its duties. This team will serve in the Office of the Communications Authority (OFCA) to provide effective support to the CA. In addition, the CA can establish committees and hand over part of its duties to these committees, so as to ease its workload. Moreover, in view of the complexity of the work of the CA and its workload, we will not rule out the possibility of appointing full-time members to the CA. In fact, the Bill has retained some flexibility, so that the Chief Executive can appoint full-time members to the CA and their pay will also be determined by the Chief Executive. I believe this flexible system can help attract talented people with commitment to the communications field to serve as members of the CA. No matter if the Administration eventually decides to appoint full-time members to the CA or not, we will surely give an account to the Panel on Information Technology and Broadcasting to enhance the transparency in the appointment of members.

(THE PRESIDENT resumed the Chair)

Members of the CA, being members of statutory bodies, will take part in the exercise of statutory powers and make various kinds of decisions according to the law. For this reason, they have to make appropriate declarations to avoid conflicts of interest and ensure that all members will discharge their duties in a fair, just, objective and impartial manner. The Bills Committee has had a number of discussions on the provisions on conflict of interest. Having listened to Members' views, we will propose an amendment to require, in addition to the original provisions on the declaration of interest, that the CA adopt a two-tier reporting system, namely, in the first tier, when members and committees members are appointed, and when necessary, declarations of interest have to be made and in the second tier, if there is any conflict of interest in relation to the items discussed in meetings, declarations of interest also have to be made. This mechanism can further improve the declaration of interest system of the CA and it has also attended to the suggestion made by Bills Committee members.

According to the Bill, the CA may make standing orders for the purpose of regulating the number of meetings to be held and the meeting procedures, so as to lay down more specific rules for matters relating to meetings. In the meetings of the Bills Committee, a Member referred to the Bill's provision for members of the

CA to participate in meetings by electronic means and the possibility it affecting the confidentiality of meetings. For this reason, having considered the view put forward by the Member, the Administration decided that the standing orders of the CA should include requirements on ensuring the confidentiality of meetings and an amendment will also be moved to add an appropriate provision to the Bill to ensure that the CA allows its members to participate in meetings by electronic means only when confidentiality can be ensured. At the same time, in order to tie in with the arrangements on the declaration of interest as mentioned by me just now, we also propose that in the standing orders of the CA, rules on whether or not information and papers should be issued to members who have declared their interests should be made.

To enhance the transparency of the work of the CA, the Administration will brief the Legislative Council Panel on Information Technology and Broadcasting on the details of the standing orders after the establishment of the CA and the contents of the standing orders in respect of the foregoing matters.

President, ever since the Administration made the proposal to establish the CA, various sectors have expressed their general support for the proposal. Of course, detailed proposals on the establishment of the CA and a number of proposals relating to the Bill have also been put forward in society and Members have also made many valuable suggestions in the Bills Committee. We have done our utmost to respond to them in the Bill, so as to perfect the arrangements in the proposal. After the establishment of the CA, the Administration will launch a review of the existing telecommunications and broadcasting legislation together with the CA, so that our regulatory regime can keep pace with social and technological developments and keep abreast of the times. I implore Members to support the Bill and the amendments to be moved by me later on.

Thank you, President.

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

(Members raised their hands)

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

(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): Communications Authority Bill

Council went into Committee.

Committee Stage

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

COMMUNICATIONS AUTHORITY BILL

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

CLERK (in Cantonese): Clauses 1, 3, 5, 6, 7, 11, 12, 14, 15, 18, 20, 22, 24, 25 and 26.

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 clauses read out just now 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 2, 8, 9, 10, 13, 16, 17, 19, 21 and 23.

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): Chairman, I move the amendments to the clauses read out just now, as set out in the paper circularized to Members.

During the deliberations on the Bill, the Bills Committee made many valuable and constructive proposals. The said amendments are proposed in response to the views expressed by Honourable Members. Furthermore, some amendments are minor amendments introduced in the technical, textual or drafting aspects for the purpose of further perfecting the Bill. In particular, I wish to explain the several proposed amendments as follows.

In clause 8, we propose to lay down clear criteria for the appointment by the Chief Executive of a person to be a member of the CA, including, in the opinion of the Chief Executive, the person has extensive knowledge of, experience in or exposure to, communications services; or such professional or other experience as would render the person suitable for the appointment.

Furthermore, in response to a proposal put forward by the Bills Committee, the Chief Executive may declare the office of a CA member vacant if the member fails to comply with the disclosure of interest requirements under the Bill.

Meanwhile, taking into account the possibility of appointing full-time members to the CA, the Administration proposes that the Bill should state clearly the person to determine the honorarium for members of the CA or the level of the honorarium. The Administration proposes to amend clause 8 to add a provision

to ensure that the Chief Executive will determine the remuneration and the terms and conditions of appointment to the CA.

We have acceded to the proposal of the Bills Committee to require in clause 10 that the CA must make standing orders to, apart from regulating the number of meetings to be held by the CA and the meeting procedures, add a provision to ensure that the confidentiality of the meeting can be ensured if participation through electronic means would be allowed and the circumstances under which a member of the CA may or may not supply documents or information relating to any relevant matter.

In clause 13, for the purpose of further ensuring the appropriate declaration of interests by members of the CA and members of its committees, we propose that the original arrangement for requiring only members of the CA to disclose interest in respect of a matter under discussion be extended to cover members of its committees as well. Meanwhile, at the request of the Bills Committee, the decision on whether a member disclosing an interest could stay during the deliberation of the item concerned, and vote in and form a quorum for that deliberation should be made by the majority of the other members present instead of by the member presiding.

The Bills Committee has discussed these amendments and expressed support for them. I implore Members to endorse these amendments. Thank you, Chairman.

Proposed amendments

Clause 2 (see Annex III)

Clause 8 (see Annex III)

Clause 9 (see Annex III)

Clause 10 (see Annex III)

Clause 13 (see Annex III)

Clause 16 (see Annex III)

Clause 17 (see Annex III)

Clause 19 (see Annex III)

Clause 21 (see Annex III)

Clause 23 (see Annex III)

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

DR MARGARET NG (in Cantonese): Chairman, I wish to talk in particular about the amendment moved by the Bureau to clause 8. Clause 8 is about the appointment of members to the CA by the Chief Executive and as the Secretary said, the Bills Committee hopes that clear criteria can be stipulated for appointment.

But the criteria for appointment now are in fact not at all meaningful. What are these criteria? As stipulated in new subclause (1A), they are: (a) not a public officer; (b) ordinarily resident in Hong Kong and has been so resident for at least seven years; and (c) in the opinion of the Chief Executive, a person having (i) extensive knowledge of, experience in or exposure to, communications services. What does all this mean? Almost all the persons appointed can be regarded as having extensive knowledge, experience in or exposure to, communications services. Every one of us would watch many TV programmes every day and we certainly have much exposure, so these cannot be any objective criteria.

As to (ii), that is, the person should have knowledge of or experience in management, accounting, finance, education, law or community service, or such professional or other experience as would render the person suitable for the appointment, the meaning is just that the person is suitable for appointment. Right? It does not matter if the person does not have professional knowledge, for there is another criterion on community service, if not, other kinds of experience will also do.

So we can see that although these provisions come with a lot of words, they represent criteria which do not make sense at all. No one will ever know what these criteria are. We hope that criteria that are fair, open and transparent can be formulated. There may not necessarily have to be things like a pre-appointment hearing or such stuff, but there should be an objective set of criteria which everyone can see, including whether or not the appointee is suitable to take up a public office.

Chairman, we have mentioned the Nolan Principles of the House of Commons in the United Kingdom many times and, that is, the criteria to be used when appointing public officers. We are not trying to copy other people's practice wholesale, but we hold that at this time and age, if we hope to find credibility in the persons to be appointed, then we must have such requirements. The person concerned should have some requirements on the public office he is to assume and the authorities should also have some requirements on the kind of principles he upholds, his character and other aspects showing his commitment to the office. If there is no requirement at all, and if certain criteria are put forward in a most perfunctory manner, I would think that it is just useless.

Although I will not negative this Bill because of the undesirable provisions in it, I must point out that we can never agree to this kind of perfunctory attitude shown.

Thank you, Chairman.

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

MR LAU KONG-WAH (in Cantonese): Chairman, these several amendments are very important. During our discussions in the Bills Committee, the requirements raised by Members were accepted by the Government. On the number of appointees to the CA, although it has been changed from five persons to from five persons to 10 persons, Members would tend to favour a larger membership. The reason is we anticipate the workload of the CA to be very heavy and since some committees would be formed under the CA, we hope that there can be more members so that the workload can be shared and enable members to work at greater depth.

As for the criteria suggested by Dr Margaret NG, compared with the original provisions in the Bill, basically there are more requirements and objective facts. Subclause (1A)(c) mentioned just now provides that the person should have extensive knowledge of, experience in or exposure to, communications services. Dr Margaret NG interpreted this just now as persons who watch TV can also meet this requirement. But what is clearly stated here is experience in communications services. As I understand it, those who watch TV do not belong to the communications services. So if persons can be found in the industry and they can be invited to join the new CA, I would think that it would help the operation of the CA and its attempt to familiarize itself with the operation of the industry and the enhancement of competitiveness.

During the discussions in the Bills Committee, some Members proposed that an electoral element should be added. I would think that it is not necessary because if an element of election is added, some representatives may have to represent the interests of some groups of people and they must be accountable to them. But we know that the CA has got very important responsibilities and we hope that its members can be impartial, have integrity and be committed to the industry. If the CA members all come from representatives of the communications industry, it would not be adequate. It is because besides people from the communications industry who can offer their extensive knowledge, people from other sectors such as accounting, law, education and even TV viewers whom Dr Margaret NG has talked about or users and consumers can also be of help. It may not be an advantage in balancing the views of all quarters if members come from only one industry. So I think that the amendments as they stand now are suitable. I hope Members can lend them their support.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary, do you wish to speak again?

(The Secretary shook his head to indicate that he did not wish to speak again)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 2, 8, 9, 10, 13, 16, 17, 19, 21 and 23 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clause 4

New Clause 3A

Functions of Authority.

CHAIRMAN (in Cantonese): Dr Margaret NG has given notice to move an amendment to clause 4 which seeks to add subclause (1A). If the amendment by Dr Margaret NG is passed, she may move an amendment to the long title later.

The Secretary for Commerce and Economic Development has given notice to move an amendment to clause 4 which seeks to add subclause (4).

In addition, Ms Emily LAU has also given notice to move an amendment to add new clause 3A.

Irrespective of whether the amendment of Dr Margaret NG is passed or not, the Secretary for Commerce and Economic Development may move his amendment; and the passage or otherwise of the amendments by Dr Margaret NG and the Secretary for Commerce and Economic Development will have no effect on Ms Emily LAU moving her amendment.

CHAIRMAN (in Cantonese): Members may now have a joint debate on the original clause 4 and the amendments by Dr Margaret NG and the Secretary for Commerce and Economic Development to the clause, as well as new clause 3A as proposed by Ms Emily LAU. I will first call upon Dr Margaret NG to speak and move her amendment.

DR MARGARET NG (in Cantonese): Chairman, I move that clause 4 be amended by adding subclause (1A).

Chairman, clause 4 is about the functions of the CA. In this clause, apart from stating that the CA has the functions conferred on it by or under the Broadcasting Ordinance and the Telecommunications Ordinance, it has also the following functions: to tender advice to the Secretary for Commerce and Economic Development on any legislation, legislative proposals and regulatory policies relating to telecommunications, broadcasting, anti-spamming or activities connected with the telecommunications or broadcasting sectors. These are the functions of the CA. My amendment is to state in subclause 1A that the CA shall carry out its functions under this Ordinance without interference from the Government. That is to say, it shall not come under any government interference in performing its functions. It does not mean that it shall not come

under any interference in all other matters, just that it shall not come under any interference in performing its functions.

Chairman, as I said earlier, if my amendment is passed, I would propose an amendment to the long title to add the words "an independent" in respect of the CA under discussion. The main purpose of these two amendments is to expressly realize the principles of independence and freedom from government interference. Why do I care so much about proposing these amendments? The reason is that apart from the issue of principles which I have talked about in the Second Reading debate earlier, the independence of the CA is also very important. While we were deliberating on the Bill, we had listened to the views expressed by members of the existing Broadcasting Authority, including its chairman. What principles did they think were most crucial to the establishment of the CA? They gave a lot of views. The most unequivocal view was they thought the most important thing was the CA should be really independent and it should concentrate its efforts on performing these functions. They thought that in this way, the people can see that the CA is independent and it is concentrating its efforts on performing its functions. Hence the CA will manifest credibility.

I asked them whether the existing provisions could realize these important features. Chairman, people with the determination and commitment to the job will use all the protection given by this provision to uphold the independence of the CA. But we feel that at this stage, irrespective of whether it is for the people or for the future CA, we should give the CA the greatest possible protection in the provisions on independence and freedom from interference. So I felt that these amendments should be moved.

Actually, the Government agrees with these principles of independence, specialization and freedom from interference. The Government has said to us repeatedly that its goals are consistent with ours. So we asked the Government if our goals were really consistent, then why could these be clearly and boldly written out? This would put the mind of the people at rest and they will know that the CA will have unequivocal protection as it begins its operation later. It does not have to worry about what the officials think and what their views are. All it needs is to refer to the law as it is passed and the goals will be clear.

The reasons cited by the Government to oppose that are strange. It points out in its paper that first, there is no need to make these amendments because

agencies like the West Kowloon Cultural District Authority, the Equal Opportunities Commission, the Urban Renewal Authority, and so on, are very much independent bodies and they do not have any provisions stating their independence and freedom from interference. So there is no need to write them down. If this is written down, the Government has indicated and I quote: "Including such references in the Bill to signify CA's independent position will also call into questions like whether the CA would rely on Government funding or it has its own funding source, or whether the CA would rely on the future OFCA to implement its decisions."

I think this is really ridiculous, for no such misunderstanding would ever arise. Performing the functions conferred on it under this provision means compliance with the Ordinance and this Ordinance has stated how the CA is to operate in future. During the Second Reading debate earlier, I have already talked about clauses 14 and 15, that is, the provisions on how the executive arm will enforce the decisions of the CA and how the Trading Fund will support the CA in its operations. So Chairman, I would think that it is an excessive worry to say that these provisions would be called to question if the CA is not to be interfered by the Government or that it is independent. Such things would never happen.

Chairman, since the powers of the CA are so immense, the consequences of whether it is independent could be a cause of concern. Hence I would think that in proposing the amendment, I have in principle clarified the views put forward by the Legislative Council and the authorities. Since there are no bad consequences, why then do we not make the amendment? If we stipulate the principle in the law, we would think conversely that the Government is being fair. But if at this moment, the Government appears to be hesitant and puts forward arguments that people will know instantly that they are defective, Chairman, I am afraid the public would suspect and they will question the independence of the CA to be established today or that it will not come under interference. Also, the public will doubt if the Government is merely trying to make the CA its secret instrument.

Chairman, so for the sake of the Government's integrity and for the credibility and smooth operation of the CA in future, and for the need to enable the Government to attract people with talents to fill positions in the CA, I think

the Government should support my amendment. I also call upon Members of this Council to support my amendment.

Thank you, Chairman.

Proposed amendment

Clause 4 (see Annex III)

CHAIRMAN (in Cantonese): Next I will call upon the Secretary for Commerce and Economic Development and Ms Emily LAU to speak, but they cannot move any amendment at this stage.

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): Chairman, I will move an amendment to clause 4 later to add subclause (4) to state clearly the matters to which the CA must have regard in performing its functions. During the Bills Committee stage, a number of Members expressed their views on the public mission of the CA and considered that the Bill must ensure that the CA could act in accordance with the principle of upholding the freedom of speech and the press. However, some Members held the view that, although it was incumbent on the CA to uphold the freedom of expression, there must also be concern about public order, public moral, decency, and so on, too. After careful consideration of Members' views, we have proposed an amendment to clause 4. Paragraph (d) of the amendment provides that the CA must act in a manner consistent with the provisions of the Hong Kong Bill of Rights Ordinance. The Ordinance spells out clearly that the freedom of expression comes with it responsibilities and obligations and hence must be consistent with the restrictions imposed in the Ordinance on certain matters, such as respecting the rights and reputation of others, assuring decency, and so on. Our proposed amendment has responded to Members' concern in a balanced and reasonable manner.

Chairman, I am aware that Dr Margaret NG and Ms Emily LAU have separately proposed amendments to the Bill. The Government considers these amendments unnecessary and inappropriate. I will give a response in detail when I speak for the second time later.

Thank you, Chairman.

MS EMILY LAU (in Cantonese): Chairman, I propose to add clause 3A to provide for the objects of the CA. During the deliberations, we referred to overseas experience and found in many cases that the missions and objects of their authorities are expressly provided. Hence, I consider it a matter of principle for the objects of the CA to be highlighted and stand part of the Bill. As mentioned by the Secretary, Members have actually expressed approval of a lot of things. The point is how to make these things stand part of the Bill and what effects will then be achieved. That is why many Members also mentioned in their speeches just now that, in respect of the telecommunications and broadcasting sectors, members of the public were greatly concerned about the upholding of the freedom of expression and freedom of the press, as mentioned in paragraph (a).

As mentioned by Mr LEE Wing-tat earlier, we have been campaigning for the opening up of the airwaves for years, but still we do not understand why there is such a small number of radio stations in such an advanced city as Hong Kong. There are many radio stations in a number of cities in Asia and other places, with Hong Kong being the only exception to have such a small number of radio stations. The approach adopted by the authorities concerned is most frustrating. In particular, after repeated censorship, many people claim that they have been put on a blacklist and cannot make noises. We consider it very important for the CA to regard the upholding of the freedom of expression and freedom of the press as its object in the future. It is even more important for more radio stations to be set up to give more people an opportunity to express diverse views.

Besides, I have also raised the issues of fair competition and the development of the communications market. Although I believe Members have no objection to these issues, it is very important as to how things can be put into implementation. We very much hope that the authorities can discontinue the policies implemented over the past several decades that enabled the Government to tilt its policies to the real estate sector and several major property developers. This has been the case for the previous and this generations. We do not want to see the next generation to continue to live for several major property developers. Hence, I hope we can spell out clearly in the objects of the CA that its future work is to promote fair competition and consumer interests, so that the people can enjoy speedy and efficient services at reasonable costs.

The Secretary said that he would introduce an amendment to make similar provisions as part of the functions of the CA. However, according to his remarks just now, he would only consider these matters. I believe everyone knows that, once such a provision is made, it will definitely be downgraded by several levels. While we advocate that the aforesaid items be promoted as the objects of the CA, the Secretary proposes to include them as the functions of the CA for its consideration when promotion is being conducted. Of course, this is better than having no provisions at all. However, the powers of the CA are so enormous that we hope it can regard matters on which a consensus has been reached by the public and considered by them to be extremely important as the objects of the CA after it is established. It is for this reason that we propose to include the objects of the CA as its mission. Should the Secretary wish to make these items part of the functions of the CA and for its consideration, I have no strong view, but still we hope that they can be clearly spelt out in the objects of the CA. Why is the Secretary reluctant to do so? You have also made reference to numerous cases overseas. You should know that it is generally adopted and some even call it a mission. Why can we not expressly state it in writing?

Chairman, I would like to say a few words about Dr Margaret NG's amendment. In fact, our amendments are cognate, and the issues involved are the same. If the upholding of public interest is regarded as the objects and mission, an independent organ must be set up to promote it. If the organ and its staff are appointed by and have to listen to the Chief Executive or, worse still, if they must serve the major consortia, then how can affairs involving public interests be promoted? Hence, I agree and support adding the "independent" element to the Bill.

As pointed out by me in my speech during the Second Reading, only an independent executive arm can truly manifest the aforesaid objects. If this organ has only a few part-time staff members, how much can they achieve? Moreover, the staff members at the lower level will all be civil servants, and it has already been spelt out clearly in the paper that the superior of the person in charge of this organ, who should be a D6 civil servant, will be a Permanent Secretary. As the appointment procedure and other arrangements of the CA are unable to convince Members that it is truly independent, and coupled with the fact that all of its staff, who are civil servants, are required to be accountable to a senior civil servant,

how can the CA truly achieve the universally recognized object of upholding public interest?

Despite the Secretary's reluctance to make amendments, he is unable to justify himself, either. Though we support this Bill, it actually has a variety of defects. We hope all the concerns raised today and being discussed now will not bear true very soon. Hong Kong society will be very disappointed and pale significantly if the people appointed are not independent, possibly involve a lot of conflicts of interests, and act against these objects. What we are trying to do now is in the right direction. However, we hope that when things are put into implementation, people can really see that the CA is able to act independently and uphold public interest.

I so submit.

SUSPENSION OF MEETING

PRESIDENT (in Cantonese): It is now precisely 10 pm. I now adjourn the Council until 9 am tomorrow.

Suspended accordingly at one minute past Ten o'clock.

Annex IAnti-Money Laundering and Counter-Terrorist Financing
(Financial Institutions) Bill**Committee Stage**Amendments to be moved by the Secretary for
Financial Services and the Treasury

<u>Clause</u>	<u>Amendment Proposed</u>
3	By deleting the clause and substituting— “3. Application to Government This Ordinance applies to the Government, except as otherwise expressly provided.”.
5(6)	By adding “any relevant authority” after “with intent to defraud”.
5(8)	By adding “the financial institution or any relevant authority” after “with intent to defraud”.
5	By adding— “(8A) In any proceedings for an offence under subsection (7) against a person who is an employee of a financial institution or is employed to work for a financial institution, it is a defence for the person to prove that he or she acted in accordance with the policies and procedures established and maintained by the financial institution for the purpose of ensuring compliance with the relevant specified

provision.”.

- 5(10) In the definition of *specified provision*, by deleting “(3), (5) or (6)” and substituting “(3) or (5)”.
- 9(4)(a) In the Chinese text, by deleting “限期” and substituting “期限”.
- 9(5)(a) In the Chinese text, by deleting “限期” and substituting “期限”.
- 9 By deleting subclause (8) and substituting—
“(8) This section is not to be construed as requiring a financial institution to disclose any information or produce any record or document relating to the affairs of any of its customers to an authorized person who is appointed by a relevant authority (referred to in this section as *other regulatory authority*) other than the relevant authority in relation to the financial institution, unless the other regulatory authority is satisfied, and certifies in writing that it is satisfied, that the disclosure or production is necessary for the purposes of this section.”.
- 9(15) In the definition of *business premises*, in paragraph (f), by deleting “carries on business” and substituting “may operate a money service”.
- 12 By deleting subclause (7) and substituting—

“(7) Neither this section nor section 11 is to be construed as requiring a financial institution to disclose any information or produce any record or document relating to the affairs of any of its customers to an investigator who is directed or appointed to investigate a matter by a relevant authority (referred to in this section as *other regulatory authority*) other than the relevant authority in relation to the financial institution, unless—

- (a) the customer is a person whom the investigator has reasonable cause to believe may be able to give information relevant to the investigation; and
- (b) the other regulatory authority is satisfied, and certifies in writing that it is satisfied, that the disclosure or production is necessary for the purposes of the investigation.”.

18(1) In the Chinese text, by deleting “以可閱讀形式將該項資料或事項或其有關部分” and substituting “將該項資料或事項或其有關部分以可閱讀形式”.

18(2) By deleting “who may” and substituting “who is empowered to”.

21 By adding—

- “(9) The powers specified in subsections (2)(c) and (4) are not exercisable in relation to the

Government.”.

24

By deleting the definition of *ultimate owner* and substituting—

“*ultimate owner* (最終擁有人)—

- (a) in relation to an individual—
 - (i) means another individual who ultimately owns or controls the money service business of the first-mentioned individual; or
 - (ii) if the first-mentioned individual is acting on behalf of another person, means the other person;
- (b) in relation to a partnership, means an individual who—
 - (i) is entitled to or controls, directly or indirectly, not less than a 10% share of the capital or profits of the partnership;
 - (ii) is, directly or indirectly, entitled to exercise or control the exercise of not less than 10% of the voting rights in the partnership; or
 - (iii) exercises ultimate control over the management of the partnership; and
- (c) in relation to a corporation, means an individual who—
 - (i) owns or controls, directly or indirectly, including through a trust

or bearer share holding, not less than 10% of the issued share capital of the corporation;

- (ii) is, directly or indirectly, entitled to exercise or control the exercise of not less than 10% of the voting rights at general meetings of the corporation; or
- (iii) exercises ultimate control over the management of the corporation.”.

25 By adding “the Government nor to” after “does not apply to”.

27(1) By deleting paragraph (b) and substituting—

“(b) in respect of each licensee—

- (i) if the licensee is licensed to operate a money service at specified premises, the address of every premises at which the licensee may operate a money service; or
- (ii) in any other case, the correspondence address of the licensee.”.

29 By deleting subclause (1) and substituting—

“(1) A person commits an offence if the person operates a money service without a licence.”.

29 By deleting subclause (4).

30(2) By deleting “at the premises specified in the licence”.

30

By deleting subclause (3) and substituting—

“(3) The Commissioner may grant a licence to an applicant only if the Commissioner is satisfied that—

(a) (i) where the applicant is an individual—

(A) the individual is a fit and proper person to operate a money service; and

(B) if there is an ultimate owner in relation to the individual, the ultimate owner is a fit and proper person to be associated with the business of operating a money service;

(ii) where the applicant is a partnership—

(A) each partner in the partnership is a fit and proper person to operate a money service; and

(B) if there is an ultimate owner in relation to the partnership, the ultimate owner is a fit and proper person to be associated with the business of operating a money service; or

(iii) where the applicant is a

corporation—

(A) each director of the corporation is a fit and proper person to be associated with the business of operating a money service; and

(B) if there is an ultimate owner in relation to the corporation, the ultimate owner is a fit and proper person to be associated with the business of operating a money service; and

(b) in relation to an application to operate a money service at any particular premises—

(i) the premises are suitable to be used for the operation of a money service; and

(ii) where the premises are domestic premises, the applicant has secured the written consent of every occupant of the premises for any authorized person as defined by section 8 to enter the premises for the purpose of exercising the powers under section 9.”.

- 30(4)(b) (a) By adding before subparagraph (i)—
“(ia) for an offence in respect of an act that would have constituted an offence specified in paragraph (a)(i), (ii), (iii) or (iv) had it been done in Hong Kong;”.
- (b) In the Chinese text, by deleting “被裁定犯” and substituting “被裁定”.
- (c) In subparagraph (i), in the Chinese text, by adding “犯” before “關乎”.
- (d) In subparagraph (ii), in the Chinese text, by adding “犯” before “任何罪行”.
- 30(9)(b) In the Chinese text, by deleting “申請人” and substituting “持牌人或申請人(視乎情況所需而定)”.
- 33 By deleting paragraph (a) and substituting—
“(a) specify—
(i) in relation to a licence to operate a money service at specified premises, the address of every premises at which the licensee may operate a money service; or
(ii) in any other case, the correspondence address of the licensee;”.
- 34(1) By deleting paragraph (a) and substituting—
“(a) the Commissioner is of the opinion that in relation to a licence—
(i) where the licensee is an individual—
(A) the individual is no longer a fit and

proper person to operate a money service; or

(B) if there is an ultimate owner in relation to the individual, the ultimate owner is no longer a fit and proper person to be associated with the licensee's business of operating a money service;

(ii) where the licensee is a partnership—

(A) any partner in the partnership is no longer a fit and proper person to operate a money service; or

(B) if there is an ultimate owner in relation to the partnership, the ultimate owner is no longer a fit and proper person to be associated with the licensee's business of operating a money service; or

(iii) where the licensee is a corporation—

(A) any director of the corporation is no longer a fit and proper person to be associated with the licensee's business of operating a money service; or

(B) if there is an ultimate owner in relation to the corporation, the ultimate owner is no longer a fit and proper person to be associated with the licensee's business of

operating a money service; or”.

- 34 By adding—
- “(8) If a person whose licence is revoked does not surrender the licence to the Commissioner within the time specified in the notice given to the person under subsection (4), the person commits an offence and is liable on conviction to a fine at level 5.”.
- 36(1) By deleting “In relation to a licensee that is a corporation, a person must not become an ultimate owner of the corporation” and substituting “A person must not become an ultimate owner of a licensee”.
- 38 By deleting subclause (1) and substituting—
- “(1) A licensee who is licensed to operate a money service at premises specified in the licence must not operate a money service at any premises other than those specified premises unless the Commissioner has, on an application of the licensee, added the new premises to the licence.”.
- 38 By adding—
- “(8) A licensee who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 6 months.”.
- New By adding—
- “38A. Application to operate at particular premises**

- (1) A licensee who is not required under the licence to operate a money service at particular premises must not operate a money service at any particular premises unless the Commissioner has, on an application of the licensee, added the premises to the licence.
- (2) An application under this section must be made in the form and manner specified by the Commissioner.
- (3) The Commissioner may grant an application under this section on payment of the fee specified in Schedule 3 and may impose any condition that the Commissioner thinks fit.
- (4) The Commissioner may grant an application under this section only if the Commissioner is satisfied that—
 - (a) the premises in respect of which the application is made are suitable to be used for the operation of a money service; and
 - (b) where the premises referred to in paragraph (a) are domestic premises, the licensee has secured the written consent of every occupant of the premises for any authorized person as defined by section 8 to enter the premises for the purpose of exercising the

powers under section 9.

- (5) If the Commissioner refuses to grant an application under this section, the Commissioner must inform the licensee by notice in writing.
- (6) A notice under subsection (5) must include—
 - (a) a statement of the reasons for the decision; and
 - (b) a statement that the licensee may apply to the Review Tribunal for a review of the decision.
- (7) The Commissioner must, as soon as reasonably practicable after granting an application under this section, amend the relevant particulars in the register.
- (8) A licensee who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 6 months.”.

40(1)

By deleting “If a licensee intends to cease to operate a money service at the premises or any of the premises specified in the licence with effect from a particular date (*date of cessation*)” and substituting “If a licensee intends to cease to operate a money service or (if applicable) to cease to operate a money service at any of the premises specified in the licence with effect from a particular date (referred to in this section as *date of cessation*)”.

- 42(1)(c) By adding “38(1), 38A(1),” after “37(1),”.
- 45 In the Chinese text, by adding “員” after “獲授權人”.
- 46(2)(c) By deleting “and” at the end.
- 46(2) By deleting paragraph (d) and substituting—
- “(d) detain any person found on the premises who appears to the officer to be, or to be likely to be, able to give information relevant to the investigation of the suspected offence until the premises have been searched;”.
- 46(2) By adding—
- “(e) if any information or matter contained in a record or document found on the premises is recorded otherwise than in a legible form but is capable of being reproduced in a legible form, require any person—
- (i) who appears to the officer to be in charge of the premises; or
- (ii) who appears to the officer to be, or to be likely to be, able to produce a reproduction of the recording of the information or matter,
- to produce a reproduction of the recording of the information or matter, or the relevant part of the recording, in a legible form; and
- (f) if any information or matter contained in a record or document found on the premises is recorded in

an information system, require any person—

- (i) who appears to the officer to be in charge of the premises; or
- (ii) who appears to the officer to be, or to be likely to be, able to produce a reproduction of the recording of the information or matter,

to produce a reproduction of the recording of the information or matter, or the relevant part of the recording, in a form that enables the information or matter to be reproduced in a legible form.”.

- 47(1)(b)(iii) In the Chinese text, by deleting “該人員” and substituting “該人”.
- 47(5) By adding “or detention” after “arrest” (wherever appearing).
- 52 By adding “, other than an indictable offence,” after “for an offence”.
- 53 (a) In the definition of *specified decision*, in paragraph (d)—
- (i) in subparagraph (xi), by deleting “or” at the end;
 - (ii) by adding—
 - “(xia) to refuse to grant an application to operate a money service at particular premises under section 38A; or”.
- (b) In the Chinese text, in the definition of 審裁處, by deleting the full stop and substituting a semicolon.
- (c) In the Chinese text, in the definition of 覆核申請, by

deleting the semicolon and substituting a full stop.

77

In the Chinese text, by adding “乎” after “或(f)段(視”.

80(2)

(a) By adding “made” after “any requirement”.

(b) In the Chinese text, by adding “的要求” after “地址”.

New

By adding immediately before clause 87—

“86A. Section 130 amended (Suitability of premises for keeping records or documents)

Section 130(1), after “under this Ordinance”—

Add

“or the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (of 2011)”.

Schedule 1,
Part 1, section 1

In the definition of *terrorist financing*—

- (a) in paragraph (a), by deleting “or facilitate the commission of any terrorist act” and substituting “one or more terrorist acts”;
- (b) in paragraph (b), by deleting “having reasonable grounds to believe that” and substituting “being reckless as to whether”.

Schedule 2,
section 1(1)

In the definition of *beneficial owner*—

- (a) by deleting paragraphs (a) and (b) and substituting—
 - “(a) in relation to a corporation—
 - (i) means an individual who—
 - (A) owns or controls, directly or indirectly, including through

-
- a trust or bearer share holding, not less than 10% of the issued share capital of the corporation;
 - (B) is, directly or indirectly, entitled to exercise or control the exercise of not less than 10% of the voting rights at general meetings of the corporation; or
 - (C) exercises ultimate control over the management of the corporation; or
 - (ii) if the corporation is acting on behalf of another person, means the other person;
 - (b) in relation to a partnership—
 - (i) means an individual who—
 - (A) is entitled to or controls, directly or indirectly, not less than a 10% share of the capital or profits of the partnership;
 - (B) is, directly or indirectly, entitled to exercise or control the exercise of not less than 10% of the voting rights in the partnership; or
 - (C) exercises ultimate control over the management of the partnership; or

- (ii) if the partnership is acting on behalf of another person, means the other person;”;
- (b) in paragraph (c), by deleting “customer that is a”;
- (c) in paragraph (c)(i), in the Chinese text, by adding “資本的” after “信託財產的”;
- (d) in paragraph (d), by deleting “customer” (wherever appearing) and substituting “person”.
- Schedule 2, section 1(1) In the definition of *customer due diligence measures*, by deleting “section 2” and substituting “section 2(1)”.
- Schedule 2, section 1(1) In the Chinese text, in the definition of 業務關係, in paragraph (b), by deleting “金融”.
- Schedule 2, section 1(1) By adding—
“*occasional transaction* (非經常交易) means a transaction between a financial institution and a customer who does not have a business relationship with the financial institution;”.
- Schedule 2, section 1(2) By adding “in subsection (1)” after “*politically exposed person*”.
- Schedule 2, section 1(3) (a) By adding “in subsection (1)” after “*politically exposed person*”.
- (b) In paragraph (a), by deleting “and” at the end and substituting “or”.
- Schedule 2, section 2 (a) By renumbering the section as section 2(1).

- (b) In subsection (1)(b), by adding “, subject to subsection (2),” after “identifying the beneficial owner and”.
- (c) In subsection (1)(c), in the Chinese text, by deleting “金融”.
- (d) In subsection (1)(d)(i), by deleting “verifying” and substituting “taking reasonable measures to verify”.
- (e) By adding—
 - “(2) Except where a situation referred to in section 15 of this Schedule exists, if an individual is a beneficial owner of a customer by virtue of paragraph (a)(i)(A) or (B), (b)(i)(A) or (B) or (c)(i) of the definition of *beneficial owner* in section 1(1) of this Schedule, the financial institution is not required to verify the identity of the individual unless—
 - (a) for an individual falling within paragraph (a)(i)(A) of that definition, the individual owns or controls, directly or indirectly, including through a trust or bearer share holding, not less than 25% of the issued share capital of the relevant corporation;
 - (b) for an individual falling within paragraph (a)(i)(B) of that definition, the individual is, directly or indirectly, entitled to exercise or control the exercise of not less than 25% of the voting rights at general meetings of the relevant corporation;
 - (c) for an individual falling within paragraph (b)(i)(A) of that definition, the individual is entitled to or controls, directly or

indirectly, not less than a 25% share of the capital or profits of the relevant partnership;

- (d) for an individual falling within paragraph (b)(i)(B) of that definition, the individual is, directly or indirectly, entitled to exercise or control the exercise of not less than 25% of the voting rights in the relevant partnership; or
- (e) for an individual falling within paragraph (c)(i) of that definition, the individual is entitled to a vested interest in not less than 25% of the capital of the relevant trust property, whether the interest is in possession or in remainder or reversion and whether it is defeasible or not.”.

Schedule 2,
section 3

By deleting subsection (5).

Schedule 2,
section 4(1)

By deleting “section 2(a)” and substituting “section 2(1)(a)”.

Schedule 2,
section 4

By adding—

“(1A) If a customer of a financial institution not falling within subsection (2) has in its beneficial ownership chain an entity that falls within that subsection, the financial institution is not required, when carrying out the measure set out in section 2(1)(b) of this Schedule in respect of the beneficial owners in that chain in any of the circumstances set out in section 3(1)(a), (b) and

(c) of this Schedule, to identify, or verify the identities of, the beneficial owners of that entity or of any person in that chain beyond that entity.”.

Schedule 2,
section 4(3)

By deleting “section 2(a)” and substituting “section 2(1)(a)”.

Schedule 2,
section 4(4)(b)

By deleting “pension scheme” and substituting “provident, pension, retirement or superannuation scheme (however described)”.

Schedule 2,
section 4

By deleting subsection (5).

Schedule 2,
section 4(6)

By deleting “section 2(b)” and substituting “section 2(1)(b)”.

Schedule 2,
section 6(1)

- (a) In paragraph (a)(ii), by adding “or” at the end.
- (b) By deleting paragraph (b).

Schedule 2,
section 9

- (a) In paragraph (a), by deleting “section 2(a)” and substituting “section 2(1)(a)”.
- (b) In paragraph (b), by deleting “, including obtaining from appropriate persons or authorities certificates certifying that the documents provided by the customer are true copies of the originals”.

Schedule 2,
section 10(1)(b)

By deleting “adequate” and substituting “reasonable”.

Schedule 2,
section 10(2)(b)

By deleting “adequate” and substituting “reasonable”.

Schedule 2,
section 12(3)(b)

In the Chinese text, by deleting “金融”.

Schedule 2,
section 12(4)

- (a) In paragraph (b), in the Chinese text, by adding “主管” after “其他有關”.
- (b) In paragraph (c), in the Chinese text, by adding “主管” after “其他有關”.

Schedule 2,
section 12

By deleting subsection (9) and substituting—

“(9) Where a financial institution is a beneficiary institution in a domestic wire transfer—

(a) if the wire transfer is not accompanied by the information required under subsection (3)(b), it must as soon as reasonably practicable—

(i) obtain the information from the institution from which it receives the transfer instruction; and

(ii) if the information cannot be obtained, either—

(A) consider restricting or terminating its business relationship with the institution referred to in subparagraph (i); or

(B) take reasonable measures to mitigate the risk of money laundering or terrorist financing involved; or

(b) if the financial institution is aware that the accompanying information that purports

to be the information required under subsection (3)(b) is incomplete or meaningless, it must as soon as reasonably practicable take reasonable measures to mitigate the risk of money laundering or terrorist financing involved.”.

Schedule 2,
section 12

By deleting subsection (10) and substituting—

“(10) Where a financial institution is a beneficiary institution in a wire transfer that is not a domestic wire transfer—

(a) if the wire transfer is not accompanied by all of the information required under subsection (3), it must as soon as reasonably practicable—

(i) obtain the missing information from the institution from which it receives the transfer instruction; and

(ii) if the missing information cannot be obtained, either—

(A) consider restricting or terminating its business relationship with the institution referred to in subparagraph (i); or

(B) take reasonable measures to mitigate the risk of money laundering or terrorist financing involved; or

- (b) if the financial institution is aware that any of the accompanying information that purports to be the information required under subsection (3) is incomplete or meaningless, it must as soon as reasonably practicable take reasonable measures to mitigate the risk of money laundering or terrorist financing involved.”.

Schedule 2,
section 13(3)

By deleting the definition of *remittance transaction* and substituting—

“*remittance transaction* (匯款交易) means a transaction for sending, or arranging for the sending of, money to a place outside Hong Kong.”.

Schedule 2,
section 14(1)

In the Chinese text, by adding “服務” after “建立代理銀行”.

Schedule 2,
section 14(2)

In the Chinese text, by adding “服務” after “建立代理銀行”.

Schedule 2,
section 15

By deleting paragraphs (a) and (b) and substituting—

“(a) where a business relationship is to be established—

- (i) obtain approval from its senior management to establish the business relationship; and

(ii) either—

- (A) take reasonable measures to establish the relevant customer’s or

- beneficial owner's source of wealth and the source of the funds that will be involved in the business relationship; or
- (B) take additional measures to mitigate the risk of money laundering or terrorist financing involved;
- (b) where a business relationship has been established—
- (i) obtain approval from its senior management to continue the business relationship;
- (ii) if there is a beneficial owner in relation to the relevant customer, take reasonable measures to verify the beneficial owner's identity so that the financial institution is satisfied that it knows who the beneficial owner is; and
- (iii) either—
- (A) take reasonable measures to establish the relevant customer's or beneficial owner's source of wealth and the source of the funds that are involved in the business relationship; or
- (B) take additional measures to mitigate the risk of money laundering or terrorist financing involved; or
- (c) where an occasional transaction is to be carried

out, take additional measures to mitigate the risk of money laundering or terrorist financing involved.”.

Schedule 2,
section 17

In the Chinese text, in the heading, by adding “服務” after “代理銀行”.

Schedule 2,
section 17(1)

In the Chinese text, by adding “服務” after “代理銀行”.

Schedule 2,
section 17(2)

- (a) By adding “and (d)(iii)” after “subsection (1)(c)”.
- (b) By adding “or jurisdiction” after “place” (wherever appearing).
- (c) In the Chinese text, by adding “即屬” after “某法團”.

Schedule 2,
section 18(3)(a)

- (a) In subparagraph (ii), by deleting “(practising)”.
- (b) In subparagraph (iii), by deleting “who is practising as a Chartered Secretary” and substituting “practising”.

Schedule 2,
section 18

By deleting subsection (4) and substituting—

“(4) A financial institution that carries out a customer due diligence measure by means of an intermediary must—

- (a) immediately after the intermediary has carried out that measure, obtain from the intermediary the data or information that the intermediary has obtained in the course of carrying out that measure, but nothing in this paragraph requires the financial institution to obtain at the same time from the intermediary a copy of any

document, or a record of any data or information, that is obtained by the intermediary in the course of carrying out that measure; and

- (b) ensure that the intermediary will, if requested by the financial institution within the period referred to in section 20(2) or (3) of this Schedule, as the case requires, provide to the financial institution a copy of any document, or a record of any data or information, obtained by the intermediary in the course of carrying out that measure as soon as reasonably practicable after receiving the request.”.

Schedule 2,
section 18(7)

In the definition of *certified public accountant (practising)*, by deleting “*certified public accountant (practising)* (執業會計師)” and substituting “*certified public accountant* (會計師)”.

Schedule 2,
section 19

By deleting subsection (2) and substituting—

- “(2) A financial institution that carries out wire transfers must establish and maintain effective procedures for identifying and handling wire transfers in relation to which section 12(5) of this Schedule has not been complied with.”.

Schedule 2,
section 20(4)

In the Chinese text, by adding “(視乎情況所需而定)” after “(3)款”.

- Schedule 2,
section 20
- By deleting subsection (6).
- Schedule 2,
section 22
- (a) In the heading, by deleting “**subsidiaries**” and substituting “**subsidiary undertakings**”.
- (b) In subsection (1)(b), by deleting “the financial institution” and substituting “a financial institution”.
- (c) In subsection (2), in the Chinese text, by deleting “該金融機構” and substituting “該機構”.
- (d) In subsection (3), in the Chinese text, in the definition of 分行, by deleting “機構所經營的業務” and substituting “機構所經營”.
- Schedule 3
- By deleting “38 & 49]” and substituting “38, 38A & 49]”.
- Schedule 3
- In item 3, in the Chinese text, by deleting “複本”.
- Schedule 3
- By adding—
- | | |
|-------------------------------------|------------|
| “10. Application to operate a money | 2,220 |
| service at particular premises | for each |
| | business |
| | premises”. |
- Schedule 4,
section 3
- By deleting subsection (4) and substituting—
- “(4) A notice of resignation takes effect—
- (a) on the date the Secretary receives the notice; or
- (b) if a later date is specified in the notice, on that later date.”.

Schedule 4,
section 4

By deleting subsection (4) and substituting—

“(4) A notice of resignation takes effect—

- (a) on the date the Secretary receives the notice; or
- (b) if a later date is specified in the notice, on that later date.”.

Schedule 4,
section 9(4)

By deleting “(1) or”.

BUILDINGS (AMENDMENT) BILL 2010

COMMITTEE STAGE

Amendments to be moved by the Secretary for Development

<u>Clause</u>	<u>Amendment Proposed</u>
4(6)	In the Chinese text, in the proposed definition of “合資格人士”, in paragraph (e), by deleting “類別” and substituting “類型”.
6(18)	In the Chinese text, by deleting ““或岩土工程師名冊的申請”而代以“” and substituting ““任何名單、結構工程師名冊或岩土工程師名冊的申請”而代以“中任何名單、結構工程師名冊”.
10(3)	By deleting “(as amended by section 9 of the Buildings (Amendment) Ordinance 2008 (20 of 2008) (referred to as the “amending Ordinance” in the following provisions))”.
10(4), (5), (6), (8), (9), (10), (11), (12) and (13)	By deleting “(as amended by section 9 of the amending Ordinance)”.
10	By deleting subclause (16).
New	By adding –

“10A. Registers of contractors, etc.

(1) Section 8A(1)(c) is amended, in the Chinese text, by repealing “類別” and substituting “類型”.

(2) Section 8A(4)(c) is amended, in the Chinese text, by repealing “類別” and substituting “類型”.

- 11 By deleting subclause (1).
- 13(1), (2), (3), (4) and (5) By deleting “(as amended by section 15 of the amending Ordinance)”.
- 13(6) By deleting ““within 28 days of the order of the disciplinary board” after “Instance”” and substituting ““registered minor works contractor,” before “director,””.
- 14 By deleting subclause (1).
- 19 In the proposed section 30A, in the heading, by deleting **“Interpretation and application”** and substituting **“Application”**.
- 19 By deleting the proposed section 30A(1).
- 19 In the proposed section 30B(5), by deleting “(other than a

signboard)” and substituting “as prescribed in the regulations”.

19 In the proposed section 30B(5), in the Chinese text, by deleting “建築物內” and substituting “建築物”.

19 In the proposed section 30B(6), in the Chinese text, by deleting “建築物內” and substituting “建築物的”.

19 In the proposed section 30B(11), by adding “not exceeding” after “surcharge of”.

19 In the proposed section 30C(8)(b), by deleting “30E(1)” and substituting “30E(1)(a)”.

19 In the proposed section 30C(9), by adding “not exceeding” after “surcharge of”.

19 In the proposed section 30E(1), by deleting everything after “must appoint” and substituting –

“–

- (a) a qualified person to carry out the prescribed inspection; and

- (b) a qualified person to supervise the prescribed repair.”.

19 In the proposed section 30E, by adding –

“(1A) The qualified person appointed under subsection (1)(b) may be the same qualified person appointed under subsection (1)(a).”.

19 In the proposed section 30E(2), by deleting everything after “subsection” and substituting –

“(1)(a) is a natural person, the qualified person must –

- (a) carry out the prescribed inspection personally; and
- (b) comply generally with this Ordinance.”.

19 In the proposed section 30E(3), by deleting everything after “subsection” and substituting –

“(1)(a) is not a natural person, a representative of the qualified person as prescribed in the regulations must –

- (a) carry out the prescribed inspection personally; and
- (b) comply generally with this Ordinance.”.

- 19 In the proposed section 30E(4), by deleting “(1)” and substituting “(1)(b)”.
- 19 In the proposed section 30E(5), by deleting “(1)” and substituting “(1)(a) or (b)”.
- 19 In the proposed section 30E(6), by deleting “(1)” and substituting “(1)(a) or (b)”.
- 19 In the proposed section 30E(6), by deleting “repair.” and substituting “repair (as the case requires).”.
- 19 In the proposed section 30E(7), by deleting “(1)” and substituting “(1)(a) or (b)”.
- 19 In the proposed section 30E(8), by deleting “(1)” and substituting “(1)(a) or (b)”.
- 23 By adding –
- “(2A) Section 38(1)(ka)(ii) is amended, in the Chinese text, by repealing “類別” and substituting “類型”.
- (2B) Section 38(1)(ka)(iii) is amended, in the Chinese text, by repealing “類別” and substituting “類型”.

(2C) Section 38(1)(ka)(iv) is amended, in the Chinese text, by repealing “類別” and substituting “類型”.

(2D) Section 38(1)(kd)(ii) is amended, in the Chinese text, by repealing “類別” and substituting “類型”.

23(3) By deleting the proposed section 38(1)(kg)(ii).

24(1) By deleting “(as amended by section 26 of the amending Ordinance)”.

25 By deleting subclause (1) and substituting –

“(1) Section 39B(1) is amended by repealing everything before paragraph (a) and substituting –

“(1) A person who has been notified by an owners’ corporation of a building that an order has been served on the owners’ corporation under section 24(1), 26(1), 26A(1) or (3), 27A(1) or (2B), 27C(1) or (4) or 28(2)(a), (3) or (5), or a notice has been served on the owners’ corporation under section 30B(3), (5) or (6) or 30C(3), in relation to any common parts of the building must not –”.

25 By deleting subclause (2) and substituting –

“(2) Section 39B(1)(a) is amended by repealing “works or other action that is required for the purpose of complying with the order” and substituting “inspection, investigation, works or other action that is required for the purpose of complying with the order or notice”.”.

25 By deleting subclause (3) and substituting –

“(3) Section 39B(1)(b) is amended by repealing “works or other action that is required for the purpose of complying with the order” and substituting “inspection, investigation, works or other action that is required for the purpose of complying with the order or notice”.”.

25 By deleting subclause (4) and substituting –

“(4) Section 39B is amended by adding –

“(1A) A person who has been notified by an owners’ corporation of a building that a notice has been served on the owners’ corporation under section 30B(3), (5) or (6) or 30C(3) in relation to any common parts of the building must not refuse to contribute to the cost of the inspection, investigation, works or

other action that is required for the purpose of complying with the notice.”.”.

- 26 By deleting “(as amended by section 27 of the amending Ordinance)”.
- 27(1), (2), (5), (6) and (7) By deleting “(as amended by section 28 of the amending Ordinance)”.
- 27(8) In the proposed section 40(2AD), by deleting “30E(2)” and substituting “30E(2)(a)”.
- 27(8) In the proposed section 40(2AD), by deleting “30E(3)” and substituting “30E(3)(a)”.
- 27(9), (10), (13) and (14) By deleting “(as amended by section 28 of the amending Ordinance)”.
- 27 By adding –
“(14A) Section 40(2E) is amended, in the Chinese text, by repealing “類別” and substituting “類型”.”.
- 27(15) By deleting “(as amended by section 28 of the amending

Ordinance)”.

27 By adding –

“(16) Section 40 is amended by adding –

“(4C) Any person who without reasonable excuse contravenes section 39B(1A) commits an offence and is liable on conviction to a fine at level 4.”.”.

36 In the proposed Schedule 7, in section 3, in the Chinese text, by deleting “在有申請以本附表第4條所述的方式提出時” and substituting “應以本附表第4條所述的方式而提出的申請”.

44 By deleting “(as amended by section 47 of the amending Ordinance)”.

New By adding immediately after clause 45 –

“Fire Safety (Commercial Premises) Ordinance

45A. Offence to disclose information obtained officially

Section 21(2) of the Fire Safety (Commercial Premises) Ordinance (Cap. 502) is amended by adding –

“(ba) in relation to exercising a power or performing a function under the Buildings Ordinance (Cap.

123), or for the purpose of enabling or facilitating any thing or work to be done by any person under that Ordinance; or”.”.

New By adding –

“Fire Safety (Buildings) Ordinance

47. Offence to disclose information obtained officially

Section 22(2) of the Fire Safety (Buildings) Ordinance (Cap. 572) is amended by adding –

“(ba) in relation to exercising a power or performing a function under the Buildings Ordinance (Cap. 123), or for the purpose of enabling or facilitating any thing or work to be done by any person under that Ordinance;”.”.

BUILDINGS (AMENDMENT) BILL 2010

COMMITTEE STAGE

Amendments to be moved by the Honourable KAM Nai-wai, MH

<u>Clause</u>	<u>Amendment Proposed</u>
<u>19</u> [NEGATIVED]	<p>In the proposed section 30D, by adding —</p> <p>“(2A) A registered inspector appointed under subsection (1)(a) or (b) must comply with the practice note for registered inspectors regarding the prescribed inspection or supervision of the prescribed repair relating to the best practices on tendering procedures for engagement of registered inspectors and registered contractors.”.</p>
<u>19</u> [NEGATIVED]	<p>In the proposed section 30E, by adding —</p> <p>“(1B) A qualified person appointed under subsection (1)(a) or (b) must comply with the practice note for qualified persons regarding the prescribed inspection, prescribed repair or supervision of the prescribed repair relating to the best practices on tendering procedures for engagement of qualified persons and registered contractors.”.</p>
<u>27(8)</u> [NOT PROCEEDED WITH]	<p>Before the proposed section 40(2AD), by adding —</p> <p>“(2ADA) Any registered inspector or qualified person who contravenes section 30D(2A) or 30E(1B), as the case may be, commits an offence and is liable on conviction —</p> <ul style="list-style-type: none">(a) in the case of a prescribed repair (other than minor works), to a fine at level 5; or(b) in the case of a prescribed repair that is minor works, to a fine at level 4.”.

Annex III

COMMUNICATIONS AUTHORITY BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Commerce and Economic Development

<u>Clause</u>	<u>Amendment Proposed</u>
2	In the Chinese text, in the definition of “營運基金”, by adding “辦公室” after “管理局”.
4	By adding – “(4) Without limiting any other matters to which the Authority may have regard, in performing its functions, the Authority must have regard to such of the following as appear to it to be relevant in the circumstances – (a) the fostering of an environment that supports a vibrant communications sector to enhance Hong Kong’s position as a communications hub in the region; (b) the encouragement of innovation and investment in the communications market; (c) the promotion of competition and adoption of best practices in the communications market for the benefit of the industry and consumers; and (d) acting in a manner consistent with the provisions of the Hong Kong Bill of

Rights Ordinance (Cap. 383).”.

8(1)(a) By deleting “who are not public officers and who are ordinarily resident in Hong Kong and have been so resident for at least 7 years”.

8 By adding –

“(1A) The Chief Executive may appoint a person under subsection (1)(a) only if the person –

- (a) is not a public officer;
- (b) is ordinarily resident in Hong Kong and has been so resident for at least 7 years; and
- (c) is, in the opinion of the Chief Executive, a person having –
 - (i) extensive knowledge of, experience in or exposure to, communications services; or
 - (ii) knowledge of or experience in management, accounting, finance, education, law or community service, or such professional or other experience as would render the person suitable for the appointment.”.

8(4) (a) In paragraph (d), by deleting “or”.

(b) By adding –

“(da) fails to comply with section 12A or 13; or”.

- 8 By deleting subclause (5) and substituting –
- “(5) The office of a member of the Authority appointed under subsection (1)(a) becomes vacant if the member becomes a public officer.”.
- 8 By adding –
- “(9) The Chief Executive may determine the remuneration and the terms and conditions of any appointment under this section.”.
- 9 By deleting subclause (2) and substituting –
- “(2) The Chief Executive may revoke any appointment made under subsection (1) if the Chief Executive is of the opinion that the chairperson or vice-chairperson is unable or unfit to perform the functions of chairperson or vice-chairperson due to any reason referred to in section 8(4) or other sufficient cause.”.
- 10(5)
- (a) By deleting “may” and substituting “is to”.
 - (b) In paragraph (a), by deleting “and”.
 - (c) In paragraph (b), by deleting the full stop and substituting a semicolon.
 - (d) By adding –
 - “(c) the conduct of any meeting to which subsection (6) applies, in order to ensure that the confidentiality of the meeting, if any, is not compromised; and
 - (d) the supply of any documents or information relating to

any matter to a member who has or may have an interest in the matter.”.

10(6) By adding “compliance with standing orders made under” before “subsection (5)”.

New By adding –

“12A. Register of interests

(1) A member of the Authority, a member of the Broadcast Complaints Committee or a member of a committee appointed under section 16 must disclose to the Authority any interest that the member has which is of a class or description determined by the Authority under subsection (2) –

- (a) on the member’s first appointment;
- (b) at the beginning of each calendar year after the appointment;
- (c) on becoming aware of the existence of an interest not previously disclosed under this subsection; and
- (d) after the occurrence of any change to an interest previously disclosed under this subsection.

(2) The Authority may, for the purposes of this section –

- (a) determine the class or description of the interest required to be disclosed;
- (b) determine the details of the interest required to be disclosed and the manner in

which such interest is to be disclosed; and

- (c) from time to time change any matter determined under paragraph (a) or (b).

(3) The Authority is to establish and maintain a register relating to any disclosure required to be made under subsection (1) (“the register”) at the principal office of OFCA.

(4) If a person makes a disclosure as required by subsection (1), the Authority must cause the person’s name and the particulars of the disclosure to be recorded in the register, and if a further disclosure is made, the Authority must cause the particulars of the further disclosure to be recorded in the register.

(5) For the purpose of enabling any member of the public to ascertain the particulars of any disclosure required to be made under subsection (1), the Authority must, by such means as it considers appropriate, make available the register for inspection by the public at any reasonable time.”.

13(1) By deleting “the Broadcast Complaints Committee or any committee appointed under section 16,”.

13(2)(c) By deleting “member presiding” (wherever appearing) and substituting “majority of the other members present”.

13 By adding –
 “(8) Subsections (1), (2) and (7) apply to a member of the Broadcast Complaints Committee or a committee appointed under section 16, as if any reference to the Authority in

subsections (1) and (7) were a reference to the Broadcast Complaints Committee or the committee appointed under section 16, as the case may be.”.

- 16(1) By deleting “The” and substituting “Without prejudice to the appointment of the Broadcast Complaints Committee, the”.
- 16(2) By adding “a member of the Authority who is also” after “and may appoint”.
- 17(3)
- (a) In paragraph (b), in the English text –
 - (i) by deleting “submit” and substituting “submission of”;
 - (ii) by deleting “section 16 (appoint” and substituting “16 (appointment of”.
 - (b) In paragraph (c), by deleting “13C, 13CA or 13E” and substituting “13C (grant of licence), 13CA (issue of guidelines) or 13E (renewal of licence)”.
 - (c) In paragraph (e), by deleting “10(1), 19, 21 or 24” and substituting “10(1) (appointment of Broadcast Complaints Committee), 19 (issue of Codes of Practice), 21 (inquiry by Authority) or 24 (imposition of financial penalties)”.
 - (d) In paragraph (f), by deleting “3, 4, 8, 9, 10, 11, 28, 31, 32 or 33” and substituting “3 (approval of codes of practice), 4 (publication of guidelines), 8 (to whom licence may be granted), 9 (recommendations on licence applications), 10 (grant of licence), 11 (extension or renewal of licence), 28 (licensee to pay financial penalty), 31 (suspension of licence), 32 (revocation of licence) or 33 (inquiry by Authority)”.

- 19(1) In the Chinese text, by deleting “須繳付或已繳付” and substituting “繳付或須繳付”.
- 19(2) In the Chinese text, by deleting “須繳付或已繳付” and substituting “繳付或須繳付”.
- 19(3) In the Chinese text, by deleting “須繳付或已繳付” and substituting “繳付或須繳付”.
- New By adding –
- “19A. Payment out from trading fund**
- Despite any provisions in the Trading Funds Ordinance (Cap. 430), any sums payable by the Authority as a result of anything properly done or omitted to be done by the Authority in connection with the performance or purported performance of functions conferred on the Authority are to be paid out of the trading fund.”.
- 21(2)(g) (a) By deleting “prevent” and substituting “ensure that no”.
- (b) In the English text, by deleting “the trading” and substituting “trading”.
- (c) In the English text, by deleting “from being” and substituting “may be”.
- 23(1) In the Chinese text, by adding “辦公室” after “通訊事務管理局”.
- 23(2) In section 2 of the proposed Schedule 3, in the Chinese text, by adding “辦公室” after “管理局”.

Schedule,
section 30(16)

In the Chinese text, by deleting everything after “廢除” and substituting ““電訊管理局”而代以“通訊事務管理局辦公室”。”.

Schedule,
section 138(3)

In the Chinese text, by deleting everything after “廢除” and substituting ““電訊管理局”而代以“通訊事務管理局辦公室”。”.

COMMUNICATIONS AUTHORITY BILL

COMMITTEE STAGE

Amendments to be moved by Dr. the Honourable Margaret NGClauseAmendment ProposedLong titleNOT PROCEEDED
WITH

By deleting “Establish the” and substituting “Establish an independent”.

4

NEGATIVED

By adding—

“(1A) The Authority shall carry out its functions under this Ordinance without interference from the Government.”.

Appendix I**WRITTEN ANSWER****Written answer by the Secretary for Financial Services and the Treasury to Miss Tanya CHAN's supplementary question to Question 2**

As regards the transparency of the investment of seed money funds, the Beat Drugs Fund is administered by the Beat Drugs Fund Association (the Association). The Association discloses in its annual audited financial statements the types and value of investments held. The annual financial statements are filed with the Companies Registry in accordance with the requirements of the Companies Ordinance and are open for public inspection.

For the Sir David Trench Fund for Recreation — Arts and Sport Development Fund, HKSAR Government Scholarship Fund and Research Endowment Fund, the types and value of investments held are disclosed in their respective annual audited financial statements. The audited financial statements of these funds or the Trustee Report containing the audited financial statements are tabled before the Legislative Council every year.