

# OFFICIAL RECORD OF PROCEEDINGS

**Wednesday, 20 October 2010**

**The Council met at Eleven o'clock**

## **MEMBERS PRESENT:**

THE PRESIDENT

THE HONOURABLE JASPER TSANG YOK-SING, G.B.S., J.P.

THE HONOURABLE ALBERT HO CHUN-YAN

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

THE HONOURABLE LEE CHEUK-YAN

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

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

DR THE HONOURABLE MARGARET NG

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

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

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

THE HONOURABLE LEUNG YIU-CHUNG

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

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

THE HONOURABLE LAU KONG-WAH, J.P.

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

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

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

THE HONOURABLE ANDREW CHENG KAR-FOO

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

THE HONOURABLE LI FUNG-YING, 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

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

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

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

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

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

THE HONOURABLE CHIM PUI-CHUNG

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

THE HONOURABLE KAM NAI-WAI, M.H.

THE HONOURABLE CYD HO SAU-LAN

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

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

THE HONOURABLE CHAN HAK-KAN

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

THE HONOURABLE CHAN KIN-POR, J.P.

DR THE HONOURABLE PRISCILLA LEUNG MEI-FUN

DR THE HONOURABLE LEUNG KA-LAU

THE HONOURABLE CHEUNG KWOK-CHE

THE HONOURABLE WONG SING-CHI

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

THE HONOURABLE IP WAI-MING, M.H.

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

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

DR THE HONOURABLE PAN PEY-CHYOU

THE HONOURABLE PAUL TSE WAI-CHUN

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

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

THE HONOURABLE LEUNG KWOK-HUNG

THE HONOURABLE TANYA CHAN

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE WONG YUK-MAN

**MEMBERS ABSENT:**

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

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

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

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

**PUBLIC OFFICERS ATTENDING:**

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

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

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

MR LAI TUNG-KWOK, S.B.S., I.D.S.M., J.P.  
SECRETARY FOR SECURITY

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

PROF GABRIEL MATTHEW LEUNG, J.P. (First Motion under  
SECRETARY FOR FOOD AND HEALTH Agenda Item V)

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

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

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

THE HONOURABLE EDWARD YAU TANG-WAH, J.P.  
SECRETARY FOR THE ENVIRONMENT

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

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

MR GREGORY SO KAM-LEUNG, J.P.  
UNDER SECRETARY FOR COMMERCE AND ECONOMIC  
DEVELOPMENT

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

MR YAU SHING-MU, J.P.  
UNDER SECRETARY FOR TRANSPORT AND HOUSING

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

### **CLERKS IN ATTENDANCE:**

MS PAULINE NG MAN-WAH, SECRETARY GENERAL

MRS VIVIAN KAM NG LAI-MAN, ASSISTANT SECRETARY GENERAL

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY  
GENERAL

MRS PERCY MA, ASSISTANT SECRETARY GENERAL

**TABLING OF PAPERS**

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

Subsidiary Legislation/Instruments	<i>No.</i>
Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Republic of Hungary) Order .....	L.N. 124/2010
Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income and Capital) (Republic of Austria) Order .....	L.N. 125/2010
Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income and Capital Gains) (United Kingdom of Great Britain and Northern Ireland) Order.....	L.N. 126/2010
Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Ireland) Order .....	L.N. 127/2010
Specification of Arrangements (The Mainland of China) (Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income) (Third Protocol) Order ....	L.N. 128/2010
Waterworks (Amendment) Regulation 2010 .....	L.N. 129/2010
Clubs (Safety of Premises) (Exclusion) (Amendment) Order 2010 .....	L.N. 130/2010

Deposit Protection Scheme (Representation on Scheme Membership and Protection of Financial Products under Scheme) (Amendment) Rules 2010.....	L.N. 131/2010
Companies (Amendment) Ordinance 2010 (Commencement) Notice 2010.....	L.N. 132/2010
United Nations (Anti-Terrorism Measures) Ordinance (Commencement) Notice 2010.....	L.N. 133/2010
United Nations (Anti-Terrorism Measures) (Amendment) Ordinance 2004 (Commencement) Notice 2010.....	L.N. 134/2010
Second Technical Memorandum for Allocation of Emission Allowances in Respect of Specified Licences .....	S.S. No. 5 to Gazette No. 41/2010

#### Other Papers

- No. 5 — The Land Registry Trading Fund Hong Kong Annual Report 2009-10
- No. 6 — Occupational Safety and Health Council Annual Report 2009/2010
- No. 7 — Protection of Wages on Insolvency Fund Board Annual Report 2009-10
- No. 8 — Environment and Conservation Fund  
Signed and audited financial statements together with the report of the Director of Audit and report of the Trustee on the Administration of the Fund for the year ended 31 March 2010
- No. 9 — West Kowloon Cultural District Authority Annual Report 2009/10

- No. 10 — Customs and Excise Service Welfare Fund  
Signed and audited financial statements and the report of the Director of Audit for the year ended 31 March 2010
- No. 11 — Consumer Council Annual Report 2009-2010
- No. 12 — The Government Minute in response to the Reports of the Public Accounts Committee No. 53A and No. 54 of June and July 2010
- No. 13 — The Legislative Council Commission Annual Report 2009-2010

Report No. 2/10-11 of the House Committee on Consideration of Subsidiary Legislation and Other Instruments

## **ADDRESSES**

**PRESIDENT** (in Cantonese): Address. The Chief Secretary for Administration will address the Council on "The Government Minute in response to the Reports of the Public Accounts Committee No. 53A and No. 54 of June and July 2010".

### **The Government Minute in response to the Reports of the Public Accounts Committee No. 53A and No. 54 of June and July 2010**

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): President, laid on the table today is the Government Minute responding to the Reports No. 53A and No. 54 of the Public Accounts Committee (PAC).

When presenting the Reports No. 53A and No. 54 on 2 June and 14 July respectively, the Chairman of the PAC set out comments on three chapters in the Director of Audit's Reports, namely, "Control of Western Medicines", "Development of EcoPark" and "Hong Kong Chinese Orchestra (HKCO)". I am grateful for the time and efforts devoted by the PAC to the scrutiny of the items concerned. The Government accepts the various recommendations made by the PAC and its specific response is set out in the Government Minute. I now wish to highlight key measures taken by us in the relevant areas.

As regards the control of Western medicines, the Government welcomes the comments made by the PAC which help us ensure the safety, efficacy and quality of medicines in Hong Kong. We are committed to perfecting the regulatory regime for Western medicines and ensuring that it is on par with international standards.

On the control of unregistered pharmaceutical products purported to be for re-export, the Department of Health (DH) has formed a Task Force on Import and Export Control of Pharmaceutical Products to formulate strategies for control of medicines imported for re-export based on risk assessment. The Task Force is exploring relevant measures, including the development of a computer system to track the import and re-export of unregistered medicines.

To enhance the standard of local drug manufacturers, the DH plans to adopt the latest international standards promulgated by the World Health Organization and the Pharmaceutical Inspection Co-operation Scheme. The DH will, based on risk assessment, regularly review the frequency and scope of inspections of wholesalers, importers, exporters, and authorized and listed sellers of poisons. It will also continue to improve the effectiveness of inspection and enforcement actions.

In response to the concerns of the PAC, the DH has enhanced the monitoring system on product recall and accorded high priority to timely issue of public alerts. The DH will also work closely with the Government Laboratory to review the sampling and other procedures on medicine testing.

In respect of licensing criteria, prosecutions and disciplinary actions, the Pharmacy and Poisons Board has taken on board the recommendations made by the PAC for achieving a greater deterrent effect against malpractices to protect the public interest. The Board has also raised the penalty against illicit medicines and malpractices by authorized sellers of poisons and revised the protocol to include the checking of conviction records of related authorized sellers of poisons when considering their applications for registration.

To protect public health and maintain confidence in the use of medicines, the Government is preparing legislative amendments and finalizing the implementation details to tighten up the regulatory and control regime of Western medicines.

Regarding the development of the EcoPark, we agree with the PAC that there is room for improvement in the planning and administration of the EcoPark. The authorities will continue to accord high priority to the development of the EcoPark, so as to promote the development of the local recycling industry through encouraging investment in advanced technologies and high value-added processes.

In response to the recommendations made by the PAC, the authorities will ensure that contract and financial arrangements are resolved at the planning stage in future environmental projects. We will critically examine the need for involving the private sector in the project development and operation, and explore alternative contract arrangements if necessary.

We note the PAC's concerns as to whether the Legislative Council was consulted on the development of the EcoPark project. The Environment Bureau and the Environmental Protection Department (EPD) have been reporting regularly the progress of the EcoPark development to the Panel on Environmental Affairs of the Legislative Council and will continue to maintain close dialogue with the Council over the project.

As far as the progress of the EcoPark project is concerned, all six lots in Phase I of the EcoPark have been let out for recycling of various waste materials. Four of them have commissioned operation. The EPD will continue to assist the remaining tenants in commencing operation as soon as possible.

Based on the experience from the Phase I development, we are reviewing the *modus operandi* of the EcoPark to increase the attractiveness of the Phase II lots. The authorities will continue to maintain close dialogue with relevant stakeholders and monitor the latest market situation. In order to ensure that tenants are selected through an open, competitive, fair and impartial process, the authorities are reviewing the leasing arrangement of Phase II. We aim to invite tenders from the recycling industry for Phase II by the end of this year.

Regarding the administration of the management contract for operating the EcoPark, we understand that the operator has been deploying additional resources to manage the EcoPark and has worked out an integrated marketing strategy to promote the EcoPark. To closely monitor the operator's performance, the EPD has introduced a quarterly performance appraisal reporting system since September this year. The authorities will also consider adding terms in future

contracts to allow for payment adjustments in accordance with the actual service standards of the operator.

As regards the HKCO, in providing funding support to performing arts groups, including the HKCO, the Government strives to appropriately balance the need for prudent use of public funds and respect for artistic autonomy. We consider that the governing boards of the performing arts groups, in addition to steering artistic excellence, should also assume the responsibility to set up proper internal procedures and guidelines to enhance transparency and accountability in the use of public money and effective management. In response to the PAC's recommendations on the HKCO's governance and management, the HKCO has started to review, having regard to its nature and characteristics, relevant operational guidelines with a view to ensuring that its internal procedures and regulations are in line with good governance and management principles.

We note the concerns of the PAC on the criteria by which the Home Affairs Bureau evaluates subvented performing arts groups, including the HKCO. To improve the current funding and evaluation arrangements, the Home Affairs Bureau appointed a consultant in March this year to conduct a study. The study aims to review the objectives of public funding for performing arts in Hong Kong and make recommendations on a sustainable funding mechanism for performing arts groups, including establishing qualitative and quantitative assessment criteria for them. We will consult the Panel on Home Affairs before formulating proposals.

We will urge the performing arts groups to adopt measures to ensure compliance with the provisions which are outside the audit scope under the 2010-2011 Funding and Services Agreements (FSAs), including adopting proper internal controls and auditing measures, complying with the requirements on the prevention of conflict of interest and establishing procurement procedures. We will continue to monitor full compliance with the FSAs by the performing arts group, whilst the authorities will continue to disseminate information on governance and management practices to the HKCO and other subvented performing arts groups, and encourage them to share good practices to improve governance.

Finally, I would like to thank the PAC once again for its constructive comments and recommendations. The Government will, as always, make a

positive response and implement the relevant improvement measures practically. Thank you.

## ORAL ANSWERS TO QUESTIONS

**PRESIDENT** (in Cantonese): Questions. Members are reminded that they may raise only one question in asking supplementary questions. These questions should be as concise as possible and Members should not make arguments so that more Members can ask supplementary questions.

First question.

### **Electorate Base of Legislative Council Functional Constituencies**

1. **MISS TANYA CHAN** (in Cantonese): *President, under the law, some statutory bodies and overseas organizations are eligible to be registered as electors for the Legislative Council functional constituencies (FCs), and thus be also eligible to be registered as voters for the subsectors of the Election Committee (EC), which is responsible for electing the Chief Executive. In this connection, will the Government inform this Council:*

- (a) *of the information on the statutory bodies and overseas organizations which are currently registered as electors for the Legislative Council FCs or voters for the subsectors of EC, including their names and the constituencies or subsectors to which they belong;*
- (b) *of the justification for such organizations to be eligible to become electors for the Legislative Council FCs, and whether the Government will consider amending the relevant legislation to change such a situation; if it will, of the detailed plan for the relevant work; if not, the reasons for that; and*
- (c) *given that some members of the statutory bodies are appointed by the Government, if the Government has assessed whether or not allowing statutory bodies to become electors for the Legislative*

*Council FCs has left the public to think that administrative agencies interfere with the legislature through elections, and may even breach the provisions of the Basic Law; if the assessment result is in the affirmative, whether the Government will amend the legislation; if the assessment result is in the negative, of the reasons for that?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): President, our reply to the question raised by Miss Tanya CHAN is as follows:

- (a) The Legislative Council Ordinance specifies the persons or organizations eligible to be registered as an elector for a functional constituency (FC). According to the 2010 final register, there are a total of 16 039 corporate bodies and 209 600 individuals registered as electors for the FCs.

As an international city, Hong Kong's outward looking economy is best known for its openness and freedom. We understand that among the corporate electors, there are foreign organizations or offices which are stationed in Hong Kong. They are eligible for registration as electors in the relevant FCs as they are members of the trade associations or organizations specified under the Legislative Council Ordinance. Certain statutory bodies have also become electors of the relevant FCs according to the services they render. At present, there are over 220 000 FC electors. We do not keep full details of these organizations or offices.

- (b) Annex II to the Basic Law provides that the delimitation of functional sectors and corporate bodies of the Legislative Council election shall be specified by an electoral law introduced by the Government of the Hong Kong Special Administrative Region (HKSAR) and passed by the Legislative Council. The current Legislative Council Ordinance has gone through the legislative procedures stipulated under the Basic Law. We obtained legal advice in the course of preparing and subsequently amending the Ordinance. The related bills were scrutinized carefully by the Legislative Council. The composition and electorate base of the

existing FCs are in conformity with the Basic Law and related electoral laws.

- (c) According to the Legislative Council Ordinance, a FC corporate elector shall appoint an eligible permanent resident of the HKSAR as its authorized representative to vote on its behalf in the related FC. Elections in Hong Kong are conducted in a fair, open and honest manner. Any elector, be it a statutory body or other corporate body, can vote according to the will of the body freely and in confidence with absolutely no interference from the Government.

**MISS TANYA CHAN** (in Cantonese): *The Legislative Council Ordinance (Cap. 542) states clearly how a corporate elector can authorize a person to vote on its behalf. This being the case, we should look at the background of this corporate body because the vote is by proxy. Just now, the Secretary cited the ground that Hong Kong's economy is outward looking in accepting corporate bodies incorporated elsewhere or whose directors and major business are not based in Hong Kong as electors rather than undertaking to amend the legislation. May I ask the Secretary if this is not far too absurd?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): President, as Members are fully aware, FCs in Hong Kong have been developing for over two decades. Concerning the enactment of legislation for past Legislative Councils, on the one hand, we have given due regard to the economic and social development in Hong Kong; and on the other, we have put forward proposals for deliberation by the Legislative Council before including these trade associations, professional bodies and relevant organizations in FC elections. Therefore, when drawing up these rules and regulations, we have made holistic consideration. Generally speaking, we have to ensure that the trade associations, trade unions, professional bodies or organizations included in FCs are making contribution to Hong Kong society.

As regards some overseas companies or statutory bodies mentioned by Miss Tanya CHAN, they have joined these FCs. It is based on respect for the Articles of Association of the organizations under the relevant FCs and their

contribution to the social and economic development of Hong Kong over the years that we have included them.

**DR MARGARET NG** (in Cantonese): *President, in fact, there is a total lack of transparency in the eligibility of the FC electors and the compilation of the elector register for FCs. We have raised this issue in this Council many times but the authorities have all along refused to take action, saying that it would be dealt with only after the passage of the constitutional reform proposal. Now, we have reached such a stage. A recent public opinion poll indicates that the mainstream public opinion supports the abolition of FCs, in particular, the abolition of the FC electors, so the voices in this regard are one-sided. In addition, many Members and political parties in this Council, including political parties that are often regarded as pro-establishment, also support making changes to the eligibility of FC electors, and corporate electors in particular. Given such a clear voice, why has the Government made no mention of reform at all? Even if corporate electors are not abolished, at least, it is necessary to put forward ideas and proposals on reforming the electorate base and eligibility of FC electors. Why has the Government all along done nothing?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): *President, in the past few years, there have actually been some very important developments. First, we drew up the timetable for the introduction of universal suffrage in late 2007, that is, the Chief Executive can be elected by universal suffrage in 2017 and afterwards, the Legislative Council can be elected by universal suffrage in 2020. Therefore, the timetable for this is already definite.*

Second, in June, with the support of the legislature, a major development will take place in 2012. Not only will there be five new seats returned by geographical direct elections, there will also be five new seats returned by FCs. Moreover, their electorate bases will also be very broad. The 3.2 million people who do not have the right to vote in FCs at present will also be eligible to vote. In fact, this "one-person-two-votes" proposal is highly conducive to the further democratization of FCs.

Third, later on, we will submit proposals on local legislation in respect of the Chief Executive and the Legislative Council elections in 2012. Members can express their views further in due course.

As regards the electorate base of traditional FCs, I can also explain to Members a little bit. The most important part in the proposal this time around for the Legislative Council election in 2012 is to give registered voters who originally do not have the right to vote in FCs a second vote, and we have included 3.2 million people in the District Council FC. As regards other traditional FCs, we will make some technical changes, but no fundamental changes will be introduced.

**MS EMILY LAU** (in Cantonese): *President, concerning this electoral system in Hong Kong that allows people who hold foreign citizenship to play a part, Article 67 of the Basic Law stipulates that permanent residents of the Region who are not of Chinese nationality or who have the right of abode in foreign countries may also be elected Members of the Legislative Council of the Region, provided that the proportion of such Members does not exceed 20% of the total membership of the Council. Now, it is further specified to which FCs this applies.*

*President, the Secretary said in part (b) of the main reply that when scrutinizing the Legislative Council Ordinance, legal advice had been sought and that Members had examined it carefully. Can the Secretary tell us whether or not everything was discussed at that time and Members knew that it was not just the electors in several designated FCs that could hold foreign citizenships but that certain electors can also hold foreign citizenship? Is it the case that only the electors in designated FCs are allowed to do so? Or are all electors allowed to do so? He said that advice had been sought. In that event, was the advice submitted and everything stated clearly at that time, and did all the people express agreement?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): *President, I believe the supplementary question raised by Ms Emily LAU involves two areas. First, according to the Basic Law, no matter if someone has Chinese citizenship, holds an SAR passport or has foreign*

citizenship at the same time or not, so long as he is a permanent resident of Hong Kong, he has the right to vote in the elections held in Hong Kong.

As regards Ms Emily LAU's query about allowing people with foreign citizenship to run in the elections for 20% of the FC seats, back then, when preparing this piece of legislation, reference had been made to the Basic Law and the relevant legislation, and legal advice had been sought before the proposal was made.

**MS EMILY LAU** (in Cantonese): *President, this is not the thrust of my supplementary question. The main reply says that legal advice was sought when preparing the Legislative Council Ordinance, including advice on the issue of electors holding foreign citizenships, as mentioned in Miss Tanya CHAN's main question. My question was whether or not advice had been sought at that time, whether the issue was discussed during the scrutiny by the relevant bills committee and whether all the people expressed agreement?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): President, what I mean is that in accordance with Annex II to the Basic Law, in dealing with the delimitation of FCs and determining which organizations, trade associations, trade unions, professional bodies, and so on, should be included, we will certainly seek legal advice each time we propose amendments to this kind of legislation.

**MR LEUNG KWOK-HUNG** (in Cantonese): *President, I think it appears as if Secretary Stephen LAM had just come back from Mars. He is the Secretary for Constitutional and Mainland Affairs but he spends too much time on matters relating to the Mainland. Today, Donald TSANG is officiating at an opening ceremony of the World Expo .....*

**PRESIDENT** (in Cantonese): Mr LEUNG, I have already reminded Members .....

**MR LEUNG KWOK-HUNG** (in Cantonese): *Yes, so I wish to .....*

**PRESIDENT** (in Cantonese): ..... not to present arguments when asking questions.

**MR LEUNG KWOK-HUNG** (in Cantonese): ..... *"Making allowance today can bring harmony in the future". I wish to present a poem to them: "The Government is like a nightclub, senior officials are all like ladies of the night." They are all working up in the North .....*

**PRESIDENT** (in Cantonese): Mr LEUNG, please ask your supplementary question.

**MR LEUNG KWOK-HUNG** (in Cantonese): *He really looks as if he had come back from Mars.*

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

**MR LEUNG KWOK-HUNG** (in Cantonese): *All right. It is indeed a very simple question. Those corporate votes are the root of corruption and they are manipulated so much that a legal problem has now arisen. A group of people who are not permanent residents of Hong Kong control an organization and tell some Hong Kong residents to cast their votes as physical persons because the former cannot bring their stamps along to give their stamp of approval themselves. If a person told to cast a vote is an expatriate, this is already not allowed, is it? This surely is not allowed — in that case, may I ask the Secretary why, under this corrupt system, this group of people who originally do not have the right to vote for Members of the Legislative Council can manipulate a legal physical person to realize their wish? I call on him to explain this matter as it is a problem. I will seek a judicial review very soon. Today, he replied .....*

**PRESIDENT** (in Cantonese): Mr LEUNG, after asking your supplementary question, you can .....

**MR LEUNG KWOK-HUNG** (in Cantonese): ..... *does he understand this? He has gone back to the Mainland. He looks as though he were a Martian. Does he understand it? Does he know?*

**PRESIDENT** (in Cantonese): Mr LEUNG, I believe .....

**MR LEUNG KWOK-HUNG** (in Cantonese): *Why can a .....*

**PRESIDENT** (in Cantonese): Mr LEUNG .....

**MR LEUNG KWOK-HUNG** (in Cantonese): *Why can a legal person manipulate a physical person in casting his vote, buddy? This is "the dead controlling the living" .....*

**PRESIDENT** (in Cantonese): Mr LEUNG, you do not have to repeat it.

**MR LEUNG KWOK-HUNG** (in Cantonese): ..... *you know Marxist theories most clearly .....*

**PRESIDENT** (in Cantonese): You need not repeat it. Please sit down.

**MR LEUNG KWOK-HUNG** (in Cantonese): *Does he know what "the dead controlling the living" means?*

**PRESIDENT** (in Cantonese): You have a very good power of expression, so I believe the Secretary has got your point.

**MR LEUNG KWOK-HUNG** (in Cantonese): *How possibly would he understand it?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): President, I also agree that Mr LEUNG Kwok-hung's power of expression is indeed quite good, but he has got slightly too far ahead in the development of space technology. Although spaceships can now fly to Mars for exploration, they cannot yet bring human beings along, nor can they bring human beings back to Hong Kong.

**PRESIDENT** (in Cantonese): Will the Secretary please answer the supplementary question.

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): Concerning his supplementary question, my reply is that the corporate bodies in FCs can authorize one Hong Kong permanent resident to act as their representative and cast votes for them in accordance with the law. This is a legal provision drawn up in accordance with the Basic Law. The representative so authorized only has to be a permanent resident of Hong Kong and regardless of whether he holds a foreign passport or HKSAR passport, he can still vote in his capacity as a permanent resident of Hong Kong.

**MR LEUNG KWOK-HUNG** (in Cantonese): *President.*

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

**MR LEUNG KWOK-HUNG** (in Cantonese): *No. First, I know that there is the technology to take beasts to Mars and he can surely qualify.*

*Second, he did not answer whether or not the Government has considered ..... this is a system of representative government, a system of political representation, so why can foreigners manipulate the votes? Will this give rise to a constitutional crisis? He did not answer this point. He only said that the Basic Law stipulates so and so. In Annex II ..... now, even Annex II no longer applies .....*

**PRESIDENT** (in Cantonese): Mr LEUNG, your follow-up question is already very clear.

**MR LEUNG KWOK-HUNG** (in Cantonese): *Buddy, what is the use of Annex II now? You also know this.*

**PRESIDENT** (in Cantonese): Your follow-up question just now is about manipulation by foreigners .....

**MR LEUNG KWOK-HUNG** (in Cantonese): *After the Democratic Party has tackled the constitutional reform proposal, Annex II is no longer useful.*

**PRESIDENT** (in Cantonese): Please sit down.

**MR LEUNG KWOK-HUNG** (in Cantonese): *It is now finished.*

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

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): Yes, President, a few brief remarks. According to Article 26 of the

Basic Law, "Permanent residents of the Hong Kong Special Administrative Region shall have the right to vote and the right to stand for election in accordance with law", and according to Article 24 of the Basic Law, persons not of Chinese nationality who have resided in Hong Kong for a period of not less than seven years can become permanent residents, so at the personal level, expatriates can vote in Hong Kong and this is the right conferred by the Basic Law.

In addition, just now, a Member pointed out specifically that under the Basic Law, insofar as all the seats in the Legislative Council are concerned, people with the right of abode in overseas countries can serve as representatives in 20% of the seats and this is also a provision of the Basic Law. The aim is to preserve Hong Kong's position as an international city and a commercial and financial centre. Of course, this arrangement is unique and uncommon in the world, but this is the constitution prescribed for Hong Kong before the reunification and it is designed to reflect the special characteristics of Hong Kong in the international community, so this is an important arrangement. As regards the arrangement of corporate voting raised specifically by Mr LEUNG Kwok-hung, it is a right conferred by Annex II to the Basic Law because Annex II to the Basic Law specifies the delimitation and electoral methods of various FCs and corporate bodies, so the arrangement was proposed by the SAR Government and provided for in the local legislation passed by the Legislative Council.

**MR RONNY TONG** (in Cantonese): *President, in fact, this is not just a political issue, but also a constitutional issue. President, the Basic Law clearly stipulates that only Hong Kong permanent residents have the right to vote and be elected. Now, the delimitation of FCs allow companies, groups or organizations to become electors and this already arouses doubts about its constitutionality. I think that even if the Secretary maintains that it is not possible to abolish FCs right away, at least, the Government should revise the FC system in the local legislative exercise this time around by introducing a provision stating that although apparently, the relevant corporate bodies or members of trade associations may become electors, they still have to fulfil another requirement, that is, only individuals, in particular, Hong Kong permanent residents, may have the right to vote. The Government can enact legislation to impose restrictions in this regard and should not shift all the responsibility to the trade associations or*

*corporate bodies in Hong Kong. Will the Secretary at least consider achieving this in the near future?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): President, I respect Mr TONG's view, but I do not agree with his comment that the delimitation of FCs is unconstitutional. As I told Members just now, under Annex II to the Basic Law, the delimitation of various FCs and corporate bodies is made by way of local legislation. The existing Legislative Council Ordinance was drawn up after the Government had proposed it in successive Legislative Councils and after scrutiny by the legislature, so we believe it conforms to the Basic Law.

As regards Mr Ronny TONG's proposal on excluding bodies that are not individuals from the relevant FCs and allow only individuals to vote, this will actually bring fundamental changes to FCs. At present, FCs can be divided into several categories. Some trade associations or trade unions mainly have corporate votes, some professional bodies have individual votes but other FCs have corporate votes as well as individual votes. We all want to take the electoral system of the Legislative Council to the stage of universal suffrage for the Legislative Council in 2020, so in this process, we have to discuss in each term of the Legislative Council how the system can be further opened up and how the Legislative Council elections can be further democratized. However, we cannot change the charters of several dozens of FCs by means of legislation in one stroke.

**MR RONNY TONG** (in Cantonese): *President, my question is .....*

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

**MR RONNY TONG** (in Cantonese): *I am not demanding an immediate change. Rather, I hope that the Secretary can consider making gradual changes.*

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

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): President, a major change, that is, the "one-person-two-votes" arrangement, will take place in 2012 and it will enable 3.2 million registered voters who originally do not have a second vote in FCs to have a second vote in 2012. I believe that in 2016 and 2020, further reforms will also be introduced to further democratize the Legislative Council elections.

**PRESIDENT** (in Cantonese): We have spent 22 minutes on this question. Second question.

### **Tourism Development Projects and Conservation of Rural Areas with Tourism Value**

2. **MR PAUL TSE** (in Cantonese): *President, regarding the progress of tourism development projects and conservation of rural areas with tourism value, will the Government inform this Council:*

- (a) *given the Government's decision to incorporate some areas of the Clear Water Bay Country Park into the proposed extension of South East New Territories Landfill and the press reports about the damage caused by property developers in rural areas such as Sai Wan and Pak Lap in Sai Kung have aroused grave public concern, whether the Government has considered formulating mandatory measures to conserve rural areas with tourism value; of the Government's specific plans for tourism development sites at present in addition to the tourism attractions and facilities already planned for construction or under construction;*
- (b) *given that the Panel on Economic Development of this Council passed a motion at its meeting on 27 April 2009 requesting the Government to review afresh the decision to abandon the "Fisherman's Wharf" project and reconsider whether this project*

*should continue to be implemented, of the Government's present stance, as well as the specific development plans; and*

- (c) *of the latest progress of the development of the Bruce Lee memorial hall project; when the hall is expected to be open to the public; whether the authorities will start afresh the selection of a building cluster with cultural traditions which awaits revitalization to be the site for "the Jao Tsung-I Academy/Hong Kong Cultural Heritage" project, with a view to developing the Academy into a tourism attraction which suits both refined and popular tastes?*

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): President, tourism development and conservation of the natural environment do not run counter to each other and are not mutually exclusive. My reply to various parts of the main question is as follows:

- (a) At present, almost 40% of the land area in Hong Kong is designated as country parks, special areas, marine parks and marine reserve, and thereby protected by law. Many of these areas possess tourism value and are especially attractive for nature-lovers. Over the years, the Agriculture, Fisheries and Conservation Department (AFCD) has been working with the Tourism Commission and the Hong Kong Tourism Board (HKTB) in promoting nature-based tourism in country parks, marine parks and the Geopark, with a view to strengthening public awareness in nature conservation.

The recent Tai Long Sai Wan incident has highlighted the need to expedite action to regulate land use in the vicinity of country parks for better protection of these sites. The Government has prepared draft Development Permission Area plans for Sai Wan, Hoi Ha, Pak Lap and So Lo Pun. For the remaining 50 sites adjacent to country parks but not yet covered by statutory plans, the Chief Executive has indicated in the Policy Address that we would either include them into country parks, or determine their proper uses through statutory planning, to enhance the protection of these sites against incompatible developments.

In respect of land use planning, other than planned and committed tourist spots and facilities, the planning work and studies in relation to tourism development currently conducted or to be conducted by the Planning Department (PD) include:

- (i) amendment to the Ping Shan Outline Zoning Plan: Two areas of about 0.5 hectare in Yuen Long Ping Shan adjacent to the Tsui Sing Lau Pagoda and Tat Tak Communal Hall will be rezoned to "Other Specified Uses" annotated "Heritage and Cultural Tourism Related" zone to facilitate tourism development;
  - (ii) "The Study on the Enhancement of the Sha Tau Kok Rural Township and Surrounding Areas" and "The Study on the Enhancement of the Lau Fau Shan Rural Township and Surrounding Areas": Both studies aim to formulate an Integrated Area Improvement Plan to enhance the local environment. The former will also assess the tourism potential of Sha Tau Kok Town as a Frontier Closed Area, and examine the possibility of enhancing the connection of Sha Tau Kok Town with other tourist attractions in the North East New Territories. The latter will assess the tourism and recreational potential of Lau Fau Shan and its surrounding areas; and
  - (iii) according to the "Revised Concept Plan for Lantau" published in 2007, part of the area in Tung Chung East would be assessed and reserved for a theme park or major recreational uses in the long term. The Civil Engineering and Development Department (CEDD) and the PD are working to commission early the feasibility study for the overall planning and engineering of the remaining development in Tung Chung.
- (b) The Administration has never given up the plan to develop Aberdeen into a popular tourist attraction. To showcase the ambience of Aberdeen as a fishing village and enhance its tourism appeal, we have discussed with the Southern District Council (DC) the

construction of a promenade on both sides of the Aberdeen Harbour and beautifying Ap Lei Chau Main Street and adjacent streets with the theme of a fishermen's village. These improvement works will be carried out by the CEDD.

The design of the beautification works is expected to be completed by the end of this month. We plan to consult the Southern DC on the design and the works schedule in November. Upon finalization of the design, we anticipate to seek funding approval from the Legislative Council Finance Committee within the current Legislative Session, so as to commence the improvement works quickly for estimated completion in phases from 2012-2013 onwards.

- (c) In respect of restoring Mr Bruce LEE's former residence, as I said in response to a Member's question during the meeting of the Legislative Council Panel on Economic Development last week, over the past year we maintained close contact and held a number of meetings with Mr YU Panglin, the property owner of the residence, with a view to working out the restoration arrangements as soon as possible. However, until now we are still unable to reach a consensus with Mr YU over the scope of the restoration.

At the same time, the Tourism Commission has gathered over 100 artifacts related to Mr Bruce LEE and produced a TV documentary on his life. To avoid disappointing the public, we plan to co-operate with the Leisure and Cultural Services Department in organizing a themed exhibition at the Hong Kong Heritage Museum in Sha Tin to showcase Mr LEE's life and his contributions to the development of film and Kung Fu culture. The Museum is now conducting detailed preparatory work.

Jao Tsung-I Academy is located at the former Lai Chi Kok Hospital, a Grade 3 historic building selected for adaptive re-use under Batch I of the "Revitalizing Historic Buildings Through Partnership Scheme" (the Revitalization Scheme) of the Development Bureau.

Under the Revitalization Scheme, the Government invites eligible non-profit-making organizations to submit proposals to revitalize selected government-owned historic buildings in the form of social enterprise. The Government received 10 proposals of different nature for revitalizing the former Lai Chi Kok Hospital. Following detailed assessment by the Advisory Committee on Revitalization of Historic Buildings, the Government finally selected the Hong Kong Institute for Promotion of Chinese Culture to revitalize the site as the Hong Kong Cultural Heritage Centre, for promotion of Chinese arts and culture.

This revitalization project aims to provide an environment that blends natural landscape with an urban setting for visitors to learn about Chinese culture and history through participation in courses, workshops, cultural exchange activities, and so on, as well as tours of the Centre. Members of the public and tourists may also learn more about the history of the cluster of historic buildings through open days, guided tours and visits to the heritage interpretation centre.

In recognition of the outstanding achievements of the renowned Chinese scholar Prof JAO Tsung-I, the Government announced the naming of the Hong Kong Cultural Heritage Centre as the Jao Tsung-I Academy in December 2009. The naming of the Centre after Prof JAO commends Prof JAO's education work over the years in the academic and art realms and, at the same time, highlights Hong Kong people's admiration for him and our commitment to preserving and revitalizing historic buildings.

**MR PAUL TSE** (in Cantonese): *President, the development of Sentosa in Singapore in recent years is evident to all. Although the size of this small island is only about one fourth of that of Lantau in Hong Kong, its tourism appeal has increased enormously in recent years.*

*In this respect, although the Secretary stated at the outset in the main reply that tourism development and conservation of the natural environment do not run counter to each other and are not mutually exclusive, it appears to us, insofar as balancing the developments on Lantau is concerned, that there is a need for a*

*more pragmatic fresh assessment. This is because, in a community-initiated forum organized by some organizations and people in charge of tourism facilities on Lantau, there were views that the developments carried out on Lantau were too individualized, making synergy impossible. In this respect, I am very pleased to see that three Bureau Directors are in this Chamber this morning. Actually, when we discuss tourism projects, many areas, including transport, warrant our attention. I would like to listen to the views of the Bureau Directors on this. Regarding the conservation and tourism development of Lantau, is there a need for a fresh assessment and a proper balance?*

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

**SECRETARY FOR DEVELOPMENT** (in Cantonese): Consideration was already given to the construction of the relevant tourism facilities on Lantau Island in the "Revised Concept Plan for Lantau" published in 2007. Since the publication of this Plan, the follow-up work currently undertaken by the Development Bureau, including the provision of additional facilities in Tai O and Mui Wo, has already proceeded to the planning stage according to the original plan, with construction works already commenced in some areas. In respect of Tai O, for instance, funding approval was granted by Members earlier to allow us to proceed with phase I of the revitalization and improvement of the tourism facilities in Tai O by, first of all, improving the conditions at Yat Chung, providing more public space in front of Kwan Tai Temple, and upgrading some tourist facilities. In respect of the plan of Mui Wo, we are now in the last phase of planning. A funding application will be submitted to the Council later.

As regards the use of land, we are currently examining a 40-hectare waterfront site in Tung Chung East and have set it aside for use as a theme park or a major recreational centre in the long run. Hence, we have considered the use of Lantau for tourism development purposes in terms of planning.

**MS LI FUNG-YING** (in Cantonese): *Before all else, President, I would like to declare an interest because I am an indigenous inhabitant of the New Territories.*

*President, in part (b) of the main reply, the Secretary quoted the reference in the Chief Executive's Policy Address to 50 sites adjacent to country parks and the plans to carry out tourism or conservation projects in some of the areas in the New Territories. Although it is just a study for the time being, these development projects will involve the use of land in the New Territories and the issue of private ownership and interests. May I ask the Secretary, in carrying out such studies and re-designating the land use, whether she has shown respect for the rights and interests of the owners, held discussion with them, and studied the offer of reasonable compensation to them when it is really necessary to use the land possessed by these owners?*

**PRESIDENT** (in Cantonese): Which Secretary will give an answer? Secretary for Development, please.

**SECRETARY FOR DEVELOPMENT** (in Cantonese): I would like to thank Ms LI for her question. All planning is carried out by the Government in accordance with the Town Planning Ordinance. Insofar as land in the New Territories is concerned, we will, in general, first prepare Development Permission Area Plans before proceeding to Outline Zoning Plans (OZPs). The statutory procedure of OZPs includes public consultation. Therefore, in respect of planning, public consultation must be conducted to collect the views of the owners and residents of the area in question for consideration.

As regards projects, such as tourism facilities projects, that will be carried out after planning, an established procedure must be followed if resumption of private land is involved. Compensation will be made in accordance with the Lands Resumption Ordinance.

**PRESIDENT** (in Cantonese): Ms Miriam LAU.

(Ms LI Fung-ying stood up)

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

**MS LI FUNG-YING** (in Cantonese): *President, the Secretary has not given me a satisfactory answer. What is more, her reply is incomplete and inaccurate because many .....*

**PRESIDENT** (in Cantonese): Ms LI, the question time is not supposed to be used by Members for conducting a debate.

**MS LI FUNG-YING** (in Cantonese): *..... I hope the Government will not .....*

**PRESIDENT** (in Cantonese): You can only point out which part of the supplementary question you raised just now has not been answered by the Secretary.

**MS LI FUNG-YING** (in Cantonese): *..... I only hope the Secretary can note that generosity should not be effected at the expense of others.*

**MS MIRIAM LAU** (in Cantonese): *President, actually, in Hong Kong we have many beautiful tourism attractions and some nature-based tourism facilities, including marine parks and the Geopark. Moreover, continuous efforts have been made to revitalize building clusters with historical value. However, we have also noticed that the vast majority of tourists have come to Hong Kong because of its reputations as a shoppers' paradise and a cuisine paradise. Has the Government studied or calculated the number of tourists who have come to Hong Kong because of its beautiful tourist attractions and abundant cultural facilities? In this respect, has the Government conducted surveys on, among other things, the number of tourists who have come to Hong Kong for this reason? Furthermore, has the Government adopted some policy initiatives to promote green tourism and cultural tourism?*

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): I would like to thank Ms LAU for the question. Actually, it is necessary to take a multi-pronged approach to promoting tourism. Moreover, a

wide range of services have to be provided to tourists, and for this purpose, rich experience is called for. Shopping is certain a great attraction of Hong Kong. We are also a cuisine paradise. As regards green tourism, Members may actually have noted today that the HKTB and the AFCD are vigorously promoting green tourism. Indeed, the HKTB will conduct frequent surveys on inbound tourists. In respect of developing green tourism, we have learnt from some data previously collected that people from certain places, such as Japan, South Korea, and even the Mainland, are particularly fond of Hong Kong's natural landscape. Hence, we have indeed conducted such surveys and made constant efforts to cope with the needs of the market. Moreover, the Trade Development Council can also provide such information to overseas tourists in its overseas offices. Of course, the HKTB plays the leading role in promoting tourism and launching publicity through different media or channels.

**MS MIRIAM LAU** (in Cantonese): *President .....*

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

**MS MIRIAM LAU** (in Cantonese): *..... concerning my request ..... the question raised by me just now is: How many overseas tourists have come to Hong Kong for green tourism? Can the Secretary provide the relevant percentages or actual figures?*

**PRESIDENT** (in Cantonese): Secretary, can you provide the figures requested by the Member?

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): President, I do not have such data at hand. I can give Ms LAU a reply in writing later. (Appendix I)

**MR FRED LI** (in Cantonese): *President, a lot of tourism hardware has yet been put in place, despite a long delay. For instance, the construction of a ferry concourse in Lei Yue Mun, a place I am most familiar with, has not yet commenced despite years of discussion. I would like to raise a relatively macroscopic question. President, how can co-ordination be achieved among the HKTB, which is responsible for promoting tourism, the Travel Industry Council of Hong Kong, which is responsible for monitoring registered travel agencies, the Tourism Commission, which is responsible for developing hardware under your ambit, and the Travel Agents Registry? I note from the answer now that the hardware is scattered here and there. Is there a mechanism or platform for devising the development of tourist attractions in Hong Kong, and whether the role of co-ordination is taken up by the Government or the Secretary? Is such a mechanism actually in place? How can this be done?*

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): Thank you, Mr LI. Although each government department has its own duties, there are frequent liaison and communication among us internally. In respect of land use, the Development Bureau and the Commerce and Economic Development Bureau will deal with matters having regard to current land use or land use planning under the Town Planning Ordinance. Moreover, co-ordination will be effected by committees related to land use with reference to the uses proposed by various departments.

I wonder if Secretary Carrie LAM still needs to add anything in respect of land use planning. I can strike home a very clear message that, although delineation of responsibilities is definitely effected among us, co-operation among us is very close, too.

**PRESIDENT** (in Cantonese): Mr LI, is your supplementary question not answered?

**MR FRED LI** (in Cantonese): *President, my question is whether a co-ordination mechanism has been put in place. I did not hear the Secretary answer this part.*

**PRESIDENT** (in Cantonese): Secretary, is there anything you can add concerning a co-ordination mechanism?

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): President, in respect of tourism development, of course, the Tourism Commission is responsible for co-ordination and liaison. As regards enforcement of legislation or promotion, we will definitely maintain constant communication with the HKTB and various organizations, or tour reception agencies. In respect of territory-wide planning, the Tourism Commission, as a government department, is certainly involved in the Government's overall planning in promoting tourism. At the same time, the Commerce and Economic Development Bureau will also undertake the work and function of promoting the overall policy and striving for resources for the implementation of the relevant plans.

**MISS TANYA CHAN** (in Cantonese): *President, my supplementary question is very brief. Perhaps the Secretary for Development shall answer it. Regarding the timetable for developing the 50 sites, that is, the sites adjacent to country parks, when will it be finalized? Or should Secretary Edward YAU give a reply instead? When will all these 50 sites be included into country parks, covered by the draft Development Permission Area Plans or fully covered by OZPs?*

**PRESIDENT** (in Cantonese): Which Secretary will give an answer? Secretary for the Environment, please.

**SECRETARY FOR THE ENVIRONMENT** (in Cantonese): President, regarding the question raised by Miss Tanya CHAN, it has actually been mentioned in the Policy Address that we are currently proceeding in two directions. Firstly, if it is feasible to do so, we will bring these 50 sites, which are not yet covered by country parks, into the scope of country parks. Furthermore, if we consider it appropriate to do so — as pointed out in the reply given by the Secretary just now — several sites have already been dealt with through town planning. Of course, consideration has to be given to the uniqueness of each site or whether it has more urgent development requirements.

I think we will deal with this when we discuss with the Development Bureau the most appropriate method in the light of the circumstances of each site. Certainly, consideration must also be given to whether the relevant locations will be affected by developments of great urgency.

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

**MISS TANYA CHAN** (in Cantonese): *President, my question is about the timetable. President, some sites are bound to be omitted. Of course, I hope the authorities concerned can commence work expeditiously.*

**PRESIDENT** (in Cantonese): Secretary, can you respond to the question concerning the timetable?

**SECRETARY FOR THE ENVIRONMENT** (in Cantonese): President, it is impossible for us to determine a single timetable for the 50 sites, as the demands on and circumstances of each site are different. For instance, places to be included into country parks may require a longer timetable because, as Members should be aware, the sites may have to go through procedures such as preparation of plans, submission to the Executive Council, and so on. If we find that some places are subject to greater pressure of development, we might discuss with the Development Bureau whether other approaches can be adopted to deal with the matter, such as recourse to the Development Permission Area Plan, as this may expedite the process. However, I can hardly decide on a single timetable for the sites. Insofar as these 50 sites are concerned, we plan to impose proper control in a certain manner.

**PRESIDENT** (in Cantonese): We have spent more than 21 minutes on this question. Third question.

### Subsidies for Patients' Drug Expenses

3. **MR WONG SING-CHI** (in Cantonese): *President, the Hospital Authority (HA) has implemented the Drug Formulary (the Formulary) by phases since 2005 under which two categories of drugs need to be purchased by patients at their own expenses. One category which comprises drugs proved to be of significant benefits is provided with a safety net, whereby patients may be partially or fully subsidized for their drug expenses through the Samaritan Fund after passing the household income test. The other category is not provided with a safety net and some drugs necessary for the treatment of cancers belong to this category. Furthermore, in the second stage public consultation document on healthcare reform published this month, the authorities have proposed that a commitment of \$50 billion be made to encourage sustained public participation in the Health Protection Scheme (HPS). In this connection, will the Government inform this Council:*

- (a) *whether it knows the number of patients who were subsidized through the Samaritan Fund for drug purchases in the past 12 months, as well as the respective amounts subsidized and paid by themselves; of the number of types of drugs for treating cancers under the self-financed items without safety net, as well as the number of patients who purchased these drugs at their own expenses and the amount of drug expenses incurred;*
- (b) *of the principle based on which the authorities refuse to pay for patients' drug expenses and require patients to self-finance expensive drugs on the ground of insufficient resources on the one hand but propose on the other hand the use of public money and resources to subsidize members of the public to take out private-run medical insurance from insurance companies in order to obtain services which are better than those offered by the public healthcare system; whether the HPS will benefit patients who need to purchase expensive drugs at their own expenses at present; if so, of the details; and*
- (c) *given that the revenue from land sales for the Government has increased substantially this year, and the Democratic Party has proposed the Government to allocate \$10 billion to establish a*

*Medicines Subsidy Fund, from which the investment income each year will be allocated to the HA to increase its financial commitment for drug expenses, whether the authorities have studied the proposal; if they have, of the outcome of the study; if not, the reasons for that?*

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): President, the Formulary has been implemented by the HA in public hospitals and clinics since 2005. The objective is to ensure equitable access by patients to cost-effective drugs of proven safety and efficacy through standardization of the drug policy and drug utilization in all HA hospitals and clinics. The Formulary is developed after evaluation of new drugs and review of the current list of drugs in the Formulary by the relevant experts on a regular basis. The review process is based on the scientific and clinical evidence on the safety, efficacy and cost-effectiveness of the drugs, and views of patient groups will also be taken into account. Changes to the Formulary will be made as appropriate.

At present, there are about 1 300 standard drugs in the Formulary. They can be classified into two categories, namely general drugs and special drugs. General drugs constitute around 80% of all standard drugs. These drugs have well-established clinical indications, efficacy and cost-effectiveness, and are available for general use by doctors of public hospitals and clinics. The remaining 20% of all standard drugs are special drugs. These drugs have to be used under specified clinical conditions with authorization by relevant specialist doctors. The HA charges standard fees and charges for general and special drugs when prescribed under the above conditions.

For patients who do not meet the specified clinical conditions but choose to use special drugs in the Formulary, they would have to pay for the drugs as self-financed items. Also, patients have to purchase those drugs which are not standard drugs in the Formulary at their own expenses. However, for drugs which are proven to be of significant benefits but are not included in the Formulary as standard drugs having regard to the considerations of the overall cost-effectiveness, we provide a safety net through the Samaritan Fund to subsidize the drug expenses of patients with clinical conditions requiring the use of these drugs but have financial difficulties. Currently, drugs not covered by the safety net only include (1) drugs which have preliminary medical evidence

only; (2) drugs with marginal benefits over available alternatives but at significantly higher costs; and (3) life-style related drugs which are not medically necessary (for example, weight-loss drugs).

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

- (a) The current Formulary has included many effective drugs for the treatment of various diseases. These drugs, including a number of expensive drugs for treating cancer and various acute and chronic diseases, are provided to patients at standard fees and charges.

In recent years, the HA has been expanding the coverage of the Formulary under the relevant review mechanism. Also, the Government has been providing additional resources to the HA to meet the growth of drug expenses. In 2009-2010 and 2010-2011, we have earmarked an additional funding of \$230 million in total to the HA to incorporate six drugs for treatment of rare genetic diseases and two drugs for treatment of cancer (including Irinotecan for treating colorectal cancer and Vinorelbine for treating lung cancer) into the special drug category of the Formulary, and to expand the clinical application of 12 drug classes. The HA's expenditure on drugs also increased from \$2.15 billion in 2006-2007 to \$2.68 billion in 2009-2010.

At the same time, the HA has in recent years included in the scope of the Samaritan Fund various self-financed drugs that are proven to be of significant benefits, so as to subsidize the drug expenses of patients with clinical conditions requiring the use of these drugs but have financial difficulties. At present, a total of 14 self-financed drugs are included in the scope of the Samaritan Fund, among which 10 are for treatment of cancer, including Trastuzumab for breast cancer treatment, Interferon, Dasatinib and Nilotinib for leukaemia treatment, Imatinib for leukaemia and gastrointestinal stromal tumour treatment, Rituximab for lymphoma treatment, Oxaliplatin for colorectal cancer treatment, Cetuximab for initial treatment of locally advanced squamous cell carcinoma of the head and neck, Bortezomib for myeloma treatment and Pemetrexed for treatment of malignant pleural mesothelioma. In 2009-2010, there were a total

of 1 095 cases of assistance provided under the Samaritan Fund for the purchase of self-financed drugs. The amount of subsidy involved was \$84.2 million and the amount paid by patients was \$7.8 million.

The HA regularly reviews the scope of the Samaritan Fund. Using drugs for treating cancer as an example, out of the above 10 drugs for treatment of cancer supported by the Samaritan Fund, four drugs were newly introduced this year; the coverage of application of another drug was also extended this year so as to benefit more patients. In addition, a self-financed drug covered by safety net and another self-financed drug have been repositioned as special drugs in the Formulary this year, and are now provided to patients with specific clinical indications at standard fees and charges.

At present, there are 14 self-financed drugs for treating cancer, all indications of which are not covered by the Samaritan Fund. These drugs only have preliminary clinical evidence and marginal benefits, and can only prolong the life of patients for a short time. Patients can be prescribed with such drugs but they would have to purchase the drugs at their own expenses. In 2009-2010, a total of 4 984 patients purchased these self-financed drugs at their own expenses and the total drug expenditure involved was \$170 million. At this stage, more scientific evidence is required to confirm the clinical efficacy and cost-effectiveness of most drugs for cancer treatment and the actual benefits to patients. The HA will continue to monitor closely the developments of these drugs and other cancer treatments, and consider introducing the use of relevant treatments in the HA in light of the above considerations.

- (b) The Healthcare Reform currently proposed aims to strengthen healthcare services and protection for the entire population and enhance the long-term sustainability of our healthcare system through reforms to public and private healthcare, primary care and specialized healthcare services of the overall healthcare system. As regards the Healthcare Reform Second Stage Consultation, there are both public and private healthcare perspectives.

The public healthcare system, which is heavily-subsidized, will continually provide target services for the public (including acute and emergency care; provision of healthcare and medical care for low-income and underprivileged groups; treatment of illnesses that entail high cost, advanced technology and multi-disciplinary professional team work; and training of healthcare professionals) and serve as a healthcare safety net for the community as a whole. Under the existing safety net mechanism, patients with financial difficulties will be provided with the necessary drugs in accordance with their clinical needs at subsidized rates. The Government will only increase, and not reduce, its commitment to public healthcare. It will uphold its long-established healthcare policy that no one should be denied adequate healthcare through lack of means.

We put forward the HPS with the aim to standardize and regulate private health insurance and healthcare services for those who use private healthcare services and subscribe to private health insurance under the Scheme. The Scheme is proposed in response to the outcome of the First Stage Consultation, where the majority view was in favour of wider choices, better protection and value-for-money private healthcare services, while maintaining the public healthcare system as a safety net for all. In drawing up the HPS, one of our considerations is that nearly one third of the population have already subscribed to private health insurance of different types. The long-term burden on the public healthcare system will be eased and those in need of public healthcare services, including patients who need expensive treatments and drugs in the public system, will be benefited, if we can, through regulation of private healthcare services and insurance markets, ensure their sustained access to private healthcare services.

The provision of financial incentives to members of the public who choose to use private healthcare services on a voluntary basis is not contrary to the subsidization of the public healthcare system for the whole community. This is because it could effectively promote public health, enhance healthcare protection and relieve the pressure on the public system. It is also in line with the direction of promoting public-private healthcare partnership set out in the

healthcare reform. The implementation of various pilot schemes of public-private healthcare partnership through subsidizing the public for private services, including the Elderly Health Care Voucher Pilot Scheme, the Childhood Influenza Vaccination Subsidy Scheme, the Elderly Vaccination Subsidy Scheme, the Public-private Chronic Disease Management Shared Care Programme and the Cataract Surgeries Subsidy Programme, and so on, is based on the same rationale and principle.

- (c) As I mentioned above, the current Formulary has included many effective drugs for treatment of various diseases. These drugs, including a number of expensive drugs for treating cancer and various acute and chronic diseases, are provided to patients at standard fees and charges.

Rapid advances in medical technology have brought in many new drugs into the pharmaceutical market every year. These available drugs are huge in number and vary widely in terms of cost, evidential support for their clinical efficacy, therapeutic effectiveness and side-effects. As a publicly-funded medical healthcare organization, the HA has to ensure rational use of public resources that serves the wide interest of the public. The HA will continue to review the Formulary having regard to the principles of effective use of limited public resources and maximizing health benefits to more patients. Thank you, President. Sorry, this reply is a rather long one.

**MR WONG SING-CHI** (in Cantonese): *President, I have pointed out in the main question that the Democratic Party has proposed that the Government should allocate \$10 billion to establish a Medicines Subsidy Fund. But the Secretary has not mentioned this concept in his reply at all. Does the Government accept this proposal in its entirety or what? With respect to operating this Medicines Subsidy Fund, provided that there is an annual return rate of 5%, the expenses of some 4 000 patients who have to purchase self-financed drugs can be covered and the problem can thus be solved. But, for reasons unknown, the Government is still procrastinating or it neglects the life and death of these patients. I am very very angry about this. May I ask the*

*Secretary whether or not he will consider this proposal from the Democratic Party to set up a Medicines Subsidy Fund?*

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): President, as I have said, over the past few years, we have been actually providing subsidies in drugs and this applies not only to regular subsidies or subsidization through the Samaritan Fund. Work is done. In the budget two years ago, we allocated \$1 billion to the Samaritan Fund. Our consideration is that not all new drugs are better than old drugs and new drugs are not necessarily more effective than conventional drugs. We have to determine which drugs are really effective before they are incorporated into our subsidy scheme and the safety net. For those drugs the actual advantages of which remain to be determined and for which we are not sure whether or not they are especially potent or have a better efficacy, we have to be particularly careful. This is why the HA will review the Drug Formulary every year. The HA will compile a list of drugs most suitable for use by the general public of Hong Kong.

We appreciate that patients may pin hopes on new drugs, but we have to understand that often hopes may not be realized. So when we make a decision, we have to be objective and base our decision on findings of scientific research and clinical evidence. As for the proposal on setting up a Medicines Subsidy Fund, I welcome any suggestions on increasing resources for drugs and healthcare. But it would be another question if permanent assistance can be offered. We reckon that in the next few decades, with the rapid developments in science and technology, more and more new drugs would come on stream. Therefore, it is most important, on the other hand, that a sound mechanism be set up to monitor medical inflation caused by the availability of new drugs and that drugs that are truly effective are selected.

**MR CHEUNG MAN-KWONG** (in Cantonese): *President, the public is presently most concerned about those life-saving drugs for cancer patients. The reply given by the Administration shows that last year there were close to 5 000 patients who had to purchase these life-saving drugs at their own expense because the Government refused to pay for them, and that such expenditure amounted to \$170 million. The Government said in its reply that these drugs*

*could only prolong the life of patients for a short period of time and so it would not purchase them. This is one of the reasons given.*

*May I ask the Government, just what is meant by prolonging life for a short time? Does it mean prolonging life for one month or one year? Does that mean a short time? When someone's life is about to end, it does not matter whether it is one day or one month, the time spent with his loved ones is most precious. But if someone cannot buy these life-saving drugs because of lack of means, and as the Government is unwilling to buy these drugs for them because it thinks that they can only offer relief which is too short-lived, it would be one of the saddest things on earth to watch someone's loved ones waiting hopelessly or even die. Can the Government change this decision and let the medical officer in charge review the patient's case and make a decision? If the doctor decides that a certain drug is good and helpful and approves its use, then once a decision is made, the Government will take care of the drug expenses. In this way, the patients will not have to purchase the drugs themselves or have to wait for death because they have no money to buy those drugs.*

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): President, we certainly appreciate the feelings of family members of terminal cancer patients. We would consider the views of specialists, especially those in charge of specialist departments. It is precisely because of this that when the HA makes many decisions, especially those on the Drug Formulary and the scope of subsidized cancer drugs, reference will be made to the views of these doctors. Many of such decisions are based on medical evidence and they are not administrative decisions. Therefore, we understand the problem raised by Mr CHEUNG and we share the feelings of these patients.

However, speaking of any public sector system, if we were to put resources on a certain patient, it would mean reducing the resources available to other patients. We need to increase resources as a whole, but the HA has also the responsibility to put these resources to good use. So we will maintain the monitoring system at present. We can see that over the past few years, both the resources in the HA and those allocated to the HA by the Government have been increasing continuously. Drugs that could not be purchased or for which subsidies could not be offered a few years ago are now covered. So, with the passage of time, we are more likely to be certain about the efficacy of drugs and

this will help us make our decisions. It is not true that the Drug Formulary will stay as it is and will never be revised. We will conduct reviews from time to time and include effective drugs in the Drug Formulary and incorporate them into the list of subsidized drugs.

**DR PAN PEY-CHYOU** (in Cantonese): *President, from the reply given by the Secretary we can see that each year some 1 000 patients are subsidized through the Samaritan Fund. I consider the subsidy made by the Government to the Samaritan Fund is instrumental in the provision of vital services. But I would also think that this approach taken by the Government to help patients through this Fund smacks of an evasion of responsibility by the Government. Since the Government has been helping these patients by allocating funds to the Samaritan Fund, so that they can have access to some very effective but at the same time very expensive drugs, then why can these drugs not be put on the list of the special drugs of the HA so that senior specialist medical officers can decide whether or not they should be used?*

*Second, with respect to these very expensive drugs, will the Government consider providing a partial subsidy while the user will meet part of the expenses, leaving the outstanding amount to coverage by the Fund or some form of subsidy, thus forming a safety net that enables more patients to get suitable treatments?*

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): *President, the inclusion of which drugs in the Drug Formulary, the determination of which drugs as standard drugs or special drugs, and the determination which drugs should be subsidized in the safety net of the Samaritan Fund depend entirely on the professional judgment of the HA. In this respect, we must respect the professional judgment made.*

As I said just now, it would be good if there are extra resources to help the patients, but we must not forget that there must be a fair mechanism in place and there must not be a situation in which a patient treated by a certain doctor will get a certain kind of drug, whereas a patient treated by another doctor cannot get that drug. It is most imperative for the HA to have this fair mechanism in place. So we all hope to be fair. As for why funds are injected into the Samaritan Fund, we think that this kind of use will certainly increase in the next few years.

So the Government will consider injecting funds into the Samaritan Fund as and when appropriate. Thank you, President.

**PRESIDENT** (in Cantonese): There are still four Members waiting for their turn to ask questions. This Council has spent more than 22 minutes on this question. As the Secretary has spent quite a long time on giving a reply to the main question, I will allow one more Member to raise his supplementary question.

**MR ALBERT HO** (in Cantonese): *President, the classification of these drugs, their listing as standard drugs or special drugs, or incorporation into the scope covered by the Samaritan Fund as subsidized or fully self-financed drugs are all very important decisions. These decisions will affect people's livelihood and those numerous patients who need these drugs to save their lives. As the Secretary has said, the HA has a committee to make such decisions which are professional decisions. I would not dispute that these are professional decisions, but other considerations are certainly involved. An example is his mention in the reply of the factor of cost-effectiveness. About these decisions, may I ask why can the transparency of these decisions not be enhanced? There is no representative from patients organizations in the abovementioned committee at present and this committee makes its decisions behind closed doors. Since there are no open procedures and no public reports, people outside the HA will never know how discussion is held in that committee.*

*Secretary, here is my supplementary question. There is an organization in Britain called the National Institute for Health and Clinical Excellence, or NICE for short, which holds public discussions on matters related to classification of drugs and their subsidization, and compiles public reports on contentious issues. Why does the Government not make reference to these procedures so that there can be participation and discussion by the public? In this way, everyone will be convinced that the decisions made are fair and impartial?*

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): Apart from making professional discussions and decisions, the HA also consults patients organizations on the use of drugs. Although such consultation is not carried out

under the same mechanism, the HA has another consultation mechanism to collect views and responses of patients. When the HA carries out work to determine the efficacy of new drugs, it will refer to analyses done by non-profit-making organizations with international credibility or other government agencies, including the one called NICE mentioned by Mr HO. Therefore, we believe that transparency is sufficient in all aspects. The most important thing is we must tell the public into which category a certain drug falls at the present stage and why it is so. I am sure the HA is duty-bound to explain it, especially to the patients. In this regard, I am sure we can do it. Over the long run and under the overall healthcare policy, we hope that a more transparent and prompt approach can be taken with respect to the control on drugs and medical technologies. When healthcare services in the public and private sectors as a whole have developed to a certain stage, we should sum up the experience gathered and conduct reviews.

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

**MR ALBERT HO** (in Cantonese): *President, the Secretary has not answered why there can be no open meetings and public reports for public engagement.*

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): President, when the HA is to make any decision now, it will give an account on the entire deliberation process and the reasons for making a certain decision. As to whether it will be open, this is open to discussion because when professionals discuss matters, they will use professional jargons and it may not be fully comprehensible to the laymen. In my opinion, regardless of what decision they make, they will have to explain clearly as to which category a drug falls into and why is that so.

**PRESIDENT** (in Cantonese): We have spent 26 minutes and 30 seconds on this question. Fourth Question.

## **Problem of Obesity in Hong Kong**

4. **MR FREDERICK FUNG** (in Cantonese): *President, it has been reported that the problem of obesity in Hong Kong is very serious, with the obesity rate among school children rising from 16.7% in the 1996-1997 school year to 22.2% in the 2008-2009 school year, representing a drastic increase of 5.5 percentage points within a decade; and it seems that the various healthy lifestyle campaigns launched by the Government all these years were not effective. For example, 171 primary schools participated in the "EatSmart@school.hk" campaign implemented in 2009, but the number of accredited schools was minimal, which is less than 10%; moreover, the obesity or overweight rate among the people in Hong Kong remains high at 40%, coming close to the level of 60% in the countries in Europe and America, which poses higher risks of chronic diseases and a heavy burden on long-term healthcare expenditure. In this connection, will the Government inform this Council:*

- (a) *of the overall strategy currently employed by the Government to promote a healthy lifestyle among the people, including healthy eating and sports for all, and so on; apart from the assessment of food consumption patterns of primary students conducted in 2008, whether the authorities had reviewed, in the past five years, the efficacy of the various initiatives and campaigns implemented to promote a healthy lifestyle and people's eating habits; if they had, of the outcome and the reasons for the failure or success of the initiatives and campaigns; if not, whether the authorities will conduct a review; and*
- (b) *whether the authorities will set short-term and medium-term targets for reducing the obesity or overweight rate among the people in Hong Kong to a low level, and adopt enhanced, or even mandatory, measures to reverse the current high calories, high fat and high sugar eating environment in Hong Kong and to develop a habit of regular exercise, so as to achieve those targets, such as regulating advertisements and publicity of junk food, prohibiting schools from selling junk food, requiring lunch box suppliers in schools to provide healthy menu, banning the sale of junk food and beverages through vending machines in public places and government facilities managed by the authorities (for example, parks, games halls and*

*office buildings of government departments, and so on), encouraging schools and employers to provide students and employees with more opportunities for exercise, and establishing more sports facilities?*

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): President, the rising trend of overweight and obesity has largely been attributed to the lifestyles of unhealthy dietary habits, wide availability of high fat and sugary foods and lack of physical activity. Medical researches indicate that such unhealthy lifestyles cause many non-communicable diseases (NCD) such as heart disease and diabetes. In this connection, the Government has been actively promoting a healthy lifestyle with a view to improving the health of the public. My reply to Mr FUNG's question is as follows:

- (a) With a view to improving the health of the public and to mitigate the burden brought by NCD, the Department of Health (DH) has launched the "Strategic Framework for Prevention and Control of Non-communicable Diseases" (the Framework) in October 2008 with the objectives to foster a healthy environment, promote community health, prevent NCD and reduce the progression of NCD and avoidable hospital admissions, and provide high quality care for NCD. Meanwhile, we have set up a Steering Committee on Prevention and Control of Non-communicable Diseases comprising representatives from the Government, public and private sectors, academia and professional bodies, related industries and other key partners to oversee the development of the Framework and the progress of its implementation. To address the pressing problem of obesity, a working group has been established under the Steering Committee to handle matters related to diet and physical activity. The working group launched in September this year an "Action Plan to Promote Healthy Diet and Physical Activity Participation in Hong Kong" which outlines the specific actions to be taken by various government departments and relevant organizations in the promotion of healthy diet and physical activity participation in Hong Kong in the coming few years. The Action Plan is available on the website of the DH.

The DH has all along been in collaboration with the related sectors in launching a number of major territory-wide health promotion and publicity campaigns, which are in line with the initiatives advocated by the World Health Organization in its "Global Strategy on Diet, Physical Activity and Health". These campaigns include the "EatSmart@school.hk" Campaign and the "EatSmart@restaurant.hk" Campaign, and so on. In the 2009-2010 school year, over 400 primary schools (including special schools) participated in the major activities of the "EatSmart@school.hk" Campaign, representing about 65% of all primary schools in the territory. As for the "EatSmart School Accreditation Scheme", which was launched since the 2009-2010 school year under the umbrella of the "EatSmart@school.hk" Campaign, 171 primary schools have participated in the Scheme with 16 of them having attained accreditation so far. According to the findings of the Baseline Assessment of Promoting Healthy Eating in Primary Schools conducted by the DH in 2008, there were significant increases in the proportion of students who chose healthier food and in the proportions of students and parents who would take account of nutritional values in choosing their food in comparison with the assessment conducted in 2006.

As breastfeeding can prevent subsequent childhood overweight and dietary habits developed during infancy play a crucial role in shaping an individual's eating patterns, the DH has been promoting breastfeeding and enhancing the training of healthcare personnel. At present, the DH monitors the trend of local breastfeeding rate through collecting annual reports from all public and private maternity units. The ever breastfeeding rate in Hong Kong increased from 50% for babies born in 1997 to 73% for those born in 2008.

The "EatSmart@restaurant.hk" Campaign launched by the DH has received favourable response and support from the catering sector. So far over 1 000 catering workers have received training and 613 restaurants are providing EatSmart Dishes to customers under the Campaign.

- (b) As I have mentioned earlier, the Administration attaches much weight to the issue of NCD caused by obesity and overweight. We have been promoting awareness of the importance of healthy eating habits among different age groups through various channels.

To further collect information on the diet and physical activity participation of infants and young children in Hong Kong, the DH is currently conducting a series of surveys on parental knowledge, attitude and practice of feeding infants and young children, the level of physical activity of infants and young children as well as their food and nutrient intakes. In addition, the DH will collaborate with some 30 pre-primary institutions to conduct a pilot project with a view to extending the promotion of healthy eating and physical activity participation to all pre-primary institutions in Hong Kong in the light of the actual experience gained.

As for the issue of obesity among school children, dieticians will provide individual counselling for school children who are overweight during the health check-up currently provided by the DH for Primary One to Secondary Seven students. In light of individual circumstances, school children who are overweight will be referred to the Hospital Authority (HA) for follow-up by a specialist in paediatrics or invited to join the DH's Regular Exercise and Fitness Training Course or the HA's Exercise and Keep Fit Course. Since 2009, the DH has also informed the schools of the number of their students who have been identified as overweight over the last school year, with an aim to encourage the schools to promote healthy eating and regular exercise among their students, and give their support to building a healthy school environment for school children to practise healthy lifestyles.

To provide guidance and assistance for schools in developing a healthier and more sustainable eating environment in schools, the DH has launched the "EatSmart School Accreditation Scheme" since the 2009-2010 school year. Under the Scheme, schools are motivated to develop top-down and bottom-up policies and measures on healthy diet, and with full co-operation between home and school, to effectively implement the food quality requirements issued by the

DH regarding the supply of lunch and food available at school tuck shops or vending machines. This serves to ensure that there will be a "nutrition friendly" environment for school children in their learning and nurturing.

In addition, the DH has also launched an outreaching Adolescent Health Programme to conduct activities in secondary schools to promote students' psychosocial health. The activities are targeted at the youth's concern over their bodyweight and self-image, and other issues related to nutrition information and development of a healthy lifestyle. The DH has also continued its collaboration with the Leisure and Cultural Services Department (LCSD) to promote the participation of people of different ages in the "Healthy Exercise for All Campaign" and encouraged students to join the School Sports Programme in support of the Education Bureau's policy.

President, from the experience we have gained from the above campaigns launched to promote healthy eating, it can be seen that the public are well aware and recognize the importance of healthy eating. Nevertheless, dietary patterns and choice of food are closely related to daily lifestyle and socio-cultural factors. The effective tackling of the issue of overweight in our population requires concerted efforts from our society as a whole and collaboration between the Government, public and private organizations, academic and professional bodies, media and members of the public and also needs to be proceeded in a systematic and step-by-step manner to ensure more cost-effective utilization of resources. Through implementation of the Framework as well as various measures and activities, we will continue to actively promote a healthy eating culture and public awareness of the importance of regular exercise with a view to improving the health of the public.

**MR FREDERICK FUNG** (in Cantonese): *President, part (a) of my main question is about the problem of obesity, whereas part (b) is about ways to address this problem, such as whether a mandatory ban will be enforced on advertisements of junk food, whether lunch box suppliers will be prohibited from*

*selling junk food, and so on, but the Secretary has not answered them at all. I hope he can answer part (b) of the question later on. President, my supplementary question is ..... I actually feel quite disappointed because this question falls not only into the ambit of the Secretary for Food and Health, but also that of the Secretary for Education. In other words, we should not provide fitness training courses for school children to do exercise only after seeing that they have become overweight. The authorities should, in the course of education, ensure that school children understand what kind of diet can benefit their health and when they have grasped such knowledge, they can decide on their own what they should eat and what kind of exercise they should do. Only this can be taken as the long-term and sustainable solution.*

*May I ask the Secretary, insofar as this issue is concerned, whether the Government will consider incorporating knowledge of healthy diet into the regular scope of education, be it in the form of extra-curricular activities or Liberal Studies?*

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): President, let me state at the outset that the Education Bureau and the LCSD have been involved in the education on and promotion of a healthy lifestyle. Of course, this has always been the work of the DH under my purview, but the LCSD has also provided many sports promotion programmes for schools. I can give an account on their work in writing to Members later. (Appendix II)

We consider it most imperative to develop good eating habits and a healthy lifestyle in children at an early age. Diet aside, physical exercise also has a part to play for an appropriate amount of physical exertion is very important. This is why we have been stepping up publicity and education in this respect. I understand that the Education Bureau has included some sports programmes in their scope of learning which at least take up more than 5% of the school timetable. I think this is also an important measure. Meanwhile, I do encourage the organization of more extra-curricular activities for students to take part in physical activities, which will make them exercise more often. So, with the support of various arrangements, we consider that education and publicity are the most effective means. Certainly, if there are ways in law or some other measures relatively mandatory in nature, and provided that they do not affect the freedom, privacy or autonomy of the public, we can take them into consideration.

But we think that in Hong Kong society, this kind of work should be carried out by means of publicity and education.

As Members can see, many measures mentioned by me earlier were introduced only in the last few years and so, for the time being, it is very difficult to review these measures and then draw a conclusion on their effectiveness. Instead, we think we should take a long-term perspective. These are all long-term initiatives, the effectiveness of which can be ascertained only after they have been implemented for at least about five to 10 years. So, I hope Members can understand this.

Lastly, I would like to make an appeal to Members. I can see that some Members of the Legislative Council are also obese, (*Laughter*) and so are some Directors of Bureaux. We, therefore, should do what we preach and make an effort to do something in this respect, so that we can at least set an example for the public to follow. Thank you, President.

**PRESIDENT** (in Cantonese): Our Members are fat, but not fatheads. (*Laughter*)

**MR FREDERICK FUNG** (in Cantonese): *President .....*

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

**MR FREDERICK FUNG** (in Cantonese): *No. President, I started to "keep fit" in 2004 and I am now much better shaped .....*

**PRESIDENT** (in Cantonese): Please repeat the part which has not been answered.

**MR FREDERICK FUNG** (in Cantonese): *My question is: The Secretary has, so far .....* Because I wish to respond to his remark just now about some Members

*having a weight problem; well, this may have nothing to do with me. I just wish to ask the Secretary the second point. With regard to advertisements and publicity of junk food, and the provision of such food by lunch box suppliers in schools, will the authorities take mandatory actions? The Secretary has not touched on this point at all.*

**PRESIDENT** (in Cantonese): You have asked your follow-up question. Secretary, please.

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): President, as I said earlier, we hope to carry out this kind of work by means of education and publicity. Certainly, when promoting healthy food in schools, for example, we will discuss this with the schools, especially on how they can control the kinds of food offered at their tuck shops, or the lunch menus provided by them. As I have just mentioned, 171 primary schools have participated in the "EatSmart@school.hk" campaign and gradually there have been more and more schools taking part in the EatSmart School Accreditation Scheme. In this respect, I think since last year more schools have become interested in these campaigns. So, I can see that for some time in the future, more and more schools will gradually engage in this kind of efforts.

**MRS REGINA IP** (in Cantonese): *President, one who wants to lose weight should run in an election. Anyone who stands for hours on a sweltering summer day will, like me, lose weight very quickly. (Laughter) Having said that, my supplementary question to the Secretary is this: As the Secretary has admitted that overweight and obesity are attributed to unhealthy dietary habits due to an excessive intake of high fat and sugary foods, will the Secretary consider adopting the practice of the United States where the gravity of the problem of obesity has caused heart diseases, hypertension, and so on, in many people? In some states of the United States, an Obesity Tax has been introduced but this is not meant to punish the obese. Rather, it is a tax imposed on food of high sugar and high fat content and high calories which can cause obesity and other diseases; a Soda Tax (a tax on soft drinks) is one of them. This has been implemented in some states in the Midwest where there is a large obese population. Will the Secretary propose a similar initiative?*

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): President, the number of people who are obese in Hong Kong still compares favourably with the obesity rate in the United States and many North American countries or regions, or countries in Europe. In respect of adults, the number of the obese in Hong Kong is equivalent to only about 10-odd percentage points of that in these countries. In other words, we do compare more favourably with them, but there is no room for complacency. We consider it necessary to promote a greater awareness of this among the public.

As for the need to impose a tax or introduce other mandatory measures as mentioned earlier, it warrants careful studies by us. I think Hong Kong people generally have a certain level of knowledge, and such initiatives as the nutrition labelling scheme which has been implemented since July this year can help the public understand the nutrients of the food consumed by them and hence the way to control their intakes. I think this is helpful to them. I hope to examine the effectiveness of this measure after putting it into practice for a period of time before giving consideration to measures which are more stringent or mandatory in nature. Thank you, President.

**MR LAU KONG-WAH** (in Cantonese): *President, the Secretary said that schools have since 2009 been informed of the number of their students who have been identified as overweight over the last school year. The number should be available now. Can the Secretary tell us this number, that is, the current number of overweight students? Moreover, President, from the experience that you and I have accumulated for decades, we very much understand that the most unhealthy foods are actually the tastiest, which are referred to by Mr Frederick FUNG as junk food. But to the children, junk food may include chips, soft drinks, ice-cream, and so on, which are all tasty. So, in what way can the Secretary tell the children that these are unhealthy food, despite that they are the tastiest?*

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): Let me provide some figures for reference by interested Members. Let us start with the figures relating to adults. In 2004, the obesity rate among men was 4.1% while that among women was 3.5%, and they together accounted for 3.8%. In 2009, which is five years later, our latest survey shows a slight increase in the rate of men

from 4.1% to 5%, while that of women has dropped from 3.5% to 2.3%, and the overall rate has come down from 3.8% to 3.5%. This is the situation among adults, and it seems that women are making a lot more efforts than men in body trimming. President, please allow me to look up some information. In respect of children, we found a continued growth in their number over the past few years, as the past five years have seen a growth of about 4% in the obesity rate among children.

The definition of obesity among children is different from the way it is measured for adults, because they are different in terms of body shape. So, we cannot put adults and children together for comparison. However, we think that such a growth rate warrants our concern and this is precisely why we particularly wish to carry out work earlier and targeting such work at children and students.

**MR LAU KONG-WAH** (in Cantonese): *President, he has not answered the second part of my question.*

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

**MR LAU KONG-WAH** (in Cantonese): *It is the second part, which is about how he will ..... in what way he will give advice to children on those so-called most unhealthy foods.*

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): President, I think the DH, when carrying out health education in schools, will analyse with students the food they eat. In the meantime, where there is a need, say, when conducting health check-ups in schools, students who are overweight will be referred to dieticians, so that they can gain a better understanding of this. Moreover, we will clearly put across to children the principle of "Two Plus Three" in taking food, which means eating two servings of fruits and three servings of vegetables, explaining to them that eating in this way every day is good to their health. After taking such a vast amount of vegetables and fruits, I think the intake of other foods will certainly be reduced. We still have to do a lot more on various

fronts, but let me stress that this can never be implemented unilaterally by the Government, for this obviously requires the co-operation of schools and parents. Thank you, President.

**PRESIDENT** (in Cantonese): Three Members are still waiting for their turn to ask questions, but the time spent on the last two supplementaries has far exceeded the time normally allowed. Members and Directors of Bureaux please be reminded to be as concise as possible and avoid repetition.

Fifth question.

### **Hong Kong Residents Being Refused Entry into Macao**

5. **MR CHEUNG KWOK-CHE** (in Cantonese): *President, it was reported that a social worker in Hong Kong who travelled to Macao for leisure on the 1st of this month was refused entry by the Macao immigration authorities for the reason that she posed a threat to the stability of its internal security, violating the Internal Security Law of the Macao Special Administrative Region (SAR). The social worker was a member of the executive committee of the Student Christian Movement of Hong Kong after her graduation, and is now a social worker of the Concerning CSSA Review Alliance, and her work mainly concerns livelihood of the people. Moreover, she participated in the 1 July march twice, the 1 May march once, as well as the sharing session on the "Five Geographical Constituencies Referendum" in Hong Kong. Regarding the issue of Hong Kong residents being refused entry by the Macao authorities, will the Government inform this Council:*

- (a) *whether it has ascertained from the Macao authorities if they have set a policy of refusing the entry of Hong Kong residents who work for the aforesaid groups or organizations or have participated in the aforesaid activities as such persons pose a threat to the stability of internal security of Macao; if it has not so ascertained from the Macao authorities, of the reasons for that;*
- (b) *whether the Government and the Macao authorities have formulated a notification mechanism for cases of Hong Kong residents being*

*refused entry by the Macao authorities; whether there are existing procedure or guidelines for providing assistance to Hong Kong residents who have been refused entry by the Macao authorities and following up such cases; and*

- (c) *whether it has compiled statistics on the total number, since the reunification of Macao, of Hong Kong residents being refused entry by the Macao authorities; if it has, of the details; whether it will communicate with the Government of Macao SAR regarding such incidents, so as to avoid similar incidents from happening again?*

**SECRETARY FOR SECURITY** (in Cantonese): President, the Government of the Hong Kong Special Administrative Region (HKSAR) attaches importance to the legal rights of Hong Kong residents travelling outside Hong Kong, and will provide assistance as necessary. On the other hand, we respect the right of other administrations to exercise immigration control in accordance with their laws. Based on that principle and taking into account actual circumstances, we will liaise and discuss with the relevant authorities of other places and countries with a view to enhancing travel convenience for Hong Kong residents.

Our response to the three parts of Mr CHEUNG's question is as follows:

- (a) According to international practice, immigration authorities will examine each entry application in accordance with local laws and prevailing circumstances. As far as we understand from the Macao authorities, each application for entry to the Macao SAR will be considered in accordance with their laws and the circumstances of individual cases. The SAR Government respects the jurisdiction of other administrations and their right to make any lawful decision accordingly.

- (b) and (c)

Hong Kong residents who have been refused entry outside Hong Kong are not obliged to, and most of them would not, make a report to the HKSAR Government, and we respect their decisions. The SAR Government will not request information of such refusals from

any other immigration authorities unless the persons concerned choose to raise such a request with the government departments. In short, there is no notification mechanism for this purpose between Hong Kong and Macao, and the Hong Kong Immigration Department (ImmD) does not keep statistics on cases in which Hong Kong residents have been refused entry to Macao.

Having said that, against the frequent passenger trips made by Hong Kong residents to Macao, with an average of more than 600 000 per month, we believe that the refused entry cases are isolated incidents.

**MR CHEUNG KWOK-CHE** (in Cantonese): *President, parts (b) and (c) of the main reply stated that the SAR Government will not request information of such refusals from any other immigration authorities unless the persons concerned choose to raise such a request with the government departments. As far as I have learnt from my contact not long ago with the person in question, she had written twice to the Security Bureau. In the first letter, she asked the Security Bureau why a Hong Kong resident like her was refused entry into other places. In the second letter, she wished to enquire with the Macao authorities, through the Security Bureau, the reasons and information of her being refused entry into Macao. I hope the Secretary will give a reply in this respect.*

**SECRETARY FOR SECURITY** (in Cantonese): President, based on the principle of not commenting publicly on individual cases, I can reiterate here that upon the request of the persons concerned, we will follow up with other immigration authorities outside Hong Kong. For example, we will seek to gain knowledge of and express concern about the relevant incidents, and we will also revert to the persons concerned any information thus obtained.

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

**MR CHEUNG KWOK-CHE** (in Cantonese): *As far as I know, the person concerned wrote to the Security Bureau on 2 October, but has not yet received*

*any reply from the Security Bureau. May I ask whether the authorities are taking any follow-up actions?*

**PRESIDENT** (in Cantonese): Are you asking the Secretary whether the authorities have already responded to the request made by the person concerned?

**SECRETARY FOR SECURITY** (in Cantonese): We will definitely handle any request upon receiving it and give a response after obtaining the relevant information. As this is an individual case, I think it should not be discussed publicly. However, insofar as the general principle is concerned, this is the approach adopted by us.

**DR LAM TAI-FAI** (in Cantonese): *President, what Hong Kong people cherish most is freedom, which certainly includes the freedom of entry and exit. To my understanding, the social worker involved in this incident is a low-profile, young social worker. Although she has participated in some processions and demonstrations, she has never taken any radical and confrontational actions. Yet, she was still refused entry by the Macao authorities without any reasonable ground. If Mr LEUNG Kwok-hung was refused entry, I would naturally have a pretty clear idea of why it was so. From this, we can see that it seems the Macao authorities have quite a full picture of Hong Kong people's activities in Hong Kong. Actually, the Macao authorities also verified the identity of this social worker by her identity card (ID card) data. Therefore, may I ask the Secretary whether the Hong Kong Government allows the Macao authorities to collect such intelligence in Hong Kong, and whether the authorities have already transferred some information on registration of persons to the Macao authorities, so that they will know once certain individuals try to enter Macao?*

**SECRETARY FOR SECURITY** (in Cantonese): President, perhaps I will answer the second part of the supplementary question first. Regarding information on registration of persons, the ImmD of Hong Kong discharges duties relating to the collection, storage and issuance of such information in accordance with the Registration of Persons Ordinance, which prescribes in great detail how such duties should be discharged under various circumstances. To enforce the

relevant law, the ImmD has also set up a specific computer system which ensures a high level of data confidentiality in keeping such information. I still remember that when the smart ID card was introduced, the Legislative Council conducted heated discussions and specifically requested the Office of the Privacy Commissioner for Personal Data (Privacy Commissioner) to conduct compliance checks on the ID card information system. We also conducted a number of privacy protection studies during the whole process of system design. Last year, the ImmD invited the Privacy Commissioner to conduct a check on the smart ID card information system mentioned just now and the report was already completed. The Privacy Commissioner's conclusion was he was satisfied in general that the ImmD had met compliance requirements in relation to the principle of data privacy protection under the Personal Data (Privacy) Ordinance. He also confirmed that the ImmD had not violated the relevant compliance requirements in relation to the principle of data privacy protection in handling ID card data. I can tell Members categorically that the SAR Government will not casually transfer the personal data of Hong Kong citizens to anyone. As for the Macao authorities' claim in respect of how they obtained what information, I cannot give any answer for them. Insofar as Hong Kong is concerned, however, one must abide by the laws of Hong Kong in performing any act in Hong Kong. This is a very clear stance.

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

**DR LAM TAI-FAI** (in Cantonese): *President, the Secretary has not answered whether the Hong Kong Government has acquiesced in Macao authorities collecting intelligence in Hong Kong.*

**SECRETARY FOR SECURITY** (in Cantonese): I think this is a groundless speculation. I must point out that everyone, including the staff of any enforcement agency of any jurisdiction, must abide by the laws of the HKSAR in conducting any activity in Hong Kong. Hence, there is no question of any consent or acquiescence.

**MS CYD HO** (in Cantonese): *President, actually we already followed up this issue in the Policy Address briefing at the meeting of the Panel on Security yesterday. There is an agreement on immigration matters between Hong Kong and Macao. Under this agreement, all Hong Kong residents are free to travel to and from Macao. However, even a social worker who has only made a few criticisms of the disparity between the rich and the poor was refused entry. In refusing her entry, the staff of the Macao immigration authorities even categorically told her that she was refused entry because she was "blacklisted".*

*Yesterday, the Secretary certainly denied having transferred any information on Hong Kong people to other authorities, but he remarked that Hong Kong's list of persons for refusal of entry was certainly longer than Macao's. In that case, may I ask the Secretary through which channel he became aware of such a list? Under what circumstances did he learn that our list is longer than theirs? Theoretically, as Hong Kong has a population of 7 million, while Macao has a population of only 500 000, Macao's list should be longer than ours. However, the Secretary stated clearly that our list is longer than theirs. I asked whether a mutual notification mechanism was in place, but the answer was in the negative. In that case, are there some dubious mechanisms other than the formal one through which the Secretary learnt that they also have a name list, which is definitely shorter than ours?*

**SECRETARY FOR SECURITY** (in Cantonese): *President, as far as I can recall, what Secretary Ambrose LEE said yesterday was probably that the annual number of Macao residents refused entry into Hong Kong should be greater than that of Hong Kong residents refused entry into Macao.*

*As for the agreements entered with Macao to provide convenience to Hong Kong residents mentioned by Ms HO just now, they are similar to visa-free treatment agreements made with other countries or jurisdictions. Certainly, as both Hong Kong and Macao are special administrative regions, there is no question of visa-free treatment, but these agreements aim at providing convenience to residents of both places, so that they can travel between the two places without making prior applications for endorsement or approval.*

*Before the reunification, some Macao residents had to apply for Hong Kong Entry Permits before visiting Hong Kong. With these agreements in*

place, Hong Kong residents now only need to use their ID cards when entering Macao, and Macao residents visiting Hong Kong need only their ID cards, but whether they will be allowed entry .....

**MS CYD HO** (in Cantonese): *President, my question .....*

**PRESIDENT** (in Cantonese): Secretary, please hold on for a moment. Ms HO, what is your question?

**MS CYD HO** (in Cantonese): *President, my question just now was very clear. According to what Secretary Ambrose LEE said yesterday, under what circumstances did he learn that their list is shorter than ours? Are there some dubious mechanisms other than the formal one?*

**PRESIDENT** (in Cantonese): Ms HO, you have repeated your question. Secretary, what is your response to that?

**SECRETARY FOR SECURITY** (in Cantonese): Our notification ..... just now I have already said that we do not have any notification mechanism for refusal of entry. Ms HO mentioned that Secretary Ambrose LEE had made that remark yesterday. I have already said that I was not aware of Secretary Ambrose LEE having said anything to that effect.

As for the existing mechanism between the two places, we do have in place a standing mechanism to enable mutual communication on immigration matters of both places. This mechanism *per se* does not involve any exchange of name lists.

**MR CHAN KAM-LAM** (in Cantonese): *President, we are certainly concerned about this incident, which involved an ordinary member of the Hong Kong public being refused entry into Macao. The Secretary has just said that the two places will communicate with each other on such incidents. May I know, apart from*

*the daily or regular communication between the SAR Government and the Macao authorities, whether both sides will effect co-ordination or even seek the Central Government's intervention to resolve such problems when they arise? These problems, if frequently reported in the press, will surely affect the image of Hong Kong and Macao substantially or even cause a great impact on people's right to the freedom of entry and exit provided for under the Basic Law.*

**SECRETARY FOR SECURITY** (in Cantonese): First of all, if such cases exist, as I have already explained, we will take follow-up actions upon the request of the persons concerned. Certainly, it depends on the circumstances of the individual cases concerned, and the rank of the staff responsible for following up such cases may also vary with different circumstances and needs. Generally speaking, we will adopt this approach in handling all relevant matters.

Hong Kong and other special administrative regions impose immigration control in accordance with their respective laws. I believe Members will appreciate that the Basic Law has already stipulated very clear provisions on this. Therefore, the immigration arrangements for residents in Hong Kong and Macao are purely dealings between the authorities of the two places, and we do not see any need to seek help from the Central Government.

The Basic Law has already protected Hong Kong residents' freedom of entry and exit and required the Government to liaise with the relevant authorities of other countries to enhance travel convenience for Hong Kong residents in entering or leaving other jurisdictions.

However, the fact that we enjoy the freedom to enter and leave Hong Kong does not mean that we have the right of entry to other places when travelling to a third country or jurisdiction. Similarly, the Basic Law has also empowered the Hong Kong Government to impose immigration control on people from a third jurisdiction and country. Therefore, even if we have entered into any arrangement with other jurisdictions and countries for the mutual abolition of visa requirement or enhanced convenience, such arrangements only aim at providing travel convenience to residents of both places. For example, the mutual abolition of visa arrangement allows us to visit the relevant places without applying for a visa beforehand, and each immigration authority will conduct immigration checks upon the arrival of travellers. The simplest case in point is

that we will definitely bring along our identification documents and passports when travelling abroad. When a traveller produces his passport for inspection, the staff of the local immigration authorities will first check his identification and then consider a number of factors before deciding whether or not to grant him entry. This practice is adopted all over the world.

**MR JAMES TO** (in Cantonese): *President, requiring the few officials-in-charge in Hong Kong who similarly act in such a lowly and unreasonable manner, including the Acting Secretary today and the Secretary, to represent us in the fight for this cause is barking up the wrong tree.*

*However, President, I must say that it is a matter of grave concern to us because it will give rise to white terror. May I ask the Secretary whether he will fight for the case involving an ordinary member of the public who was refused entry into Macao for no particular prima facie reason? Or will he only adopt a "couldn't care less" attitude, just as how the Secretary replied yesterday and the Acting Secretary replied just now, by not taking any follow-up actions or adopting a perfunctory approach, knowing only too well that both sides are acting in an equally lowly and unreasonable manner? If the administrations of other countries do not fight for such cases, they may have to step down as a result.*

**SECRETARY FOR SECURITY** (in Cantonese): President, we appreciate the feeling of the person who was refused entry and we also understand the concern of Mr James TO and other Members about such incidents.

Theoretically, we will certainly not comment publicly on individual cases, but as I have explained in my main reply, while the SAR Government attaches importance to the legitimate rights of Hong Kong residents travelling outside Hong Kong, it must also respect the right of other jurisdictions to enforce immigration control in accordance with their laws and their decisions. For the same reason, we also expect other jurisdictions to respect the decisions made by Hong Kong in enforcing immigration control. As the SAR Government acts in full compliance with the law in enforcing immigration control, I do not agree to the argument advanced by Mr James TO.

**MR JAMES TO** (in Cantonese): *President, he has not replied .....*

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

**MR JAMES TO** (in Cantonese): *Have the authorities exerted their utmost to fight for the case while respecting others' rights? Or is everything fine as long as the others respect us? Will they exert their utmost to fight for the case?*

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

**SECRETARY FOR SECURITY** (in Cantonese): President, I do not have anything to add.

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

### **Single-person Applicants for Public Rental Housing**

6. **MR LEUNG YIU-CHUNG** (in Cantonese): *President, will the Government inform this Council:*

- (a) *of the respective numbers of elderly single persons, non-elderly single persons and families currently waiting for public rental housing (PRH), with a breakdown by the waiting time;*
- (b) *of the number of PRH flats to be provided for the above two types of single-person applicants in each of the next five years, with a breakdown by District Council district; and*

- (c) *whether the authorities have new measures to provide more PRH flats for these single-person applicants so as to shorten their waiting time; if so, of the details; if not, the reasons for that?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): President, the Government and the Hong Kong Housing Authority (HA) are committed to achieving a target of maintaining the average waiting time for the provision of PRH for low-income families with housing needs at around three years. As at the end of August 2010, the average waiting time for PRH rehousing for general Waiting List applicants and for elderly one-person applicants was two and 1.1 years respectively. The target in respect of the average waiting time is not applicable to non-elderly one-person applicants. Under the Quota and Points System (QPS), the priority of PRH allocation to these applicants is determined according to the points they have. The higher the number of points they have, the earlier they may be rehoused.

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

- (a) As at the end of August 2010, there were about 74 100 family applications, 4 800 elderly one-person applications, and 55 700 non-elderly one-person applications under the QPS on the Waiting List.

The waiting period for the above applications refers to the time between registration until flat offers or end of August 2010, but excluding any frozen period during the application, for example, where applicants do not fulfil the residence requirements, applicants being imprisoned, at the request of the applicants pending arrival of family members for family reunion, and so on. For these family applications, elderly one-person applications and non-elderly one-person applications under the QPS, the average waiting period was 1.5, 0.6 and 2.4 years respectively.

- (b) At present, the HA does not have PRH units that are specifically constructed for one-person applicants. One-person applicants may

be allocated small flats which may also be allocated to two-person families.

Turning to the new production figures for small flats in the coming five years according to the Public Housing Construction Programme (June 2010):

In 2010-2011, it is estimated that there would be a total of 13 700 new units to be completed in Kowloon City, Kwun Tong, Wong Tai Sin, Kwai Tsing, Sha Tin and Sai Kung. About 21% of these units would be small flats that could be allocated to one- to two-person families.

In 2011-2012, it is estimated that there would be a total of 11 200 new units to be completed in Kowloon City, Kwun Tong, Sham Shui Po and Wong Tai Sin. About 23% of these units would be small flats that could be allocated to one- to two-person families.

In 2012-2013, it is estimated that there would be a total of 16 700 new units to be completed in Kowloon City, Kwun Tong, Sham Shui Po, Kwai Tsing, Sha Tin and Tuen Mun. About 23% of these units would be small flats that could be allocated to one- to two-person families.

In 2013-2014, it is estimated that there would be a total of 14 400 new units to be completed in Kowloon City, Sham Shui Po, Wong Tai Sin, Kwai Tsing, Sha Tin and Sai Kung. About 22% of these units would be small flats that could be allocated to one- to two-person families.

In 2014-2015, it is estimated that there would be a total of 18 300 new units to be completed in Kwun Tong, Sham Shui Po, Sha Tin, Northern New Territories and Yuen Long. About 19% of these units would be small flats that could be allocated to one- to two-person families.

For efficient use of public housing resources, the HA may also allocate Housing for Senior Citizens (HSC) Types II and III units to

one-person applicants. As at end August 2010, there were about 430 such units that could be allocated to one-person applicants.

- (c) With the aim of allocating limited public housing resources in an objective and effective manner to those with the most pressing housing needs, applications for PRH from Waiting List applicants are presently split into three different categories, namely ordinary family applications, elderly applications and non-elderly one-person applications. In respect of singletons applying for PRH, the non-elderly one-person applicants may apply for PRH under the QPS. Under the current system, they may also apply for PRH with their family members as general family applicants. In this regard, to encourage the younger generation to live with their elderly parents, the HA has put in place various enhanced housing arrangements to foster family harmony. The arrangements include:
- (i) under the Harmonious Families Addition Scheme, eligible adult offspring (including singletons or those with family members) are allowed to be added to the tenancies of elderly tenants. As at the end of August 2010, 5 620 tenants have had their adult offspring or adult offspring together with their family members added to the tenancies; and
  - (ii) under the Harmonious Families Priority Scheme, the younger generation may apply with their elderly family members for a PRH flat in any Waiting List District of their choice and enjoy a credit waiting time of six months. Alternatively, the younger generation and their family may apply with their elderly family members for two nearby PRH flats in non-Urban Districts. They can also enjoy a six-month credit waiting time. As at the end of August 2010, there were 7 930 Harmonious Families Priority Scheme applications on the Waiting List enjoying the additional credit on their waiting time. Since the implementation of the enhanced arrangements in October 2007, about 5 650 households have been rehoused.

As for elderly one-person applicants, the HA has accorded priority for PRH rehousing for elderly applicants. Elderly one-person applicants can apply for PRH under the Single Elderly Persons Priority Scheme, and their average waiting time for PRH rehousing is shorter than that for general applicants. On the choice of Waiting List Districts, elderly households (including elderly one-person applicants) are allowed to choose any one of the four Waiting List Districts, including the Urban District, in their PRH applications. The HA also provides one-stop services for elderly applicants aged 60 or above. Applications and vetting can be processed in one go.

Eligible elderly or non-elderly one-person applicants with pressing housing needs may also apply for the Express Flat Allocation Scheme (EFAS) or Compassionate Rehousing (CR) on the recommendation of the Social Welfare Department for early rehousing. On average, some 800 and 700 one-person applicants were allocated PRH flats through the EFAS and CR respectively in the past three years.

**MR LEUNG YIU-CHUNG** (in Cantonese): *President, in her reply to the second part of the question, the Secretary gave some very detailed information, pointing out that an average of some 12 000 new units will be completed in each of the next five years, and about 20% of these units can be allocated to one- to two-person families. But the problem is that these figures are not helpful to those categorized as non-elderly one-person Waiting List applicants under the QPS. What is the reason? President, it is because the number of PRH units that may be allocated to such applicants each year is only 2 000 according to the rule imposed. Therefore, even if the flat production volume is raised, it will not help this type of applicants. After all, where does the problem lie? It lies in the fact that 2 000 units are really too few, thus making it absolutely necessary to adopt the points system, under which it is clearly specified that the higher the score of points, the earlier allocation of PRH. However, the calculation of points is related to one's age, meaning that the older one is, the more points he gets. Therefore, very often people will complain that suddenly someone can jump the queue because of his older age when they should have been rehoused otherwise. Such situation is most common, so much so that some people will never be allocated PRH. Secretary, such a situation is neither just nor fair. It*

*has also breached the long-established "first-come-first-served" principle for PRH allocation. That said, will the Government review the system to pre-empt such "queue-jumping", and expand the annual quota of 2 000 units so that applicants can be rehoused more quickly and benefit from a reasonable waitlisting system?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): President, I understand Mr LEUNG's concern. The QPS is indeed related to age, but the waiting time is also taken into account. In the calculation of an applicant's points at the start of the waiting period, three points are granted for each year of age, but one additional point will be added for each month of waiting thereafter. Therefore, this system is not entirely skewed in favour of those older of age. I believe people in the community will also understand that although the current resources are limited, we have to not only cater for the needs of non-elderly one-person applicants, but also the needs of family applicants and elderly one-person applicants. Then, how can we distribute the resources in a reasonable manner? To this end, the number of points calculated will depend on the age on the one hand, and the amount of time the applicant has spent waiting on the other. In fact, the PRH units allocated to singletons each year are not confined to those 2 000 either — of course, this is the upper limit. Under the EFAS, we can allocate 10% of the total quota to non-elderly one-person applicants. Taking the year 2009-2010 as an example, this category of applicants has been allocated 2 700 units in total.

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

**MR LEUNG YIU-CHUNG** (in Cantonese): *She has not answered my supplementary question at all. I am talking about the "queue-jumping" phenomenon under the system, and I believe this unfair system has breached the long-established "first-come-first-served" principle for waitlisting. I asked her whether she would conduct a comprehensive review and whether she would increase .....*

**PRESIDENT** (in Cantonese): Mr LEUNG, I believe the Secretary has already given a reply. Regarding the waiting time, she has already answered that there is a points calculation method. You are not satisfied .....

**MR LEUNG YIU-CHUNG** (in Cantonese): *I know, but what I want to ask her is: Will this mechanism be reviewed afresh?*

**PRESIDENT** (in Cantonese): Secretary, will it be reviewed?

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): We do not have any plans to comprehensively review this mechanism yet.

**MR WONG KWOK-HING** (in Cantonese): *President, according to the Secretary's reply, there are totally 55 700 non-elderly one-person applications under the QPS. According to the reply the Government gave us previously, about 2 000 PRH units are allocated to this category of applicants each year. Dividing this number of allocations by the total number of applicants, President, we will find that the waiting time is 27 years. If an applicant is wait-listed at the age of 30, he will have turned 57 when he is rehoused 27 years later, and the "queue-jumping" scenario mentioned by Mr LEUNG Yiu-chung just now has yet to be factored into this. What I want to ask the Secretary is: In view of the current practice that rehousing of such one-person applicants depends on the total number of applicants and the annual quota for PRH allocation, is the waiting time too long and too unreasonable, to such an extent that they almost become elderly before they can move in? Although the Secretary gave an undertaking to Mr LEUNG Yiu-chung just now that she would conduct a review, President, may I ask when the review will be conducted? When will papers be submitted to the Council for review? I had better focus the question on this point. Besides, does the Secretary not find it excessive to wait for 27 years, from young till old?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): President, this is not the way to calculate the waiting time. Presently, the

average waiting time for a non-elderly one-person applicant to be rehoused is 2.2 years. Why do we ..... The number of applications seem to have substantially increased, but in fact during the process from application to eventual allocation of a PRH unit, the applicants in this queue would experience various changes, because many applicants who were non-elderly one-person applicants at the beginning would get married during the waiting period and be transferred to other queues or other districts. Therefore, according to the information of the past several years, 45% of the applicants would leave the queue midway or move to another queue. This is a normal social phenomenon as family statuses will change. Therefore, insofar as the current situation is concerned, the average waiting time of 2.2 years for a non-elderly one-person applicant to be rehoused is still less than the three-year general pledge made by us. This situation is acceptable. Of course, we will keep a close watch on it. As I have said just now, at present we do not have any plans to comprehensively review the present QPS yet. This system is based on age on the one hand, and the time already spent on waiting on the other.

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

**MR WONG KWOK-HING** (in Cantonese): *President, she did not say when the papers would be submitted for review.*

**PRESIDENT** (in Cantonese): Mr WONG, I believe you have caught the Secretary's reply wrongly. In her reply to Mr LEUNG Yiu-chung, she said there was no plan to conduct a review, and hence there was no timetable.

**DR PRISCILLA LEUNG** (in Cantonese): *President, this question reminds me of my meeting with a 15-year-old outstanding teenager during the summer holidays. He raised a question: Why does Hong Kong keep promoting the construction of PRH units for single elderly persons and single youths? He asked very sincerely, "Why is our overall rehousing policy not based on the promotion of building healthy families?" The Secretary mentioned the Harmonious Families Priority Scheme just now in her main reply. I understand,*

*indeed, that many people nowadays opt for not getting married nor building up a family, but if a young single person is willing to take care of a single elderly person, we can obviate the need to allocate two PRH units to two single persons. Will the Government introduce more concessionary measures in its overall policy? I do not mean to call it "queue-jumping", because after handling the building collapse incident at 45J Ma Tau Wai Road, we found it necessary to implement special measures for special circumstances. Priority should be accorded to rehousing needy families. This discretion should be acceptable and not be described as "queue-jumping".*

*I do not think we should encourage 30-year-old single persons to remain unmarried for 27 years, but the problem is that personality differs from one person to another. There are such persons in society. Instead, I hope that our general housing policy can provide more concessions to encourage the preservation of some family values. Taking families with small children or school-age children as an example, they have a greater need for housing. How will the Government consider this?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese):

President, this is the reason why we have introduced "family applications". Generally speaking, the average waiting time pledged by us is still three years. This is the case for families. Regarding the question mentioned by Dr LEUNG ..... In fact, this is related to the Harmonious Families Priority Scheme — I am talking about the Harmonious Families Priority Scheme rather than the Harmonious Families Addition Scheme. Under the former Scheme, firstly, the applicants can apply for housing together, or alternatively for allocation of two separate units in the same estate to facilitate mutual care. At present, we offer a credit waiting time of six months. Statistics show that more than 5 000 households have been rehoused thanks to this measure. Currently, there are still around 8 000 households on the Waiting List applying for PRH allocation under this Scheme. They enjoy the credit waiting time just mentioned. In other words, with the three-year waiting time reduced by six months, the applicants have to wait for only two-odd years to be rehoused. While we can not deny the need of some people in society for single-person PRH units as the family status or situation varies from one person to another, this Scheme has precisely responded to Members' views. We very much hope that family members can take care of each other, but I have to also take into consideration the realistic situation.

Therefore, we do not want to force them to live together. I believe that the flexibility we have allowed for is most humanistic. The applicants can apply for housing in a nearby estate or in the same estate, with one on a floor above that of the other in the ideal case, of course. Otherwise it is also fine to live in different blocks in the same housing estate. I believe that this caters better for the prevailing needs of families, in the sense that the elderly and the younger generation can have their own private space while living in the neighbourhood to take care of each other. We will continue to review this Scheme. If it is well received, we will examine whether there are areas that may be improved. Nevertheless, judging from the current figures, this Scheme has gained certain credibility and is very well received.

**PRESIDENT** (in Cantonese): Mr LEE Cheuk-yan.

(Dr Priscilla LEUNG stood up)

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

**DR PRISCILLA LEUNG** (in Cantonese): *President, actually I wish to ask the Government whether it will inject more resources. If it is necessary to speed up .....*

**PRESIDENT** (in Cantonese): You need only repeat the part of your supplementary question that you believe has not been answered.

**DR PRISCILLA LEUNG** (in Cantonese): *I hope the Secretary can answer whether additional resources can be deployed as a matter of policy? Can the current three-year waiting time for rehousing be reduced to one year? In terms of resources .....*

**PRESIDENT** (in Cantonese): Dr LEUNG, I believe you have repeated the part that has not been answered. Secretary, please.

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): President, under our present housing construction programme, the average waiting time is still three years. Of course, we consider it appropriate from the perspective of land resources. Besides, the waiting time benchmark of three years on average for rehousing has been established after long discussions in society, and widely hailed as a good one. As far as the present stage is concerned, any discussion on greater concession under the Scheme touches squarely upon the issue of striking a balance in the utilization of resources, limited resources. What I mean is: Would the early rehousing of a certain group of people affect other types of applications, such as those filed by non-elderly one-person applicants and family applicants? At present, in relatively satisfactory conditions, the average waiting time for family applications is only two years. Besides, there is a credit waiting time of six months. We consider this already quite acceptable.

**MR LEE CHEUK-YAN** (in Cantonese): *President, in fact there is now a new phenomenon of more and more young people living in cubicles. Many young single persons have no alternative but to live in caged homes or cubicles, and the 55 700 people currently wait-listed are precisely this group of people. Talking about the present system, I am very disappointed that the Secretary said just now that no review would be conducted on the one hand, and she misled the public on the other. She said that the current average waiting time is 2.4 years and the situation seems not to be too serious. However, since the new points system was introduced only two to three years ago, there is no problem with all of the applications before that. But under the current points system, even though it may not take 27, it has been widely reported that one has to wait for 10-odd years at least, and many people have yet to be allocated any PRH unit at all after waiting for seven years. They have been waiting all along, extending the average waiting time as an inevitable result. It is unfair to these people. Is the Secretary misleading the public in suggesting 2.4 years? In fact, she knows it full well in her heart. Would she admit that some single persons may not be allocated a unit even though they have been waiting for more than 10 years?*

*Would she admit these loopholes and facts under the present system? If the Secretary admits them, would she help these people sincerely?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): President, our overall policy is committed to helping people settle into public housing. This is a serious commitment. However, as I explained just now, in allocating the limited resources, it is anyhow necessary to establish priorities. The present discussion is on non-elderly one-person applications, but in fact there are also family applications and elderly applications. In other words, there are totally three queues. Currently, the waiting time for rehousing is 2.4 years, and the actual time taken for rehousing is 2.2 years. We believe that in order to achieve a balanced overall situation, it is eventually necessary to adopt a points system. Regarding this points system, as I have explained just now, it takes into account not only the age, but also the time already spent on waiting. Of course, if we focus on a particular waiting period, as if watching a picture, we might ask why the waiting time is so very long? However, there are many different situations in reality. Judging from the overall trend and circumstances of individual cases, as I said just now, some applicants may apply for transfer to another district, moving to another queue, or even freezing the application after waiting for some time. There are also cases where the applicants have requested that the application be frozen during the waiting period because they have to wait for their wives to come to Hong Kong from the Mainland. Therefore, we cannot just look into certain cases and conclude that the waiting time is extraordinarily long. Each application has its underlying causes. Overall, we find it necessary to establish a system to deal with limited resources in a balanced manner, but we must certainly also have regard to many personal problems of the applicants. At present, there are 135 100 applicants on the Waiting List. In 2009, there was a sharp rise in the number of applicants because of problems with the economic conditions, but as the economy changes for the better, hopefully the queue will become slightly shorter. For this reason, we must not introduce a major reform for non-elderly one-person applications, as if we were focusing only on one picture. This would affect the allocation of resources for other categories of applicants.

**PRESIDENT** (in Cantonese): This Council has spent more than 22 minutes on this question. Oral questions end here.

**WRITTEN ANSWERS TO QUESTIONS****Depreciation Allowance for Machinery and Plants**

7. **MR JEFFREY LAM** (in Chinese): *President, regarding the reply given by the Secretary for Financial Services and the Treasury on 7 July this year to my question on the "depreciation allowance for machinery and plants", will the Government inform this Council:*

- (a) *of the specific scope and timetable of the study conducted by the Joint Liaison Committee on Taxation on whether Hong Kong manufacturers might continue to be entitled to depreciation allowance in Hong Kong for their machinery after restructuring their business from "contract processing" to "import processing" on the Mainland (including when the study is expected to be completed and submitted to the Government);*
- (b) *whether it knows the number of Hong Kong manufacturers who were not entitled to depreciation allowance for their machinery after restructuring their business to "import processing" on the Mainland in each of the past three years; and*
- (c) *whether the authorities will formulate new measures to assist Hong Kong manufacturers in solving their problem of not being entitled to depreciation allowance for their machinery after upgrading and restructuring their business on the Mainland?*

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

- (a) and (c)

We understand that Hong Kong manufacturers wish to obtain depreciation allowance in Hong Kong for machinery and plants made available for use by Mainland enterprises free of charge under "import processing" arrangements. As indicated in our letter of 10 March 2010 to the Legislative Council Panel on Financial Affairs

and our replies to written questions raised by the Legislative Council on 17 March and 7 July 2010, we consider that the completeness of the anti-avoidance provisions in the Inland Revenue Ordinance would be affected if the relevant restriction is relaxed. There are also practical difficulties in the implementation and the provision could easily be abused. Hence, we need to consider thoroughly the feasibility of relaxing the relevant restriction, including whether there are effective measures to plug tax evasion loopholes. We would complete the study as soon as practicable.

- (b) The Inland Revenue Department does not have such data.

### **Air and Water Pollution in West Kowloon Waterfront**

8. **MR JAMES TO** (in Chinese): *President, from time to time in recent years, I have received complaints from residents of the Stonecutters Island and the Yau Ma Tei Typhoon Shelter (YMTTS) areas about odours frequently coming from the sea water. Moreover, although government officials said at the meeting of the Panel on Environmental Affairs of this Council on 25 January this year that an analysis of the water quality at the outfalls of the Stonecutters Island Sewage Treatment Works (SCISTW) indicated that the residual chlorine content was within acceptable limits, it was recently reported in a weekly magazine that the outcome of the tests and investigation conducted by it showed that the sewage discharged from SCISTW and the operation of the West Kowloon Refuse Transfer Station (WKTS) had led to water and air pollution in the district, and the hydrogen sulphide content in the air of the district had exceeded the standards of certain states of the United States. In this connection, will the Government inform this Council:*

- (a) *focusing on the investigation outcome in the aforesaid report, whether the authorities had, in the past five years, conducted similar studies; if they had, of the outcome; if not, whether they will conduct such studies; whether they will re-examine if the operations of SCISTW and WKTS have led to air or water pollution in the West Kowloon district, and whether they will re-assess the impact of such facilities on the health of members of the public;*

- (b) *whether the Environmental Protection Department (EPD) has regularly monitored the contents of air pollutants (including hydrogen sulphide, and so on) in the vicinity of the aforesaid two facilities; if it has, of the locations of the monitoring points; of the relevant data obtained in each of the past three years, and whether such data exceeded any international standards;*
- (c) *of the monitoring results of the marine monitoring stations set up by the EPD around the aforesaid West Kowloon waterfront (WKW) in each of the past three years; whether it had detected any deterioration in the water quality and conducted relevant investigations to ascertain if the odours from the sea water are related to water quality;*
- (d) *of the number of complaints received by the authorities in each of the past three years about the air or water quality near SCISTW, WKTS or the YMTTS/the WKW, and among them, the number of such complaints which had been substantiated; whether government departments such as the EPD and the Marine Department (MD), and so on, had prosecuted or penalized the persons or organizations involved; if they had, of the penalties imposed;*
- (e) *whether the Government had, in the past three years, carried out regular inspections on illegal connection of sewers for discharging sewage in the West Kowloon district; if it had, of the number and locations of sewers which were proved to be illegally connected but have not yet been removed so far, as well as the number and locations of sewers which illegally discharged sewage into the harbour; and whether the Government has any plan to remove all the illegal sewers;*
- (f) *focusing on the current odour problem in the West Kowloon district, what improvement plans the Government has, including whether it has carried out any dry weather flow interceptions works in respect of the odour problem at the YMTTS, and whether it has implemented any environmental measure for the operations of SCISTW and WKTS;*

- (g) *given that in its "Harbour Area Treatment Scheme (HATS) Stage 2A Environmental Impact Assessment (EIA) Study — Investigation" report submitted in June 2008, the Drainage Services Department (DSD) recommended enclosing or covering all the identified odour sources in the preliminary treatment works and SCISTW and discharging them into the atmosphere after treatment, when such recommendation can be implemented; given that the authorities stated at the meeting of the Panel on Environmental Affairs of this Council on 5 July 2005 that in the event that the water quality objectives could not be met due to an increase in the population during the implementation of HATS Stage 2, consideration would be given to proceeding to secondary sewage treatment, whether the Government has studied the feasibility of providing secondary sewage treatment; and*
- (h) *according to the information of the Leisure and Cultural Services Department, a large flood relief box culvert was built underground in the central part of the open space at Hoi Fan Road of Tai Kok Tsui, and the culvert with its surrounding area of 33 m in width is classified by the DSD as a drainage reserve on which quite a number of manholes for repair are distributed, of the current operation of the culvert (including the areas from which flood water is collected and where flood water is discharged), and whether water quality monitoring is conducted in the district?*

**SECRETARY FOR THE ENVIRONMENT** (in Chinese): President,

- (a) In early 2006, the DSD commissioned an EIA study on the HATS Stage 2A. The EIA study, completed in mid-2008, was endorsed by the Advisory Council on the Environment and approved by the EPD in October 2008. The EIA study included an impact assessment of the odour from the SCISTW. With mathematical models, it made predictions about the odour from the SCISTW upon the completion of the HATS Stage 2A extension and improvement works. The modelling results indicated that after implementing various odour control and mitigation measures (including covering up all the odour sources and installing deodourizing devices) as recommended in the EIA study report, the level of odour in the

vicinity of the premises that might be affected would meet the requirement set out in the Technical Memorandum on EIA Process.

The Government has attached great importance to the environmental performance of the SCISTW and WKTS. On odour management at the SCISTW, the DSD has been upgrading relevant facilities, and has carried out a series of enhancement works over the past few years to step up odour control and mitigation measures, so as to minimize the potential odour nuisance to the public. They include the installation of chemical deodourizing spray systems at all the sludge cake unloading bays and sedimentation tanks, the provision of biofilters at the vertical discharge chambers of the sedimentation tanks, and the provision of mobile deodourizers for equipment under maintenance to control any potential odour from such equipment.

As for the WKTS, the EPD has adopted a series of odour control measures including the air purification system for filtration and deodourization in the waste tipping hall. The tipping hall itself is designed with negative air pressure to prevent odour from emitting to the surrounding areas. The tipped waste will be compacted and containerized in sealed containers for onward transportation to the strategic landfill by marine vessels. This method of transporting waste can minimize the environmental impact to the surrounding environment and waste will not be exposed to the atmosphere in the entire waste handling procedure. As all sewage generated from the WKTS will be discharged into sewers after proper treatment, the operation of the WKTS would not pollute the surrounding sea water. The EPD will monitor the existing operation and strengthen the environmental management of the WKTS to ensure compliance with a series of stringent environmental parameters.

- (b) An odour monitoring system has been put in place at the SCISTW. The DSD measures the odour at the boundary of the plant and at the locations of the sedimentation tanks every month. Based on the analysis of the DSD, the concerned level of hydrogen sulphide has not constituted undesirable impact to the nearby residents. In response to the complaints from nearby residents, the DSD had also measured hydrogen sulphide levels at the neighbouring premises and the data showed that the nearby residents had not been affected.

The DSD will continue to closely monitor the odour from the treatment works.

Odour control at the WKTS is monitored independently by air specialists from The Hong Kong Polytechnic University. They monitor the odour at the periphery of the WKTS at irregular hours on a daily basis. Based on the data, no anomaly has been detected.

- (c) The EPD has set up a marine monitoring station off the coast of West Kowloon to monitor the water quality. The monthly data cover the measurement and records of various physical and chemical properties, including dissolved oxygen, ammonia nitrogen, inorganic nitrogen and E. coli. The compliance rate of major water quality indicators is assessed annually based on the data collected. The monitoring results over the past three years (2007-2009) show a continuous improvement in marine water quality. The compliance rate of marine water quality for 2009 exceeds 90%, comparing favourably with the 2008 figure. The EPD has not received any complaint about odour from the marine water. According to a performance verification on HATS Stage 1, effluent discharged from the SCISTW has not affected the local water quality, marine sediment and benthos. Upon the commissioning of the advance disinfection facilities of the SCISTW in early 2010, the E. coli level in marine water on the western side of Victoria Harbour fell by 60%.
- (d) The number of complaints about air and water pollution received by the EPD, DSD and MD between 1 January 2008 and 30 September 2010 is shown in the tables below:

<i>Air Pollution Complaints</i>	<i>2008</i>	<i>2009</i>	<i>2010 (as at 30 September 2010)</i>
SCISTW	9	11	18
WKTS	8	2	8
YMTTS/WKW	0	3*	4*

Note:

\* Complaints were related to black smoke from vessels and not related to odour.

<i>Water Pollution Complaints</i>	<i>2008</i>	<i>2009</i>	<i>2010 (as at 30 September 2010)</i>
SCISTW	0	0	0
WKTS	5	0	2
YMTTS/WKW	2	4	2

The relevant government departments have followed up with all the above complaints. For those individual cases that were related to the operational issues, the EPD has requested the concerned operator to take immediate measures for improvements. In the subsequent inspections, it was found that the problems had ceased. For the majority of the remaining complaints, the sources of pollution could not be identified after taking follow-up actions. Relevant government departments will continue to closely monitor the situation.

- (e) The EPD has conducted regular inspections of mis-connected sewers in West Kowloon. The numbers of confirmed cases and locations of mis-connected sewers over the past three years (from 1 January 2008 to 30 September 2010) are shown in the table below:

	<i>Cases of mis-connection</i>	<i>Rectified cases</i>	<i>Cases for which follow-up action is being taken</i>
Yau Tsim Mong District	27	11	16
Sham Shui Po District	13	3	10

The EPD, in collaboration with other government departments, will continue to follow up on each case with a view to rectifying all the mis-connections.

- (f) and (g)

The Government has installed six dry weather flow interceptors in the storm water drainage system along the upstream area of YMTTS.

They are located at the junctions of Nullah Road/Nathan Road, Portland Street/Nelson Street, Soy Street/Portland Street, Dundas Street/Portland Street, Waterloo Road/Dundas Street, and Public Square Street/Reclamation Street. These interceptors serve to intercept effluent flow in dry seasons. The recently completed Feasibility Study of the Review of West Kowloon and Tsuen Wan Sewerage Master Plans recommends a series of works targeting YMTTS to mitigate the existing water pollution and the associated odour problems. They include a trial scheme for providing an odour removal system at Cherry Street Box Culvert. Detailed design of the scheme will commence soon.

The EPD reviews regularly the WKTS's operation and steps up odour management and inspection within the WKTS to ensure compliance with environmental standards. Apart from the air purification system for filtration and deodourization in the waste tipping hall, we also require washing up of the bodies of refuse collection vehicles before leaving the WKTS to prevent pollution of the surrounding area.

To solve the odour problem at the SCISTW, the DSD has been upgrading its facilities. A series of enhancement works have also been implemented over the past few years to step up odour control and mitigation measures, so as to minimize the generation of odour. The mitigation measures include:

- (i) the installation of chemical deodourizing spray systems at all the sludge unloading bays and sedimentation tanks;
- (ii) the provision of biofilters at the vertical discharge chambers of the sedimentation tanks; and
- (iii) the provision of mobile deodourizers for equipment under maintenance to control odour from such equipment.

As a long term solution to the odour problem at SCISTW, in October 2009, the DSD awarded a works contract on providing covers for all

the exposed sedimentation facilities, including sedimentation tanks, flocculation tanks, main distribution channels, effluent drop shafts and launders to eliminate odour from such facilities. The contract also includes the provision of air extraction systems and deodourizing devices to extract and purify the air from the covered areas before discharge to meet the operational safety and maintenance requirements. The works progress has been good and we expect that all the covering works will be completed in phases by year 2012.

Apart from the above covering works for all the exposed sedimentation tanks at the SCISTW, the extension of the SCISTW includes providing deodourizing devices in all the pump rooms and sludge treatment facilities to enhance the deodourizing performance.

The Government commissioned a consultancy study in June 2010 on the planned secondary sewage treatment works under the HATS Stage 2B, including the review on the water quality, population projection and sewage flow and load. The study will put forward recommendations on planning, funding arrangements, design and construction for HATS Stage 2B. The Government will make reference to the findings of the study in drawing up the schedule for the implementation of HATS Stage 2B; and

- (h) The box culvert system near the open space at Hoi Fan Road, Tai Kok Tsui is in operation and effective in relieving floods. It runs from Cornwall Street near Chak On Estate to the southwest along Nam Cheong Street, passes through Tung Chau Street Park, Nam Cheong Park and the open space at Hoi Fan Road, and discharges at the seawall outlet between Hampton Place and The Long Beach. It collects rainwater from Shek Kip Mei, Sham Shui Po and Tai Kok Tsui for direct discharge into the sea. The EPD has set up a marine monitoring station off the coast of West Kowloon to monitor the water quality regularly. The relevant water quality monitoring results are shown in our reply in part (c) above.

### Provision of Non-emergency Transfer Service for Patients

9. **MR WONG YUK-MAN** (in Chinese): *President, quite a number of elderly people and elderly groups have complained to me that the existing provision of non-emergency ambulance transfer service (NEATS) and Easy-Access Transport Services (ETS) for patients to attend follow-up medical appointments are severely insufficient and, because such transport services cannot be arranged for them, patients have often failed to attend follow-up medical appointments as scheduled, which may affect their health adversely. Moreover, Accessible Hire Cars (AHCs) and Rehabuses services have time restrictions and charge high fares on the basis of journey distance, which the general poor and sick elderly people find it hard to afford. In this connection, with the Government inform this Council:*

- (a) *of the number of NEATS and ETS users as well as the utilization rate of such services in the past five years (set out in the table below);*

<i>Year</i>	<i>Number of NEATS users and utilization rate of such service</i>	<i>Number of ETS users and utilization rate of such service</i>
2009		
2008		
2007		
2006		
2005		

- (b) *whether the Government will consider increasing the number of vehicles plying NEATS and ETS to meet users' need; if it will, when it will do so, the number of vehicles to be increased, and the time when they will be put into service; if not, the reasons for that;*
- (c) *whether the Government will consider lowering the fares of AHCs and Rehabuses to the level of that for ETS in order to benefit more poor and sick elderly people; if it will, when it will do so; if not, the reasons for that; and*
- (d) *whether the Government will consider fully subsidizing the elderly people living on Comprehensive Social Security Assistance (CSSA)*

*to take AHCs and Rehabuses to public hospitals or specialist out-patient clinics for follow-up medical appointments when NEATS and ETS cannot be arranged for them; if it will, when it will do so; if not, the reasons for that?*

**SECRETARY FOR LABOUR AND WELFARE** (in Chinese): President, the Hospital Authority (HA) provides transport services to patients with mobility-disability mainly through the NEATS and ETS. NEATS provides point-to-point transfer service primarily for mobility-handicapped patients who are unable to use public transport such as bus, taxi and Rehabus. The HA's ETS, which is operated by the Hong Kong Society for Rehabilitation (HKSR), provides transfer services between homes and hospitals or clinics for patients aged above 60 with minor mobility-disability.

- (a) The numbers of persons served by NEATS and ETS in the past five years are as follows:

<i>Year</i>	<i>NEATS</i>	<i>ETS</i>
2009	386 148	157 194
2008	367 056	145 751
2007	351 285	145 360
2006	347 565	135 004
2005	354 627	135 128

- (b) The numbers of persons using NEATS and ETS have increased steadily in the past few years. In order to enhance the services, the HA has increased the manpower for provision of NEATS and added six new vehicles to the NEATS fleet, thereby increasing the fleet size to 133 vehicles. The HA will keep the two services under review having regard to the service demand, including actively exploring improvements to the booking procedures of ETS, in order to provide more effective transfer service for mobility-handicapped patients between homes and hospitals or clinics.
- (c) Through subvention to HKSR for the operation of Rehabus, the Government provides point-to-point transport services for those

persons with disabilities who have difficulties in using normal modes of public transport. The Rehabus offers scheduled routes, feeder routes to and from hospitals or rehabilitation centres, and dial-a-ride service to convey persons with disabilities in need to office, school, receive rehabilitation training, participate in other social activities or attend medical appointments. The annual subvention of the Government accounts for over 80% of the recurrent operating cost of the Rehabus.

Apart from the operation of Rehabus, the HKSR also received funding under the Hong Kong Jockey Club Charities Trust for procuring 20 wheelchair AHCs, that is, AHC, as well as the operating cost for the first three years to launch an accessible transport service for wheelchair-bound passengers. AHC service has been fully implemented since October 2008, and the project has to operate on a self-financing basis within three years upon implementation.

To cater for the transport needs of different people, the service nature, target clients, operation modes, fee charging mechanism, and so on, of ETS, Rehabus and AHC are different.

In general, the fee levels of the subvented Rehabus and ETS are comparable and recipients of CSSA may also apply for half-fare concession for Rehabus dial-a-ride service to relieve their financial burden on transport expenses. Through the provision of the self-financing AHC service, persons with disabilities are provided with an additional service option to existing transport services, thereby facilitating more effective utilization of resources of the Rehabus in providing transport services for persons with disabilities in need. Given its self-financing service mode, the fee level of AHC should not be compared with that of the two other transport services subvented by the Government and HA.

- (d) As stated above, Rehabus and AHC provide transport services for those persons with disabilities who have difficulties in using normal modes of public transport, and the service targets are different from that of NEATS and ETS. The HA will continue to keep NEATS

and ETS under review having regard to service demand, and explore other improvement measures in order to facilitate patients in need in their transfer to and from hospitals or clinics.

### **Capital Subvention Projects for Provision of Medical Services**

10. **DR RAYMOND HO:** *President, will the Government inform this Council:*

- (a) *given that the number of capital subvention projects for the provision of medical services submitted to the Finance Committee of this Council for funding approval had decreased in the past four sessions, whether the Government has assessed if the decrease reflects a reduction in the medical needs of the community; and*
- (b) *given that it was stated in the Policy Agenda for the 2008-2009 Policy Address that the establishment of multi-partite medical centres of excellence in paediatrics and neuroscience to improve the quality of clinical services to patients suffering from complex and serious illnesses as well as to enhance the standards of research and training in the two respective medical disciplines was under preparation, of the current status of such projects?*

**SECRETARY FOR FOOD AND HEALTH:** President,

- (a) The Hospital Authority (HA) has been planning for the provision of hardware facilities in public hospitals having regard to such factors as the increase in service demand arising from a growing and ageing population in Hong Kong, the standards required of modern medical equipment and the wear and tear of existing medical facilities. The HA acquires additional medical facilities and replaces obsolete ones through various projects in order to meet the demand for healthcare services and ensure the provision of quality services to the public.

Over the years, we have obtained funding approval from the Legislative Council for the use of the capital subventions to carry out a number of capital works such as expansion, redevelopment,

reprovisioning and refurbishment of existing hospitals, improvement of facilities and equipment in hospitals as well as construction of new hospitals. In the past four legislative years, the Finance Committee has approved an aggregate total of more than \$6.4 billion to carry out seven capital works projects for medical facilities. Apart from this, the HA is granted allocation under Head 708 Subhead 8100MX every year to carry out maintenance and minor improvement works for public hospitals. In 2009-2010, \$600 million was approved under this subhead for the HA to carry out about 1 000 number of minor works.

The planning of capital works projects involves a series of work and procedures. In general, we need to prepare a project definition statement to describe the requirements and specific details of the proposed project and to carry out various preliminary technical assessments to ascertain its technical feasibility. Thereafter we will consult the views of the local community. Upon completion of relevant preparatory work and estimation of capital works expenditure, we will seek funding approval from the Legislative Council and commence the works.

Work projects pertinent to medical facilities are carried out on a needs basis. The time required for project preparatory work is also different among projects as the scale, scope and nature of each project are not the same. For these reasons, there is no regular pattern for the number of projects requiring approval from the Legislative Council for capital subventions each year. We will continue to conduct planning for the hardware of medical facilities to ensure that the public will continue to be provided with adequate quality medical facilities.

- (b) In the last two years, we have been working closely with experts from the public and private medical and academic sectors as well as representatives from allied health groups and patients' groups to prepare for the establishment of the two medical centres of excellence. An initial consensus has been reached on the scale and facilities of the centres. It has been decided that the two centres will be built at the Kai Tak Development Area.

We have completed the technical feasibility study for the Centre of Excellence in Paediatrics and are now finalizing the Schedules of Accommodation. Upon finalizing the details, we will seek funding approval from the Finance Committee of the Legislative Council in 2011.

We will continue to work with experts from various sectors and representatives of related groups on matters regarding the Centre of Excellence in Neuroscience.

### **Entry Visa Arrangements for Hong Kong and Taiwan Residents**

11. **MS MIRIAM LAU** (in Chinese): *President, during his visit to Taiwan at the end of August this year, the Financial Secretary said that the question of granting visa-free access to Taiwan travellers should be "seriously studied and followed up". Yet, the Taiwanese authorities have already announced that Hong Kong residents who were born in Hong Kong and are holders of Hong Kong Special Administrative Region (HKSAR) Passport may enter Taiwan immediately after being granted an entry permit from application on the Internet, which has significantly streamlined the process of entry permit application. In this connection, will the Government inform this Council:*

- (a) *of the average length of time it takes at present in processing each entry permit application by Taiwan travellers; the percentage of cases in which the HKSAR Government had refused to grant entry permits to Taiwan travellers in each of the past three years, and the main reasons for such refusals;*
- (b) *given that there have been comments that since at present the Macao SAR Government has already agreed to grant visa-free access to Taiwan travellers, and the adoption of a corresponding arrangement by Hong Kong is technically quite feasible, of the latest progress of the study by the authorities on granting visa-free access to Taiwan travellers and the specific implementation timetable, the major factors of consideration involved; whether the authorities will, during the transitional period before visa-free access is granted to Taiwan travellers, implement other measures to improve the*

*granting of entry permits, so as to attract Taiwan travellers to Hong Kong; if they will, of the details (including the way in which the measures are to be implemented and the details of charges); if not, the reasons for that; and*

- (c) *whether it will strive to persuade the Taiwanese authorities to extend the coverage of the aforesaid streamlining measure for entry permit applications for Hong Kong residents to Hong Kong residents who were not born in Hong Kong but are holders of Hong Kong permanent identity cards?*

**SECRETARY FOR SECURITY** (in Chinese): President, last year, the HKSAR Government introduced several measures to enhance the immigration facilitation for Taiwan travellers. On 1 January 2009, the Immigration Department lifted the restriction on the number of iPermit applications and extended the period of stay for holders of iPermit and multiple entry permits from 14 days to 30 days for each visit. Since 27 April 2009, Taiwan travellers holding Mainland Travel Permit for Taiwan Residents (MTP) can even visit Hong Kong for seven days without the need to apply for any endorsement or entry permit.

Our response to the three parts of Member's question is as follows:

- (a) In the first nine months of this year, of around 1.7 million arrivals of Taiwan travellers, 80% held MTPs and hence enjoyed permit-free entry. Of the remaining 20%, three fourths held i-Permits, which were applied on the Internet through authorized airlines or their agents before departure. Over 95% of the iPermit applications were given instant confirmation. For the residual number of applications which could not be processed through the computer system, the applicants concerned need to apply for entry permits instead.

The processing of the vast majority of applications for entry permit could be completed within two working days. The main reason for refusing such applications is the applicants' failure to fulfil normal immigration requirements, such as insufficient validity period of travel document, doubtful purpose of visit, and so on. The following is the relevant percentage over the past three years:

Year	<i>iPermit</i>		<i>Entry Permit</i>	
	<i>Applications Received</i>	<i>Not Processed by Computer System</i>	<i>Applications Received</i>	<i>Applications Refused</i>
2007	343 716	7 805 (2.3%)	23 327	37 (0.2%)
2008	342 039	13 051 (3.8%)	15 690	15 (0.1%)
2009	265 799	6 428 (2.4%)	7 762	33 (0.4%)
2010 (January to September)	234 690	5 796 (2.5%)	4 191	9 (0.2%)

- (b) The HKSAR Government is actively studying measures to further facilitate the entry of Taiwan travellers. Our major consideration is to strike a balance between the maintenance of effective immigration control and the provision of reciprocity.
- (c) Currently, above 70% HKSAR passport holders are eligible to apply for entry permit for Taiwan under the streamlined measure implemented since last month. In striving for maximal travel convenience for HKSAR passport holders under the principle of reciprocity, we will continue to follow up suggestions for further facilitating Hong Kong residents' visit to Taiwan.

### **Section 39E of Inland Revenue Ordinance**

12. **DR LAM TAI-FAI** (in Chinese): *President, the Secretary for Financial Services and the Treasury indicated in February this year that a review of the implementation of section 39E of the Inland Revenue Ordinance (Cap. 112) (section 39E) would be conducted through the Joint Liaison Committee on Taxation (JLCT). In this connection, will the Government inform this Council:*

- (a) *of the number of meetings held to date and the names of persons and organizations met by JLCT in respect of the study on section 39E, as well as the contents of the respective views collected;*
- (b) *how JLCT conducts extensive consultation with persons in the commerce and industry sector who are affected by section 39E;*

- (c) *whether JLCT has arranged legal adviser(s) to study the legal issues, including whether the authorities' current interpretation and implementation of section 39E have deviated from the original legislative intent, in particular the legal basis of the viewpoint that section 39E no longer targets merely against "leveraged leasing" after the amendment in 1992; if it has, of the name(s) and title(s) of the legal adviser(s); if not, the reasons for that;*
- (d) *whether JLCT will make public the contents and relevant information of the meetings held to study section 39E; if it will, of the details; if not, the reasons for that;*
- (e) *whether JLCT will enhance the transparency of such studies (such as allowing the public or persons in the commerce and industry sector who are affected by section 39E to observe the meetings); if it will, of the details; if not, the reasons for that;*
- (f) *of the Government's estimated timing for making public the JLCT review report; and*
- (g) *apart from the Financial Services and the Treasury Bureau taking charge of the review on section 39E at present, whether there are other government departments or officials participating in the review; if so, of the details; if not, the reasons for that?*

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

(a) to (e)

The JLCT is a discussion forum set up on the initiative of the accountancy and commercial sectors in 1987. It discusses various tax issues and reflects the views of the industry to the Government. The JLCT is not an advisory body established or appointed by the Government, though government officials are invited to attend its meetings. Hence, we are not in a position to respond to questions

in relation to its operation. Nevertheless, we have relayed to the JLCT Chairman the questions and concerns of Dr LAM Tai-fai.

(f) to (g)

As indicated in our letter of 10 March 2010 to the Legislative Council Panel on Financial Affairs and our replies to written questions raised by the Legislative Council on 17 March and 7 July 2010, we consider that the completeness of the anti-avoidance provisions in the Inland Revenue Ordinance would be affected if the relevant restriction is relaxed. There are also practical difficulties in the implementation and the provision could easily be abused. Hence, we need to consider thoroughly the feasibility of relaxing the relevant restriction, including whether there are effective measures to plug tax evasion loopholes. The Financial Services and the Treasury Bureau and the Inland Revenue Department would complete the study as soon as practicable. If there is a need to consult other government departments in the course of review, including the Department of Justice and the Commerce and Economic Development Bureau, we will invite their participation.

### **Operation of Hong Kong Girl Guides Association**

13. **MR LEUNG KWOK-HUNG** (in Chinese): *President, after the Secretary for Home Affairs answered my question concerning the operation of the Hong Kong Girl Guides Association (the Association) on 14 July this year, I have received complaints from parents, members of women groups and kindergarten teachers that the appointment of the Chief Commissioner (CC) of the Association had all along been made in a black box, with the candidates being predetermined internally. The Association would not take the initiative to provide nomination forms for CC to the eligible persons and those other than the predetermined candidate for the next CC, rendering the election system cosmetic and unfair. Moreover, some complaints have also pointed out that the appointment of the incumbent CC gave rise to a conflict of interest as well as a breach of the constitution submitted to the Inland Revenue Department (IRD) by the Association and the provisions governing its internal organization. In this connection, will the Government inform this Council whether it knows:*

- (a) *if the Association had taken the initiative to issue relevant nomination forms to members of its Council, including CC, Deputy Chief Commissioners (DCC), Assistant Chief Commissioners, International Commissioner (IC), Division Commissioners, Assistant Division Commissioners and various District Commissioners before each of the last three appointments of CCs; if so, of the respective dates of issuance; if not, the reasons for that, and whether eligible electors for CC have to make a request in order to obtain the nomination forms;*
- (b) *if the incumbent six DCCs and the IC of the Association had participated in the patrol assemblies each week in the past five years to train the girl guides; if so, of the number of assemblies in which each of them had participated each month and the number of the patrols involved; if not, of the reasons for that, and whether such posts are only honorary in nature;*
- (c) *of the respective numbers of candidates who were nominated in the 2007 and 2010 elections of CC; the number of nominators for the incumbent CC in the 2007 election and the respective numbers of votes for and against her appointment as well as the number of abstentions; and*
- (d) *if there are provisions in the constitution submitted by the Association to IRD which restrict CC from holding the post of Vice President concurrently so as to avoid conflict of interests; if so, of the details and the reasons why the incumbent CC is allowed to hold the post of Vice President concurrently; if not, the reasons for that?*

**SECRETARY FOR HOME AFFAIRS** (in Chinese): President, the Association was established in 1916. As an independent statutory body, the Association is subject to legislation, its constitution and internal rules as far as its operation is concerned. The Government respects its independent status. My reply to the question of Mr LEUNG Kwok-hung is as follows:

- (a) Under Section 15.02 of its constitution, the Association's CC shall be a person nominated by the ex-officio members of the Council of the

Association and elected by the Council. Calls for nomination by the ex-officio members shall be at least six weeks before the election date. According to the information provided by the Association, after receiving the notification letter about the election, the ex-officio members of the Council may ask the Honorary Secretary for the nomination forms.

- (b) According to the Association, the DCC and IC serve as members of the management team on a voluntary basis. They make use of their professional knowledge and resources to help raise funds and are tasked with planning and guidance work. From time to time, they meet with other Commissioners and/or Unit Guiders to discuss and arrange activities for the girl guides. Patrol assemblies and direct training to girl guides are the responsibilities of frontline Unit Guiders.
- (c) According to the information provided by the Association, only one candidate was nominated in the 2007 election of CC with the following result: For: 39 votes; Against: 2 votes; Abstention: 3 votes.

Regarding the 2010 CC election, the number of candidates is not known yet since the nomination period will only start in the near future.

- (d) At present, there are no provisions in the constitution of the Association restricting CC from holding the post of Vice President concurrently. Nor are there any restrictions in the constitution on any person other than CC to take up the duties of the Council in addition to his own.

### **Consultation Paper on "Should Hong Kong bid to host the 2023 Asian Games?"**

14. **MR KAM NAI-WAI** (in Chinese): *President, the Home Affairs Bureau published a public consultation paper on "Should Hong Kong bid to host the 2023 Asian Games?" (Consultation Paper) last month to brief the public on the*

*potential costs and benefits in hosting the Asian Games. In this connection, will the Government inform this Council:*

- (a) given that the high prices of construction materials in recent months have resulted in soaring construction costs, in respect of the Government's current cost estimates for the alterations, upgrading or construction works for the venues planned for staging the Asian Games (including existing government and non-government facilities as well as sports centres that have been studied or planned), by how much the costs of such works will increase during the construction stage as compared with those estimated according to the current level;*
- (b) what temporary alterations or upgrading works will be undertaken by the authorities for the proposed competition venues for staging the 35 sports mentioned in the Consultation Paper and, among these venues, the number of those which require installation of additional seats, and the respective additional number of permanent or temporary seats to be installed in each of such venues; whether these seats need to be removed after the Asian Games; if so, of the number of temporary seats that have to be removed in respect of each venue and the respective amount of charges involved for the removal;*
- (c) of the anticipated usage of the various venues (including the venues listed in Annexes B and C to the Consultation Paper) in part (b) after the Asian Games, and list the usages against the names of the venues concerned, together with the user organizations or the sports for which the venues will be used;*
- (d) of the respective original timetables for the construction, completion and commissioning of each of the sports venues listed in Annex C to the Consultation Paper, and whether such timetables are expected to be revised after Hong Kong has successfully bid for the Asian Games; if so, of the details;*
- (e) given that it was stated in the Consultation Paper that the proposed Multi-purpose Stadium Complex (MPSC) at Kai Tak will be the main competition venue for the Asian Games, of the estimated number of*

*branch venues that MPSC will comprise, the respective seating capacity of each branch venue and the aggregate seating capacity of MPSC; of the difference in the seats and equipment of such venues as compared with their original plans; apart from MPSC, of the number of seats provided by each of the sports venues listed in Annex C to the Consultation Paper;*

- (f) of the estimated construction cost of the athletes' village and the land premium involved; and*
- (g) what criteria the authorities will adopt in evaluating public views on the bid for hosting the Asian Games; whether the authorities will decide not to bid for the Asian Games on the ground that the majority of the public do not support the bid?*

**SECRETARY FOR HOME AFFAIRS** (in Chinese): President, in late September, the Home Affairs Bureau launched a public consultation exercise to gauge the public's views on whether Hong Kong should bid to host the 2023 Asian Games. In the light of the views of Legislative Council Members and the public that the original six-week consultation period was too short, we have extended the consultation period by four weeks until 1 December 2010. In other words, the consultation exercise will now run for two and a half months. In addition, we provided the Legislative Council Panel on Home Affairs on 8 October 2010 with detailed information regarding the financial implications for hosting the 2023 Asian Games in Hong Kong, including the breakdown of the estimated operating and direct capital costs, projected revenue, and number of jobs created. We hope that the community would be able to analyse different arguments and facts, and express their views during the consultation period.

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

- (a) The capital cost set out in our consultation paper is estimated at the current price level. If the public supports the proposed bid, we will plan and implement a number of tasks carefully and comprehensively, including making a detailed assessment of how Hong Kong can meet the requirements of the Olympic Council of Asia as a host city of the Asian Games in terms of venue facilities,

accommodation, security, transportation and other ancillary facilities, and preparing the estimates of expenditure. Should Hong Kong decide to bid for the 2023 Asian Games, we will submit a detailed discussion paper to the Legislative Council Finance Committee to seek its approval-in-principle on the financial implications for hosting the 2023 Asian Games and the Asian Para Games (which follows shortly after), including the financial assessment of the costs at both the current and the estimated 2023 price levels, prior to the submission of the formal bid document.

- (b) As set out in the consultation paper, we proposed to adopt a three-pronged strategy on the provision of venues, namely (a) to make optimal use of existing government and non-government sport facilities; (b) to expand and bring forward planned sports facilities with a view to meeting the requirements for staging the Games; and (c) to speed up consideration of redevelopment and new projects. The direct capital costs for items (a) and (b) above (including the temporary modification works to existing facilities and upgrading works for bringing proposed new venues up to Asian Games standards, that is, works/projects which would not have been planned and rolled out if we were not hosting the Games) amount to some \$10.5 billion. The estimated expenditure covers temporary provisions required by 35 competition venues (including the hired venues and proposed venues in neighbouring cities) such as temporary seating, media work area, temporary toilets and changing rooms, venue dressing, signage, and so on, and reinstatement works after the Games.
- (c) The sites for the MPSC at Kai Tak and other long-term projects have long been identified for development/redevelopment to meet community needs. Assuming the proposed MPSC at Kai Tak would serve as the main competition venue for the Asian Games, it is expected that after the Games, the MPSC could be used by different National Sports Associations, schools as well as business and trade organizations for sports competitions and training purposes. For example, major football or rugby events can be held in the main stadium, track and field events or school athletic meets in the secondary stadium, while the multi-purpose indoor sports arena

is suitable for gymnastics, wushu and different ball games or activities. Apart from sports events, the Kai Tak MPSC can also be used for other purposes such as concerts, exhibitions and performances. Other newly-built or redeveloped facilities can be put to different uses, having regard to their features. For example, high level competitions can be held at the new hockey ground and the redeveloped/reprovisioned tennis centre, while other indoor sports arenas can be used for competitions and training activities, as well as different ball games by the public.

- (d) According to the latest programme, construction work of the MPSC at Kai Tak is expected to commence in April 2014, with the target date for trial run in April 2019. The work schedules of other long-term projects are subject to further planning and study. If Hong Kong succeeds in bidding to host the 2023 Asian Games, the construction or upgrading works of all competition venues must be completed before 2023.
- (e) According to the consultation paper, the athletic and gymnastic events are proposed to be held at the Kai Tak MPSC. The current plan for the Kai Tak MPSC includes a 50 000-seat main stadium, a 5 000-seat secondary stadium, and a 4 000-seat multi-purpose indoor sports arena. The proposed scale of the MPSC has not been changed as a result of our consideration in supporting the proposed bid. Our plan has always been to bring the proposed facilities at Kai Tak MPSC up to the standards for staging international sports events. If Hong Kong succeeds in bidding to host the Asian Games, we only need to carry out temporary works to meet the prevailing requirements for individual sports events for staging the Asian Games.

The scales of other sports venues listed in Annex C of the consultation paper are still under planning. According to preliminary planning, the estimated numbers of seats of the relevant sports venues (including fixed and temporary seats) are as follows:

- (i) two new sports centres with a total of about 4 600 seats;

- (ii) a new sports ground with about 3 000 seats; and
  - (iii) a redeveloped/reprovisioned tennis centre with about 5 000 seats.
- (f) The host city of the Asian Games is required to provide an "athletes' village" with about 3 000 flat units to accommodate the delegations. As we are still considering the mode of delivery and the proposed sites for the athletes' village, information on the construction cost and the land premium involved are not available at this stage.
- (g) The Home Affairs Bureau is responsible for collecting and analysing views collected through various channels. To ascertain the views of the public, the Bureau will, in addition to considering the numbers of those who are in support and those who oppose, study the grounds of all parties carefully. We keep an open mind on the consultation and will listen to the public's views conscientiously. We hope that the community would be able to analyse different arguments and facts, and express their views during the consultation period. We will come to a conclusion and make the decision after the close of the consultation period.

### **Factors of Consideration in Selecting Tree Species to be Planted**

15. **MR CHAN HAK-KAN** (in Chinese): *President, in mid-September this year, an Acacia confusa tree located on the slope along Fung Mo Street in Wong Tai Sin collapsed, crushing two passing taxis. Moreover, a tree expert has recently relayed to me that the average lifespan of an Acacia confusa tree is about 40 years only and since a large number of such trees have been planted in Hong Kong since the 1980s, he estimated that these trees would gradually develop illness or even collapse in the foreseeable future, posing danger to the public. In this connection, will the Government inform this Council:*

- (a) *of the total number of Acacia confusa trees planted in Hong Kong at present, broken down by District Council district and, among them, the number of such trees which are located in high-risk areas with*

*high pedestrian and vehicular flows, as well as the health conditions of such trees at present;*

- (b) apart from *Acacia confusa* trees, which other species of trees with a similar lifespan of about 40 years were planted in large numbers in Hong Kong during the 1980s, and list the distribution of such trees by District Council district;*
- (c) whether it will draw up specific plans for the removal of *Acacia confusa* trees; if so, of the details; if not, how it ensures that they are in good health condition;*
- (d) of the factors to be considered by the authorities at present for selecting the tree species to be planted; and*
- (e) given that the Development Bureau has stated in its paper submitted to the Panel on Development of this Council on 27 July this year that the Tree Management Office (TMO) would commission research covering different areas (including selection of suitable tree species for greening), in order to build up its professional knowledge base, of the latest progress of the research?*

**SECRETARY FOR DEVELOPMENT** (in Chinese): President, since the 1970s, government departments concerned have carried out large-scale afforestation in the countryside to prevent soil erosion, *Acacia* (*Acacia confusa*) as one of the chosen tree species. *Acacia* is widely planted in the rural areas of Hong Kong for its rapid growth and effectiveness in improving infertile soil. It is also planted in the urban areas for greening the environment quickly.

The Government is very concerned about the recent tree failure incident. The TMO has followed up with the departments concerned immediately after the incident to look into the cause of the incident, so that appropriate measures will be taken to protect public safety.

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

- (a) Most of the *Acacia* in Hong Kong is found in the countryside. The Government does not have statistics on the total number of *Acacia* in

the territory nor a breakdown by district. According to the tree risk assessment arrangements implemented by the tree management departments this year, there are about 147 000 Acacia in total at locations with high pedestrian or vehicular flow. One hundred and forty-seven Acacia were assessed to have health or structural problems. Departments concerned have taken appropriate risk mitigation measures, such as pruning, treatment of pests and diseases, cabling and propping, and will continue to monitor those trees.

- (b) A number of government departments carried out large-scale planting for various reasons in the 1980s. For instance, the Agriculture, Fisheries and Conservation Department (AFCD) widely planted Acacia (*Acacia confusa*), Brisbane box (*Lophostemon confertus*), Paper-bark tree (*Melaleuca leucadendron*) and Horsetail tree (*Casuarina equisetifolia*), among others, in country parks with infertile soil to prevent soil erosion. The Civil Engineering and Development Department planted Eucalypts (*Eucalyptus spp.*) extensively on slopes and remote hills to protect the slopes and prevent soil erosion. The Housing Department planted Bauhinia (*Bauhinia blakeana*) and Chinese banyan (*Ficus microcarpa*) in many public housing estates for greening purpose. Generally speaking, the trees planted in the 1980s have not shown any widespread obvious health problems. As they are extensively planted in the countryside and urban areas, the departments concerned do not have a detailed breakdown of their distribution by district.
- (c) We note that some Acacia in the territory are ageing. The TMO will remind the tree management departments to carry out routine tree maintenance in a professional manner, with particular attention being given to ageing trees. On detecting any sign of health problems, appropriate risk mitigation measures will be taken promptly. In absence of other feasible means to improve their health, departments will consider removing them as a last resort to protect public safety.

The TMO is drawing up tree care measures for ageing trees, including guidelines for departments concerned on tree replacement. In view of the declining health of ageing Acacia planted in country parks years ago, the AFCD launched the Hong Kong Country Park Plantation Enhancement Scheme in 2009. Under the Scheme, Acacia and other exotic species in poor health are replaced gradually with diverse species of native trees and shrubs of higher ecological value with the objective of enhancing the overall ecological and landscape value of the woodland in country parks.

- (d) In carrying out tree planting, we select suitable tree species taking account of the planting objective, the environment of the planting site as well as the characteristics and maintenance requirements of different tree species. For instance, for tree planting in country parks, the AFCD cultivates seedlings of native plant species and adopts a mixed-species planting strategy in order to enhance faunal and floral diversity in the woodland and avoid problems arising from mono-species planting such as a monotonous landscape, pest outbreaks and simultaneous ageing of trees. In selecting tree species for urban planting, our focus is on the environment of the planting sites as well as the characteristics and maintenance requirements of different tree species. We will select the most suitable tree species in the light of the design concept, environmental factors (such as planting space, the micro-climate of the planting area, soil quality, visual impact, traffic flow and landscape features) as well as the market supply of tree seedlings and the project budget.
- (e) To raise the professional standard of tree management work in Hong Kong, the TMO will commission four consultancy studies in 2010-2011, including a study on the selection of suitable tree species for greening. The TMO is now carrying out the preparatory work (including drafting the scope and details of the studies and drawing up relevant documents for commissioning the consultancy studies), and will conduct tender exercises shortly.

### Composition of Election Committee

16. **MS EMILY LAU** (in Chinese): *President, on 24 June this year, the Legislative Council passed a motion concerning the amendment to the method for the selection of the Chief Executive, which stipulated that the number of members of the Election Committee (EC) responsible for electing Chief Executive in 2012 would be increased from 800 to 1 200, with the number of seats for each of the four sectors increased by 100. Apart from proposing the allocation of 75 of the 100 new seats for the fourth sector (that is, the political sector) to elected District Council (DC) members, the executive authorities have not stated clearly how the new seats for the other sectors will be allocated. Many members of the public are of the view that real estate developers have excessive direct and indirect influence in EC, and their weight in this regard should be diluted when the local legislation is being made. In this connection, will the executive authorities inform this Council:*

- (a) *whether they have assessed if real estate developers are having excessive influence in the EC; if they have, of the details; of the reasons for coming up with such a design in the first place; and whether they will make adjustments when local legislation is being made; if they will not, of the reasons for that; and*
- (b) *whether they will enhance the democratic elements of the EC as far as practicable to allow participation of more members of the public; if they will, of the details; if not, the reasons for that?*

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Chinese): President, my reply to Ms LAU's questions is as follows:

- (a) According to Annex I to the Basic Law, the Chief Executive shall be elected by a broadly representative EC. In accordance with the principle of balanced participation, the EC is composed of four sectors, namely the industrial, commercial and financial sectors; the professions; the labour, social services, religious and other sectors; members of the Legislative Council, representatives of district-based organizations, Hong Kong deputies to the National People's Congress, and representatives of Hong Kong members of the

National Committee of the Chinese People's Political Consultative Conference. The four sectors of the existing EC are broadly representative. They enable representatives from different strata and sectors of the community to participate in the Chief Executive election.

- (b) Hong Kong has taken a significant step forward in its constitutional development. In June, the Legislative Council passed the draft amendments to the methods for selecting the Chief Executive and for forming the Legislative Council in 2012. The Chief Executive subsequently signed instruments of consent to the draft amendments. The amendments were then approved and recorded respectively by the Standing Committee of the National People's Congress in August. According to the amendments to the method for selecting the Chief Executive, the representativeness and the democratic elements of the EC will be further enhanced. The number of members of the EC will be increased from 800 to 1 200. The number of seats for each of the sectors will be increased by 100. As regards the fourth sector, the Administration suggested that three quarters of the 100 new seats (that is, 75 seats) will be allocated to elected DC members. Together with the existing 42 seats, the DC subsector will have a total of 117 seats, which will be returned through election from among elected DC members. It is hoped that the inclusion of elected DC members, who will be returned by over 3.4 million voters, will enhance public participation in the EC and its representativeness. This will also enhance the democratic elements of the Chief Executive election. The Administration is now working on the local legislation regarding the two electoral methods. We plan to consult the Legislative Council on the proposals before the end of October and hope that the bills will be passed in a few months' time.

### **Information Dissemination Mechanism of Police on Unforeseen Incidents**

17. **MR LAU KONG-WAH** (in Chinese): *President, the Hong Kong Journalists Association (HKJA) has earlier released the result of its study, pointing out that since the police implemented the digitalization of its*

*communications system in 2004, the number of times of dissemination of information on unforeseen incidents to the media has been on the low side. On a daily average, the police disseminated to the press the information on only 2.7 unforeseen incidents in the latter half of last year, which accounts for only 1.27% of the daily average of 212.7 crime cases. The HKJA also criticized the police for disseminating information in a selective manner, in that quite a number of incidents which were important to the public, such as street deception, serious homicide and accidental death, were either withheld from or deferred in dissemination. In this connection, will the Government inform this Council:*

- (a) of the number of times of dissemination of information regarding unforeseen incidents each year since the police implemented the digitalization of its communications system at the end of 2004, the categories of such incidents, and the percentage of the average daily number of incidents released each year in the average total number of cases recorded daily in that year;*
- (b) of the criteria for disseminating such information; the average time taken for disseminating information regarding each unforeseen incident, and the number of incidents the information on which could be disseminated within 20 minutes upon receipt of report;*
- (c) whether it will extend the scope of dissemination to cover all unforeseen incidents and involve public interest; and whether it will negotiate with the media on the criteria for dissemination so as to reach a consensus; and*
- (d) whether the police will review the existing mechanism for disseminating such information so as to safeguard people's right to know?*

**SECRETARY FOR SECURITY** (in Chinese): President, the police's Third Generation Command and Control Communications System came into operation by phases since December 2004. The system was fully implemented since March 2006 with the objective of increasing the operational efficiency of the Force and enhancing the confidentiality of internal transmission of information. Before the system was implemented, the police had explained the operation of the

new system to major media agencies and relevant organizations and listened to their views on information dissemination. The police then established a new mechanism in disseminating information of unforeseen incidents to the media.

Under the new mechanism, when an emergency call is received by the 999 Control Centre, the police will immediately deploy officers to the scene to understand the situation, provide assistance, or conduct investigation. After the nature of the incident reported has been ascertained and immediate measures have been taken to protect life and property of the public, the 999 Control Centre will pass the relevant information to the Police Public Relations Branch (PPRB) immediately if the case involves public interest or is a major incident. The PPRB will then disseminate the information in the form of "Attention News Editors" through the Government News and Media Information System of the Information Services Department, so the media can decide whether to cover the case at scene.

When disseminating information, the police will take into consideration the public's right to know, and comply strictly with the relevant ordinances and the requirements of the "Code on Access to Information". At the same time, the process should not affect covert operations, privacy of individuals and possible judicial procedures. For some cases including rape or kidnapping, the police will not disseminate the information of the cases immediately as it is necessary to protect the privacy of the victims and the safety of the persons involved.

In addition to the above mechanism, the newsroom of the PPRB operates round the clock every day to provide information or response to media in response to their enquiries. Currently, the newsroom handles an average of 800 to 900 enquiries each day from different media agencies. For major incidents, the police will, depending on the circumstances, make arrangements for officers to brief the media or respond to their enquiries at scene. Written information or press releases on the latest development of the incidents will also be issued timely.

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

- (a) The police's Third Generation Command and Control Communications System came into full operation in March 2006. Between 2006 and 2009, the police disseminated information of

1 516, 789, 417 and 1 239 unforeseen incidents respectively. They were generally related to public interest or were major incidents. The categories include murder, robbery, discovery of dead bodies, police open fire, person falling from height, person found unconscious, object falling from height, arson, industrial accident involving injury, wounding, vehicle fire and traffic accident resulting in injuries or involving multiple vehicles.

In fact, the police's 999 Control Centre receives a large number of calls from the public asking for assistance every day. Most of them are non-urgent matters or general cases of request for assistance, such as minor disputes, street obstruction, noise nuisance, lost property, treating injury or sickness, and so on. Therefore, it is inappropriate to compare the figures of unforeseen incidents released with those of general cases of request for assistance.

- (b) Under the existing mechanism, information on incidents involving public interest or of major incidents will be disseminated to the media. The categories of such incidents are set out in part (a) above. The police do not maintain the statistics recording the time taken from the receipt of a report to the dissemination of information for every unforeseen incident. However, the result of a special study conducted between 1 to 7 October this year indicates that among the 59 unforeseen incidents on which information was disseminated by the police in the form of "Attention News Editors", the average time taken from the receipt of a report to the dissemination of information is around 40 minutes. Information of 18 incidents was disseminated within 20 minutes after the receipt of the report. We have to stress that the time taken to disseminate information upon receipt of a report varies from case to case, depending on individual circumstances of an incident and the emergency follow-up action that has to be taken. The PPRB will continue to disseminate information of unforeseen incidents referred by the 999 Control Centre to the media as soon as possible.

- (c) and (d)

As mentioned above, in disseminating information of unforeseen incidents, the police will take into consideration the public's right to

know, the requirements of the "Code on Access to Information", and that the process should not affect covert operations, privacy of individuals and possible judicial procedures.

We always respect the public's right to know and media's freedom of reporting. The police will continue to provide timely information and assistance to facilitate reporting by the media. To improve the mechanism of disseminating information of unforeseen incidents, the police will continue to maintain dialogue with media agencies and review the mechanism from time to time, including to improve the efficiency of information dissemination through upgrading technology and streamlining of procedures.

### **Emissions from Aircraft and Their Impact on Communities near Hong Kong International Airport**

18. **MR ALBERT CHAN** (in Chinese): *President, at the meeting of this Council on 20 October 2004, I enquired if there were measures to reduce emissions from aircraft so as to alleviate the problem of air pollution in Tung Chung, but the authorities said that they could not confirm that there was a direct relation between air pollution in Tung Chung and emissions from aircraft. Yet, some Tung Chung residents have relayed to me that with the growing number of flights operating at the Hong Kong International Airport (HKIA) in recent years, emissions from aircraft have increased correspondingly, affecting the health of residents in the district. In this connection, will the Government inform this Council:*

- (a) *whether it knows the various levels of emissions from aircraft movements and aircraft parking at the HKIA in each of the past three years, and list in table format a breakdown by the model of aircraft, as well as which models had the highest level of emissions, and what measures the authorities have at present to reduce emissions from aircraft of such models; and*
- (b) *whether it will take new measures to reduce the impact of emissions from aircraft on the health of Tung Chung residents; if it will, of the details; if not, the reasons for that?*

**SECRETARY FOR THE ENVIRONMENT** (in Chinese): President,

- (a) Air quality in Tung Chung is affected by various factors, one of which is air pollutant emissions from aircraft. Based on the aircraft arrival and departure data of the HKIA provided by the Civil Aviation Department (CAD), the Environmental Protection Department (EPD) estimates the annual emissions of civil aviation. At present, we have estimated the emissions up to 2008. From 2006 to 2008, the aircraft arrival and departure data of the HKIA and the annual quantities of air pollutants emitted from aircraft are tabulated as follows:

<i>Year</i>	<i>Annual Emissions of Air Pollutants (in Tonnes)</i>					<i>Number of Aircraft Arrival</i>	<i>Number of Aircraft Departure</i>
	<i>Sulphur Dioxide</i>	<i>Nitrogen Oxides</i>	<i>Respirable Suspended Particulates</i>	<i>Volatile Organic Compounds</i>	<i>Carbon Monoxide</i>		
2006	294	5 020	21	261	2 020	140 207	140 180
2007	308	5 350	23	296	2 160	147 680	147 662
2008	312	5 450	24	302	2 170	150 579	150 563

In 2008, aircraft emissions accounted for about 1%, 6%, 1%, 1% and 3% of the total emissions of sulphur dioxide, nitrogen oxides, respirable suspended particulates, volatile organic compounds and carbon monoxide in Hong Kong respectively.

The total quantities of air pollutants emitted from individual models of aircraft depend on a number of factors including the numbers of arrival and departure of such aircraft in a year, the type, size and number of engines used in the aircraft. Even for aircraft of the same model, they may not have the same types and sizes of engines and therefore their levels of emissions could vary. In general, bigger aircraft with higher arrival and departure frequencies will have higher level of emissions. Based on the CAD's aircraft arrival and departure data of the HKIA, the percentage shares of emissions for different types of aircraft from 2006 to 2008 are tabulated below:

<i>Aircraft Model</i>	<i>Percentage Shares of Total Level of Emissions from Different Models of Aircraft during 2006-2008</i>				
	<i>Sulphur Dioxide</i>	<i>Nitrogen Oxides</i>	<i>Respirable Suspended Particulates</i>	<i>Volatile Organic Compounds</i>	<i>Carbon Monoxide</i>
B747	38%	36%	44%	56%	46%
A330	22%	23%	8%	13%	18%
A320	4%	4%	6%	3%	4%
B737	4%	3%	11%	3%	4%
B777	11%	13%	6%	5%	8%
A340	7%	8%	6%	8%	8%
A321	2%	2%	2%	1%	1%
MD11	4%	4%	5%	2%	3%
A319	1%	1%	1%	2%	1%
Remaining Aircraft	7%	6%	11%	6%	7%

Whilst the actual air pollutants emissions from each commercial aircraft type may vary (depending on the aircraft size and passenger load), aircraft engines are required to follow the standards set out at Annex 16 to the Convention on International Civil Aviation (hereinafter referred to as "the Chicago Convention"), Volume 2, Part III, Chapter 2 (Turbojet and turbofan engines intended for propulsion only at subsonic speeds). This document specifies the standards for four types of emissions that an aircraft engine has to meet: smoke, unburned hydrocarbons, carbon monoxide and nitrogen oxides.

The Chicago Convention and its annexes apply to Hong Kong. The CAD has been adopting their standards when certifying engines on commercial aircraft registered in Hong Kong. It also allows commercial aircraft registered elsewhere to use the HKIA provided that they meet the standards at Annex 16 to the Chicago Convention. All the engines installed on commercial aircraft have met the relevant standards.

- (b) Whilst continuing to implement international standards in certifying aircraft engines, the CAD has also implemented new air routes with effect from 22 October 2009, which have shorter travelling distances for arrival aircraft from the west and the north of Hong Kong. Each flight coming to Hong Kong from the Mainland, Southeast Asia and Europe has been able to save up to about 210 km in flight journey or 14 minutes in flight time. The shortened air routes can reduce air pollutants emissions from aircraft.

At the airport, the Airport Authority (AA) provides electricity powered fixed ground power (FGP) and pre-conditioned air (PCA) systems for aircraft at the parking stands to reduce the need for aircraft to use their onboard fuel combustion auxiliary power generation units. About 70% of passenger flights now adopt the FGP and PCA systems. In early 2011, the AA will start a renewal and upgrade programme to improve the efficiency of these systems. Upon completion in 2013, more than 95% of passenger flights will use the FGP and PCA systems.

### **Monitoring Practice of Optometrists**

19. **DR JOSEPH LEE** (in Chinese): *President, it is a legal requirement that only registered optometrists holding valid practicing certificates and persons exempted under the Optometrists (Registration and Disciplinary procedure) Regulation (Cap. 359, sub. leg. F) (qualified persons) may practise the profession of optometrist. However, some members of the profession have relayed to me that at present, a number of optometrists in Hong Kong who are not qualified persons still prescribe and fit glasses or contact lenses for customers, which poses risks to the optical health of the public. In this connection, will the Government inform this Council:*

- (a) *whether the authorities have information on the number of cases of optometrists who were not qualified persons being prosecuted for practising the profession of optometrist in the past five years; if so, of the details, including the penalties imposed; if not, the reasons for that;*

- (b) *whether it has reviewed in the past three years if the existing penalties are too lenient and insufficient to combat the aforesaid illegal practice; whether the authorities will consider increasing the penalties or imposing severe punishment on those employers who employ optometrists who are not qualified persons to practise the profession of optometrist, so as to enhance the deterrent effect; if they will, of the details; if not, the reasons for that;*
- (c) *of other approaches adopted by the authorities at present to combat the aforesaid illegal practice; whether additional measures will be implemented to prevent such practice; if so, of the details; if not, the reasons for that; and*
- (d) *given that some members of the profession have pointed out that at present, the public have little knowledge of distinguishing whether or not an optometrist is a qualified person while relevant information available is also inadequate, whether the authorities will enhance publicity and education or adopt other approaches to assist the public in knowing without difficulty whether or not an optometrist is a qualified person; if they will, of the details; if not, the reasons for that?*

**SECRETARY FOR FOOD AND HEALTH** (in Chinese): President, the registration system for optometrists was put in place in 1994 under the Supplementary Medical Professions Ordinance (Cap. 359) (the Ordinance) and its subsidiary legislation, the Optometrists (Registration and Disciplinary Procedure) Regulation (the Regulation). The Optometrists Board (the Board) is an independent statutory organization set up under the Ordinance and the Regulation mainly to carry out registration for people who practise the profession of optometrist and to exercise regulation over their professional conduct.

Section 21 of the Ordinance stipulates that any person who practises any of the five supplementary medical professions, that is, optometrist, medical laboratory technologist, occupational therapist, radiographer and physiotherapist, must be registered.

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

- (a) The figures on prosecutions and convictions for contravention of section 21 of the Ordinance, that is, practising the five types of supplementary medical professions (including Optometrists) without being registered, over the past five years are as follows:

*Outcome of prosecution and penalties imposed*

<i>Outcome of prosecution</i>	<i>Year in which the trial was concluded</i>				
	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>
Total number of persons prosecuted	2	0	0	3	2
Number of persons convicted	2	0	0	3	2
Suspended imprisonment	0	0	0	1	0
Fine	2	0	0	2	2
Number of persons not convicted	0	0	0	0	0

Note:

Not including trials not yet been concluded as well as summons

*Amount of fine imposed on convicted persons*

<i>Number of convicted persons on whom the following amount of fine was imposed:</i>	<i>Year in which the trial was concluded</i>				
	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>
\$1,000-\$3,999	1	0	0	2	2
\$4,000-\$5,000	1	0	0	0	0

- (b) and (c)

Section 21 of the Ordinance provides that any person who practises the profession of optometrist in Hong Kong must be registered with the Board. Any person who practises the profession of optometrist without being registered or employs an unregistered person to practise the profession commits an offence and is liable on conviction to a fine of \$5,000 and to imprisonment for six months. Currently, the Administration has no plans to increase the penalties. Upon receipt of reports referred by the Board or made by members

of the public about suspected cases of practice of the profession of optometrist by persons who are not registered optometrists, the police will conduct investigation. Offenders will be prosecuted accordingly.

- (d) All registered optometrists are required under section 18(1) of the Ordinance to keep displayed in a conspicuous position in any premises in which they practise the profession of optometrist their certificate of registration, or a certified copy of such certificate issued under section 14(3) of the Ordinance for identification by the public.

Moreover, to enable members of the public to view the list of registered optometrists, the Board has made it available on its website <[http://www.smp-council.org.hk/op/english/index\\_reg.htm](http://www.smp-council.org.hk/op/english/index_reg.htm)>. The public is also welcome to contact the Secretariat of the Board by phone on 2527 8363 for any inquiry, or visit the Central Registration Office under the Department of Health in person on 17th Floor, Wu Chung House, 213 Queen's Road East, Wan Chai, Hong Kong for inspection of the list of registered optometrists.

### **Problem of Insufficient Coach Parking Spaces at Tourist Attractions and Shopping Areas**

20. **MR WONG TING-KWONG** (in Chinese): *President, the number of inbound tourists has grown continuously in recent years. Some members of the tourism industry have relayed that insufficient coach parking spaces at downtown shopping areas has resulted in such coaches being parked on the road, blocking the traffic, causing inconvenience to tourists, drivers and the public alike, and may even cause accidents and adversely affect the tourism industry of Hong Kong. In this connection, will the Government inform this Council:*

- (a) *of the anticipated growth in the number of inbound tourists in the next three years;*
- (b) *of the number of cases in the past three years of drivers being penalized for illegal parking of coaches at tourist attractions, with a breakdown by the penalty imposed on them;*

- (c) *whether the authorities are concerned about the situation of traffic jam which resulted from coaches crowding major tourist attractions and shopping areas with heavy pedestrian flow, such as Tsim Sha Tsui, Hung Hom and Mong Kok; whether they had conducted studies on improvement measures in the past three years; if they had, of the details; if not, the reasons for that; and*
- (d) *whether additional parking spaces and passenger pick-up/set-down areas for coaches will be provided at major tourist attractions and shopping areas in the next three years; if so, of the details; if not, the reasons for that?*

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

- (a) Since the performance of the tourism market and the number of tourists are affected very easily by short-term changes in the macro environment, the Hong Kong Tourism Board (HKTB) will only announce at the beginning of each year detailed projections of visitor arrivals for the coming year.

In 2009, the total arrivals were 29.59 million. Assuming no sudden changes in the macro environment, the HKTB expects an increasing desire for travel to Hong Kong in the next few years among Mainland residents and visitors from other short-haul markets in Asia. The arrivals from emerging markets such as India and Russia are also expected to increase substantially. However, owing to the relatively slow economic recovery in long-haul markets such as Europe and the United States, the HKTB anticipates that the total visitor arrivals to Hong Kong will maintain a single-digit annual growth in the next three years.

- (b) Drivers committing parking offences will be prosecuted by the police under the Fixed Penalty (Traffic Contraventions) Ordinance (Cap. 237). Offenders are fined a fixed penalty of HK\$320. In 2009, the number of prosecutions against illegal parking totalled over 718 000. The police do not have a breakdown of the number

of prosecutions against drivers for illegal parking of coaches at tourist attractions.

(c) and (d)

The Transport Department (TD), the police and the Tourism Commission (TC) have been keeping a close watch over coach movements and roadside loading/unloading activities at major tourist attractions and shopping areas such as Tsim Sha Tsui, Hung Hom and Mong Kok. Additional parking spaces for coaches will be provided as the circumstances may require. For example, the TD permitted coaches to use the temporary open car park near the Hung Hom Ferry Pier in the past few years and plans to provide in end 2010 additional parking spaces near the Kowloon City Ferry Pier in To Kwa Wan. Relevant parties including the TD and the TC are discussing with the tourism industry on the availability of coach parking spaces in the Tsim Sha Tsui District, with a view to exploring feasible improvement options such as promoting better co-ordination among industry players and providing additional roadside parking spaces and loading/unloading bays without affecting the traffic flow. For the latter option, the TD has preliminarily selected some suitable sites in the district for the said purpose and is conducting further feasibility study. It is expected that new parking spaces or loading/unloading bays for coaches will be available in the district in 2011. Separately, the TD will provide about 100 additional parking spaces for coaches near the Ocean Park to cater for its extension project. Moreover, the TD will provide or plan to provide an appropriate number of additional loading/unloading bays or parking spaces for coaches in Tai O and the vicinity of the Ap Lei Chau Wind Tower Park.

The TD and the relevant departments will continue to monitor the situation at major tourist attractions and, if necessary, identify as far as possible suitable sites to provide additional parking and loading/unloading facilities for coaches. The TD will also work closely with the police in order to support their enforcement actions against illegal loading/unloading activities and formulate appropriate traffic improvement measures to maintain smooth traffic flow.

**BILLS****First Reading of Bills**

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

**LEGISLATION PUBLICATION BILL**

**CLERK** (in Cantonese): Legislation Publication Bill.

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

**Second Reading of Bills**

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

**LEGISLATION PUBLICATION BILL**

**SECRETARY FOR JUSTICE** (in Cantonese): President, I move the Second Reading of the Legislation Publication Bill (the Bill).

The Bill proposes to provide for the establishment of an electronic database of legislation and an approved website for public access to copies of legislation that have a legal status on the Internet. The Bill also seeks to provide for powers to make editorial amendments and revisions to Ordinances; and to provide for additional editorial powers for preparation of the loose-leaf edition of the Laws of Hong Kong.

The Law Draftsman briefed the Panel on Administration of Justice and Legal Services of the Legislative Council on the modernized format and styles of legislation in December 2009 and obtained their support on the proposed electronic database of Hong Kong legislation in April 2010. The Finance Committee of the Legislative Council has also granted funding approval for the

development of the new electronic database. We have also obtained support from both the Bar Association and the Law Society.

Section 20 of the Interpretation and General Clauses Ordinance requires Hong Kong legislation to be published in the Gazette, and section 98(1) of that Ordinance provides that a copy so published is deemed to be authentic.

The Department of Justice also arranges for the publication of a consolidated edition of the laws in the Loose-leaf Edition, which now comprises 48 volumes of 40 576 replaceable pages. Periodic issues of new or replacement pages incorporating new legislation or amendments to the texts are sent to subscribers, who need to substitute them for outdated pages. According to section 3 of the Laws (Loose-leaf Publication) Ordinance 1990, the Loose-leaf Edition is deemed to be correct unless the contrary is proved.

Moreover, the Department of Justice also maintains an online legislation database, known as the Bilingual Laws Information System (the BLIS), which is available free to the public on the Internet. The database contains a consolidated version of legislation and other legislation-related materials.

The current arrangements of providing public access to law by the Loose-leaf Edition and the BLIS have their respective limitations. The Loose-leaf Edition is the official source of current and consolidated Hong Kong legislation published under statutory authority. At present, changes to legislation are consolidated and printed as replacement pages for the Loose-leaf Edition twice a year. As such, there is always a time gap, which may be up to a few months, between the passage of the relevant legislative provisions and their incorporation in the Loose-leaf Edition. As regards the BLIS, it is updated more frequently to provide the public with the most up-to-date consolidated Hong Kong legislation. However, it does not enjoy any status recognized by law and can only be for reference purpose.

Access to the law is a fundamental element of a jurisdiction that upholds the rule of law. We strongly believe that in the modern information technology age, the availability of an updated, reliable and searchable online consolidated legislation database with a legal status is a must.

Other leading jurisdictions have been improving the presentation of their legislation. In order to keep abreast with the current trend, the existing format and styles of our legislation are in need of modernization and adjustments to improve the legislation's presentation and user-friendliness.

While we are able to introduce new format and styles in newly gazetted legislation, we have insufficient power to update existing legislation to the new format and styles. This may present difficulties when incorporating amendments in new format and styles into the texts of existing legislation. In order to ensure uniformity in appearance across the whole consolidated text as published, which is currently in the Loose-leaf Edition and in future in the Database and separate booklets, it will be necessary to provide for new editorial powers to bring the consolidated text into line with the current drafting styles of new legislation. The Bill also seeks to consolidate existing provisions for making minor and technical amendments to legislation which are currently scattered in various Ordinances, add some new editorial powers, and streamline the procedures for making these changes.

President, in addition to upholding the rule of law, a more user-friendly and modernized edition of Hong Kong legislation is conducive to the conduct of business activities and Hong Kong's development as a world-class city. The Bill represents a major milestone in the publication of consolidated Hong Kong legislation.

With these remarks, President, I would like to appeal to Members to support the Bill.

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

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

## **MOTIONS**

**PRESIDENT** (in Cantonese): Motions. Proposed resolution under the Pharmacy and Poisons Ordinance to approve the Pharmacy and Poisons

(Amendment) (No. 4) Regulation 2010 and the Poisons List (Amendment) (No. 4) Regulation 2010.

I now call upon the Secretary for Food and Health to speak and move the motion.

## **PROPOSED RESOLUTION UNDER THE PHARMACY AND POISONS ORDINANCE**

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): President, I move that the motion under my name, as printed on the Agenda, be passed.

Currently, we regulate the sale and supply of pharmaceutical products through a registration and monitoring system set up in accordance with the Pharmacy and Poisons Ordinance. The Ordinance maintains a Poisons List under the Poisons List Regulations and several Schedules under the Pharmacy and Poisons Regulations respectively. Pharmaceutical products put under different parts of the Poisons List and different Schedules are subject to different levels of control in regard to the conditions of sale and keeping of records.

For the protection of public health, some pharmaceutical products can only be sold in pharmacies under the supervision of registered pharmacists and in their presence. For certain pharmaceutical products, proper records of the particulars of the sale must be kept, including the date of sale, the name and address of the purchaser, the name and quantity of the medicine and the purpose for which it is required. The sale of some pharmaceutical products must be authorized by prescription from a registered medical practitioner, dentist or veterinary surgeon.

Arising from an application for registration of three pharmaceutical products, the Pharmacy and Poisons Board proposes to add the following three substances to Part I of the Poisons List and the First and Third Schedules to the Pharmacy and Poisons Regulations:

- (a) Dapoxetine; its salts;
- (b) Indacaterol; its salts; its esters; their salts; and
- (c) Plerixafor; its salts.

Pharmaceutical products containing the above substances must then be sold in pharmacies under the supervision of registered pharmacists and in their presence, with the support of prescriptions.

We propose that these Amendment Regulations take immediate effect upon gazettal on 22 October this year, so as to facilitate early control of pharmaceutical products containing these substances and allow sale of such products in the market as soon as possible.

The two Amendment Regulations are made by the Pharmacy and Poisons Board, which is a statutory authority established under the Pharmacy and Poisons Ordinance to regulate pharmaceutical products. The Board, comprising members engaged in the pharmacy, medical and academic professions, considers the proposed amendments necessary in view of the potency, toxicity and potential side-effects of the medicine concerned.

With these remarks, President, I propose the motion.

**The Secretary for Food and Health moved the following motion:**

"RESOLVED that the following Regulations, made by the Pharmacy and Poisons Board on 13 September 2010, be approved –

- (a) the Pharmacy and Poisons (Amendment) (No. 4) Regulation 2010; and
- (b) the Poisons List (Amendment) (No. 4) Regulation 2010."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Food and Health be passed.

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by the Secretary for Food and Health be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**PRESIDENT** (in Cantonese): Proposed resolution under the Interpretation and General Clauses Ordinance to amend the Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Brunei Darussalam) Order.

I now call upon the Secretary for Financial Services and the Treasury to speak and move the motion.

## **PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE**

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): President, I move that the Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Brunei Darussalam) Order be amended as set out on the Agenda.

To implement the Hong Kong/Brunei, Hong Kong/Netherlands and Hong Kong/Indonesia comprehensive avoidance of double taxation agreements signed in March this year, the Government submitted three Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) Orders to the Legislative Council on 7 July 2010. The Legislative

Council subsequently set up a Subcommittee to scrutinize the three Orders. The Subcommittee has completed the scrutiny work and indicated support to the three Orders. I hereby wish to express my gratitude to Mr James TO, Chairman of the Subcommittee, and other members for their invaluable views expressed in the course of scrutiny.

In response to the suggestion of the Subcommittee during the scrutiny of the Orders, we agree to make a technical amendment to the Chinese version of the Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Brunei Darussalam) Order by amending the term "協會" in Part 1, Article 11 of the Schedule to "基金會" for consistency with a corresponding provision. This amendment will not affect the content of the agreement.

President, I move that the resolution be passed. Thank you.

**The Secretary for Financial Services and the Treasury moved the following motion:**

"RESOLVED that the Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Brunei Darussalam) Order, published in the Gazette as Legal Notice No. 89 of 2010 and laid on the table of the Legislative Council on 7 July 2010, be amended as set out in the Schedule.

Schedule

Amendment to Inland Revenue (Double Taxation Relief  
and Prevention of Fiscal Evasion with respect to Taxes  
on Income) (Brunei Darussalam) Order

1. Schedule amended

The Schedule, Chinese text, Part 1, Article 11, paragraph 3(b)(v) –

Repeal

"協會"

Substitute

"基金會".

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Financial Services and the Treasury be passed.

**MR JAMES TO** (in Cantonese): President, in my capacity as Chairman of the Subcommittee on the three Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) Orders gazetted on 2 July 2010 (the Subcommittee), I would like to report on our scrutiny work to this Council.

The Subcommittee has held one meeting to meet with the Administration and scrutinize the three Orders. Members have expressed concern about the progress of the Administration's work on negotiating Comprehensive Agreements for Avoidance of Double Taxation (CDTAs). As advised by the Administration, they have actively engaged Hong Kong's trading partners in negotiating CDTAs. Since the Inland Revenue (Amendment) Ordinance 2010 came into operation in March 2010, the Government has already signed or upgraded 10 CDTAs based on the 2004 version of the exchange of information (EoI) article of the Organization for Economic Cooperation and Development (OECD) model text, and another five CDTAs are expected to be signed in the near future. Its strategy is that Hong Kong would attempt first to conclude a CDTA with an identified country in each major region, such as the northern Asian region, the Asian Pacific Region, Europe and the Middle East, so that other countries in the same region would make reference to that CDTA and be more prepared to negotiate a CDTA with Hong Kong.

The Subcommittee has noted that the OECD has provided a model text for CDTAs, and negotiations are generally based on this model. As regards the negotiation process, the Administration has advised that it will bear in mind the need to assure the overall interests of Hong Kong, pay heed to the views of local stakeholders on tax issues of their concern and ensure that Hong Kong's residents and enterprises will benefit from such agreements. The Administration has assured the Subcommittee that it will step up efforts in soliciting views from the relevant sectors for the CDTA negotiations.

President, the Subcommittee has also noted that during the scrutiny of the Inland Revenue (Amendment) (No. 3) Bill 2009 by the Legislative Council sometime ago, Members were concerned whether there were adequate safeguards for personal privacy of local taxpayers and confidentiality of information in the exchange of tax information. According to the sample EoI Article provided by the Administration to the Bills Committee at that time, disclosure of the information exchanged is confined to the tax authorities and cannot be provided to their oversight bodies. However, under the Agreement signed between Hong Kong and the Netherlands, oversight bodies of the tax authorities are allowed access to the tax information exchanged.

The Administration has explained that based on the OECD model text for CDTAs, oversight bodies of tax authorities of the contracting parties are allowed access to the tax information exchanged. However, during the scrutiny of the Inland Revenue (Amendment) (No. 3) Bill 2009, in view of the concern of the Bills Committee, the Administration undertook to seek to confine disclosure of information to the tax authorities but not their oversight bodies when negotiating individual CDTAs. During the negotiations on the Dutch Agreement, the Dutch side insisted that reference to "oversight body" should be included in the EoI Article, so as to cater for submission of information relating to cases being considered by "de Algemene Rekenkamer" (the Court of Audit) and "de Nationale Ombudsman" (the National Ombudsman). The Administration considered this a justified request and had therefore accepted the Dutch proposal.

As specified in the CDTAs with Indonesia and Brunei, the government and certain entities of a Contracting Party can be exempted from being taxed on interest income derived from the other Contracting Party. The Subcommittee requested the Administration to explain this arrangement. The Administration has advised that it is common international practice for parties to a CDTA to provide exemption for specific entities of a Contracting Party from being taxed on interest income derived from the other Contracting Party on the basis that such entities and their activities are of governmental nature. In negotiating CDTAs, Hong Kong will seek to restrict the list of entities eligible for tax exemption to government bodies, central banks, and statutory or public entities discharging government functions.

The Subcommittee has expressed concern about the taxation arrangement on Hong Kong residents' pensions upon their retirement in contracting states and

enquired about the Government's policy in this regard. The Administration has advised that in negotiating CDTAs, it will seek to secure exclusive taxing right for Hong Kong on Hong Kong people's pensions but may not be successful in securing such right in each and every CDTA. Some negotiating partners may hold a strong view that as substantive public resources have been spent on services for resident retirees, say those from Hong Kong, the resident jurisdiction should have taxing right on their income.

As regards the drafting of the provisions, having considered members' views, the Administration has agreed to amend the term "協會" in the Chinese text of Article 11 of the Brunei Agreement to "基金會" for better consistency with another corresponding provision of the same Article.

President, the Subcommittee supports the three Orders and the amendments.

**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 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): President, I would like to thank Mr TO for his support for the implementation of three Orders in respect of Comprehensive Agreements for Avoidance of Double Taxation between Hong Kong and Brunei, Hong Kong and the Netherlands, and Hong Kong and Indonesia, as well as presenting various views which have been considered at the Subcommittee just now. I implore Members to support this motion to make a technical amendment to the Order relating to the Brunei Agreement. Thank you, President.

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

(Members raised their hands)

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

(No hands raised)

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

## **MEMBERS' MOTIONS**

**PRESIDENT** (in Cantonese): Members' motions. Ms Miriam LAU will move a motion under Rule 49E(2) of the Rules of Procedure to take note of Report No. 2/10-11 of the House Committee laid on the Table of the Council today in relation to three items of subsidiary legislation.

According to the relevant debate procedure, I will call upon Ms Miriam LAU, mover of the motion, to move the motion first. The debate on the motion will be divided into two sessions. The first session is to debate the Smoking (Public Health) (Designation of No Smoking Areas) (Amendment) Notice 2010; and the second session is to debate the Waste Disposal (Clinical Waste) (General) Regulation and the Waste Disposal (Charge for Disposal of Clinical Waste) Regulation.

In each session, each Member may only speak once and for up to 15 minutes. I will first call upon Members to speak first, to be followed by the designated public officer.

The second debate session shall start immediately after the public officer has spoken in the first debate session. The debate will come to a close after the

public officer has spoken in the second session. The motion will not be put to vote.

I now call upon Ms Miriam LAU to move the motion.

### **MOTION UNDER RULE 49E(2) OF THE RULES OF PROCEDURE**

**MS MIRIAM LAU** (in Cantonese): President, in my capacity as Chairman of the House Committee, I move the motion as printed on the Agenda in accordance with Rule 49E(2) of the Rules of Procedure in order that Members may debate the Smoking (Public Health) (Designation of No Smoking Areas) (Amendment) Notice 2010, Waste Disposal (Clinical Waste) (General) Regulation and Waste Disposal (Charge for Disposal of Clinical Waste) Regulation as found in Report No. 2/10-11 of the House Committee to study subsidiary legislation and other instruments.

#### **Ms Miriam LAU moved the following motion: (Translation)**

"That this Council takes note of Report No. 2/10-11 of the House Committee laid on the Table of the Council on 20 October 2010 in relation to the subsidiary legislation and instrument(s) as listed below:

<u>Item Number</u>	<u>Title of Subsidiary Legislation or Instrument</u>
(14)	Smoking (Public Health) (Designation of No Smoking Areas) (Amendment) Notice 2010 (L.N. 100/2010)
(3)	Waste Disposal (Clinical Waste) (General) Regulation (L.N. 83/2010)
(4)	Waste Disposal (Charge for Disposal of Clinical Waste) Regulation (L.N. 84/2010)."

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

**PRESIDENT** (in Cantonese): We now proceed to the first session, that is, to debate the Smoking (Public Health) (Designation of No Smoking Areas) (Amendment) Notice 2010.

Members who wish to speak on this item of subsidiary legislation will please press the "Request to speak" button.

**MR ALBERT CHAN** (in Cantonese): President, I made the special request to debate this item and the next on the Agenda in the meeting today because when these two items were introduced to this Council for debate, it was during the *de facto* referendum for the five constituencies and four Members and I were not in the Council, and so the League of Social Democrats did not have a chance to join any committee during the period from February to May when the Administration submitted these legislative proposals to the Council. Therefore, after we had returned to this Council in May, we began to follow up various issues. These two items, including the one relating to the smoking ban which we are discussing, have numerous issues involving public places in particular. As a matter of fact, in 2006 when the Government was carrying out the legislative work on a smoking ban, I had raised criticisms and opinions on a number of occasions. I would like to make use of this opportunity to reiterate certain issues and points of concern.

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

Deputy President, when this piece of legislation was being drafted, I pointed out that a lot of disputes and technical issues would arise when a smoking ban was imposed in public places. Some of the cases could be extremely absurd. I pointed out at that time that in a school, especially in a boarding school ..... at that time I cited the example of St Stephen's College, saying that if a smoking ban were imposed on campus, the staff working in that school would have no place in the school at all to smoke. Of course, in the end Secretary Dr York CHOW did not care about problems like these and so did many Members.

Actually, although the number of people affected would not be many, insofar as the spirit of the law is concerned, a lot of unreasonable and unfair social phenomena will arise. When there is unfairness in a law, it bears proof to Members having been sloppy in deliberating on it or that a double standard is applied. Right? When a law leads to discrimination or unfair treatment of a minority group of people, and when this minority is often people from the lower classes or the disadvantaged, then we will know that there is a policy bias.

At that time when discussion was conducted on public transport interchanges, I pointed out clearly that many public transport interchanges did not have clearly defined boundaries because many of them are semi-open, no different from any ordinary road sections. At that time, I cited the example of the public transport interchange at the Nan Fung Centre in Tsuen Wan where the public may enter the public transport interchange by a staircase and that public transport interchange is connected to a public pavement. Unless the Government can draw some boundaries at the public transport interchange, *a la* the practice of the Housing Department in designating smoking areas in public places and a yellow line is drawn on the ground indicating a certain place is a smoking area, for places like public transport interchanges where people and vehicular traffic is mixed, just which part of a public transport interchange can be delineated? The Government still refuses hitherto to pledge that boundaries will be drawn. When such boundaries are so vague and the conditions so confusing, some members of the public, especially the smokers, would be prosecuted wrongly or innocently unawares. If a smoker knows clearly that the place where he is in or wants to smoke is a no smoking area, he would just walk up a couple of steps to a smoking area. Once he walks up to the pavement, he will very likely to be in a no smoking area. But now some of these pavements have been designated as no smoking areas because of environmental pollution considerations. However, smokers do not know what they should do because of the absence of clear-cut boundaries and signs. As a result, many of them are prosecuted wrongly. Of course, the Government will always say that if you do not feel like it, you can lodge an appeal and if you do not admit guilt, you can dispute in a Court of law. But these innocent members of the public and smokers are made to suffer because of the sloppy work in legislation and the same careless, slovenly and irresponsible attitude of the Government.

In the past I had pointed out this problem repeatedly, but the Government adopted a couldn't-care-less attitude, because it had secured enough votes to pass

the law. So it could be so hegemonist. When it does not have enough votes, it would beg for votes. Right? In the case of the landfill in Tseung Kwan O, in the end Secretary Edward YAU had to put up a show in that district reluctantly and accept almost all the demands of the Subcommittee, everything it wanted. Of course, owing to the political reality, the Subcommittee will not support the Government. If it is against it in principle, even if the Government accedes to all of its demands, in the end, it will raise objection all the same. Somethings are very funny, are they not? There are times that even though the Government has met all the demands of a committee, the committee will nevertheless voiced objection. But at times when a committee has made demands, the Government will not care about them and do nothing. However, its proposal is passed in the end. So we can see from these cases the absurdities of this Council and it is also interesting to note the polarization. Members can review the attitude of the Environment Bureau in handling the Tseung Kwan O landfill, the issues discussed in the committee, and matters concerning the development of additional facilities. Compared with the situation of a smoking ban now, there is polarization which is extremely absurd indeed. The Government knew a long time ago that the smoking ban law would be passed with a majority vote and so it cared nothing about the life and death of the people. It will care about nothing even if mahjong parlours and bars would have to fold and people in the entertainment business would be rendered jobless because of the smoking ban.

In 2007, we pointed out that the introduction of a smoking ban would affect the entertainment business and eateries. Of course, the effects would not be all-inclusive, and only certain types of business in the entertainment industry would be affected. But the Government just thought that they were sacrifices that must be made. Right? An approach has become the norm these days and that is, no matter if a piece of land is to be resumed or some villages are to be demolished, if things can be sacrificed, that is, if the interest of the majority is considered to be more important, then the interest of the minority can be sacrificed. This was the case when Choi Yuen Village was resumed and also when Tsz Tin Village was resumed. This rationale is advanced when the minority interest is sacrificed. Right? Even for the smoking ban issue now, the Government is blind to the plight of the hardship of the entertainment industry and newspaper vendors.

Deputy President, I would like to stress that although the proposal on extending the smoking ban to public transport interchanges has long since been

stipulated in the relevant policy and law, I am still most unhappy about the administrative and technical arrangements. I must point out, Secretary — I still saw Secretary Dr York CHOW this morning in attendance and now the Under Secretary is taking the questions, and it may be because Secretary Dr York CHOW has grown tired of my criticisms of him and every time when I see him, my blood pressure readings will rise — I am sure the Government cares not about this. But I think this Council is to blame for the prosecution of innocent members of the public, and this applies to those Members and political parties who were blind to the problems and passed the relevant law rashly.

Lastly, Deputy President, I would like to point out that the only positive thing about this law is that it creates employment. In consequence to the amendment of this law, that is, expanding the no smoking areas, the Government will need to hire more people. However, I have sympathies for the staff of the Tobacco Control Office for the obnoxious nature of their work. This is actually an obnoxious job and the Government should grant them an allowance as it would with other obnoxious duties in recognition of the duties performed by such staff.

Deputy President, I wish to reiterate my criticism of this law and point out once again the problem of unclear boundaries. I hope that when the Under Secretary responds later, his response will be slightly different from that made by Secretary Dr York CHOW. I hope that improvements can be made to the administrative measures and approaches, that is, in terms of the attitude and actual measures concerned. Thank you.

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

(No Member indicated a wish to speak)

**DEPUTY PRESIDENT** (in Cantonese): Members have already spoken in this session. I now call upon the Secretary for Food and Health to speak. This debate session will come to a close after the Secretary has spoken.

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): Deputy President, first of all, I would like to tell Members that Secretary Dr York CHOW was in attendance earlier actually. But why am I here now? This is because he had to catch a flight for a business trip out of Hong Kong. So I will deal with this item for him.

Deputy President, I wish to thank Mr Albert CHAN once again for speaking on the Smoking (Public Health) (Designation of No Smoking Areas) (Amendment) Notice 2010 under the Smoking (Public Health) Ordinance (Cap. 371). The object of the Notice is to designate public transport interchanges as no smoking areas. I would like to make a brief response now.

First, the Government has been working on the reduction of the harms caused by tobacco to the public and the community through a step-by-step and multi-pronged approach. The aim of our tobacco control policy is to discourage smoking, encourage smokers to cease smoking or reduce tobacco intake, and further protect the public from the health hazards of second-hand smoke.

The amendment to the Smoking (Public Health) Ordinance passed by the Legislative Council in 2006 empowers the Director of Health to designate no smoking areas in public transport interchanges. In the meetings of the Bills Committee and when the bill was debated in this Council, we undertook that after a fixed penalty system on smoking offences was put in place, no smoking areas would be designated step-by-step in public transport interchanges.

Last year, we obtained the support of this Council and the District Councils in designating 48 public transport interchanges with superstructures as no smoking areas on 1 September 2009. Together with 43 public transport interchanges which meet the definition of indoor areas (where a smoking ban has been imposed since 1 January 2007), a total of 91 public transport interchanges in Hong Kong has become smoke-free. Compliance with the smoking ban at these public transport interchanges has been satisfactory so far and enforcement work has also been smooth.

On the good foundation laid, we are preparing to proceed to the second stage to designate 128 open-air public transport interchanges which meet the definition in law as no smoking areas. The scheme to impose a smoking ban in the public transport interchanges will be launched on 1 December this year. We

consulted the Health Panel of the Council on this proposal in April. Since May this year, we have been consulting the respective District Councils on designating no smoking areas in public transport interchanges in various districts, including the details of implementation. This proposal has gained the support of various District Councils.

Deputy President, with respect to publicity work, the Tobacco Control Office (TCO) will launch territory-wide publicity efforts starting from next month, informing the public that a smoking ban will be imposed in public transport interchanges. The public will be encouraged to comply with the smoking ban. In order to facilitate enforcement in public transport interchanges, the TCO will be in close touch with the venue management of all public transport interchanges with superstructures and the public transport operators, including bus companies, and trade associations of public light buses and taxis, with the aim of promoting compliance by the trades concerned and passengers.

As for signage in the no smoking areas, this was also mentioned by Mr CHAN earlier on. We have consulted the relevant departments including the Transport Department, as well as various public transport operators on the proposal to draw boundaries on the ground of statutory no smoking areas to facilitate public awareness of the boundaries of no smoking areas. The general view is that the idea of drawing boundaries demarcating no smoking areas on the ground will not work as there may be other lines drawn on the road surface and such lines may confuse road users and lead to driving safety problems. This is especially the case with public transport interchanges where many lines are already drawn on the road surface.

However, after considering the fact that the actual conditions of open-air public transport facilities in general lack proper demarcation such as in the form of physical objects like superstructures, we will discuss with the Transport Department, Highways Department and Housing Department to see how signs can be added in proper places to clarify the actual scope of no smoking areas on the premise of ensuring pedestrian and traffic safety and not leading to other undesirable consequences.

Meanwhile, the TCO will pose signs showing the scope of no smoking areas at conspicuous positions such as the entrances and exits of public transport

interchanges. Diagrams of these signs will be published in the Gazette and no smoking banners and signs will also be displayed to remind the public of the smoking ban. Diagrams showing the designated no smoking areas in the public transport interchanges will be displayed in the office of the TCO and its website for public inspection.

Deputy President, in sum, ever since a smoking ban was imposed in September 2009 on public transport interchanges with superstructures, enforcement work has been going on smoothly. The introduction of a fixed penalty system also increases the deterrence on smoking offences.

The most effective way to implement a smoking ban is to build up a culture of public respect for the statutory smoking ban and to carry out public education.

We will adopt a multi-pronged approach comprising legislation, taxation, publicity, education, enforcement and cessation programmes to further reduce the harms of smoking and protect public health.

**DEPUTY PRESIDENT** (in Cantonese): We now proceed to the second session, that is, to debate the Waste Disposal (Clinical Waste) (General) Regulation and the Waste Disposal (Charge for Disposal of Clinical Waste) Regulation.

Members who wish to speak on these two items of subsidiary legislation will please press the "Request to speak" button.

**MR ALBERT CHAN** (in Cantonese): Deputy President, in February this year the Government consulted the Panel on Environmental Affairs of this Council on the relevant Regulations on the disposal of clinical waste. Since the *de facto* referendum of the five constituencies was being carried out at that time, the three Members from the League of Social Democrats were not in the Council because they had resigned, hence they could not take part in the deliberation and discussion on the relevant legislation.

Deputy President, I would like to make use of this opportunity to point out that now the rice is cooked, so to speak, and it is a *fait accompli* — that the Tsing Yi Chemical Waste Treatment Centre will also treat clinical waste. However, I

would like to point out that at the time when the Government raised the proposal on treatment of clinical waste, the site suggested was in Tuen Mun. At that time, due to strong opposition from Tuen Mun district and the District Council, the plan was discarded. Eventually, the Chemical Waste Treatment Centre in Tsing Yi took up the task of handling clinical waste. This is most unfair to the residents of Tsing Yi. If we look at Tsing Yi district, we can find that almost all the polluting trades in Hong Kong are concentrated there. All those facilities not wanted by other districts are built there, like cement factories, shipyards, oil depots, power generation plants and container terminals. It can be said that Tsing Yi has got all the trades not wanted by other districts.

Actually, I wish to point out that this historical blunder has caused tragic consequences. If we are familiar with the development of the New Territories, we will find that during the 1960s and 1970s, government planning at that time was to designate the entire Tsing Yi Island for industrial use. But unfortunately, and the reason why we always talk about collusion between business and the Government, the transfer of interests, and so on, is that during the 1970s, and if my memory has not failed me, back at the time of the old District Offices, some developers wanted to build some private residential buildings on Tsing Yi. Some top officials with great authority approved of the construction project and from then on there have been drastic changes in land use on Tsing Yi. Had the Town Planning Board not been acting so carelessly and made these changes, and had there not been so close a relationship between these consortia and top officials, I believe the development on Tsing Yi would never have been like it is today.

The development of Tsing Yi is actually the worst example of urban planning in all of Hong Kong. Land on Tsing Yi in the 1970s was used for industrial purposes and so at that time almost all such industries could be found there. There were, for example, the shipbuilding industry, the oil depots, the power plants, and so on, and they were all set up on Tsing Yi. But starting from the late 1970s and early 1980s, as residential flats began to be built there, a huge number of residents of public housing estates also moved in. Now the population of Tsing Yi is close to 200 000. When there are so many polluting trades or those unwelcome by residents moving in gradually, the people are forced to live side by side with these trades. The result is the frequent emergence of various problems. For myself, since 1991 when I was a Member of the former Legislative Council from New Territories South, I have handled

many problems on Tsing Yi. These included the cement factory which was formerly built at a location that would affect the residents. Later on, that cement factory was forced to move. Now there is the problem of clinical waste disposal. Of course, the Government would make many undertakings and stress that this would not affect the Tsing Yi residents.

Deputy President, I wish to point out in this Council a number of things. First, if we look at the records of the Chemical Waste Treatment Centre on Tsing Yi, there were two occasions during the period from November 1998 to February 1999 on which the levels had exceeded the permitted standards. Therefore, we can see that problems are found in the records. Certainly, the exceedance will not directly affect the health and life of the people. It is also hard to prove medically, nor is there any evidence showing that if someone dies of a certain disease 20 years later, it is due to the Tsing Yi Chemical Waste Treatment Centre having exceeded its permitted levels 20 years ago. It is impossible to speculate on latent problems and the extent of the impact caused. But there are problems indeed.

I also wish to point out that when designing the Tsing Yi Chemical Waste Treatment Centre, the Government explained that the chimney there was very tall and after any waste was incinerated, the impact on Tsing Yi might not be the greatest, for factors like the velocity and strength of the winds should also be taken into account. According to the prevailing wind directions and wind velocity in Hong Kong, most of the chemicals coming out from the chimney would not be blowing directly to Tsing Yi. If the direction is right, they would be blowing to Central or the Mid-levels. I wish to tell those tycoons living on the Mid-levels that the Tsing Yi Chemical Waste Treatment Centre also treats clinical waste and when treating such clinical waste, and if there is any toxic gas in the air, it is most likely that the wind will carry it to those luxury flats on the Mid-levels. I am not sure if Mrs IP has moved, for in future the toxic air will be drifting to your place. This is because I recall that your flat is close to Martin's. You are neighbours. You can see the chimney on Tsing Yi through the windows of your flat. So the smoke from that chimney will be blown across the harbour and we have to send our best wishes to those tycoons for their health. Thus the effect on Tsing Yi may be less than that on the tycoons living on the Mid-levels. This is of course not the original intent of the Government, but I hope that these tycoons can be more concerned about this irony in history. I am not sure if that would affect property prices on the Mid-levels. Perhaps we can

tell those tycoons from the Mainland that they can see the Tsing Yi Chemical Waste Treatment Centre from there and now there is another chimney from the Clinical Waste Treatment Centre. They can see for themselves how their flats are positioned when the smoke from there is drifting across the harbour. I hope the media can pursue this subject or some experts can be called in to study the problem. The Government can be urged to provide some information, so that we can examine the situation in the wake of chemical treatment.

Deputy President, on this issue of clinical waste, in other places — especially in those advanced regions, such waste is recovered and recycled. As for incineration or even dumping at landfills previously, it is hard to assess the long-term impact. It is even more difficult to assess the catastrophe that may be caused. Many places have adopted the approach of recovery and recycling. Things like mercury are recovered and recycled by all means. But Hong Kong lags behind other places in this respect. I hope that when the Secretary promotes many of his green policies, he can do something for the good of the people of Hong Kong by reducing as much as possible the impact of clinical waste incineration on Hong Kong people. Also, from the perspective of environmental protection, the disposal of garbage should be focused on their collection, disposal and recovery and recycling. There are many such examples in overseas countries. In Hong Kong, the overall cost-effectiveness in this aspect is low because Hong Kong is only a city and it is very expensive to make investments on waste recovery and recycling. Our situation is different from that of a state or a country. A state or a country has a lot of hospitals and clinical waste and when treated together, it would lead to a higher cost-effectiveness and financially, it would be more attractive. Also, waste would be disposed of more easily. If it is due to cost reasons, the Government may consider funding or subsidizing the recovery and recycling of clinical waste. For in the final analysis, this is an issue of public interest and the Government should not just be talking about cost recovery or always asking the trades to bear all the costs.

In addition, Deputy President, I would also like to express a concern. It is true that the disposal of clinical waste has to follow a set of prescribed procedures and in general, a licensing system would be put in place to exercise control. But I am worried about the disposal of radioactive waste. This is because hospitals will certainly produce radioactive waste. If any blunder happens in incineration or separating it for treatment, ..... we know that at times a name tag for a dead body can get wrong and cases of medical blunders are frequent. At times we

can even get a wrong tooth pulled out when the tooth to be extracted is supposed to be on the left side of your cheek, but a tooth on your right gets pulled out in the end. Sometimes an operation to remove something from the body may end up being done to the wrong part. So medical blunders do happen often, and some patients would be victimized. Of course, we do not want to see these problems happen, but if it is due to some blunder that some radioactive materials are incinerated, the impact on the city and the neighbouring region will be downright catastrophic. I hope that when the Secretary responds later, he can make an undertaking or give some explanation on how blunders concerning radioactive materials will not happen in the disposal of clinical waste. This will allay our apprehensions.

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): Members have already spoken in this session. I now call upon the Secretary for the Environment to speak. This debate session will come to a close after the Secretary has spoken.

**SECRETARY FOR THE ENVIRONMENT** (in Cantonese): Deputy President, I wish to thank Mr Albert CHAN for his views.

Deputy President, the aim of this Waste Disposal (Clinical Waste) (General) Regulation is to protect the environment and the health of the public. This is because it is hoped that the enactment of the relevant Regulation can minimize the potential hazards in the treatment of clinical waste. By clinical waste, we mean in general scalpels and such tools used in a surgery or other clinical procedures. They cannot be reused and so they have to be disposed of. Then there are also other kinds of clinical waste. Every day a total of about 6 tonnes to 7 tonnes of such waste is produced, mainly by hospitals and clinics. Currently, such waste is disposed of in the landfills. Some of the more sensitive

kinds of clinical waste will be treated in the pathological incinerator in Tuen Mun Hospital or the crematoriums of the Food and Environment Hygiene Department.

It is hoped that with the enactment of this Regulation, some rules can also be made to provide a better method of disposal, that is, through the treatment centre on Tsing Yi. Also, some codes of practice can be drawn up to enable more stringent steps to be taken in waste disposal peculiar to various types of waste. Having formulated such a Regulation, we would also enhance monitoring so that a set of stringent procedures can be employed by the producers of such waste. They are required not only to keep records on the transportation but also monitor the entire disposal process. With respect to the treatment centre, we will also enhance some measures in response to the impact on residents of the district as mentioned by the Member earlier. These measures include upgrading the exhaust cleaning system of the incinerator and enhance facilities for the reception and disposal of clinical waste. These will in turn raise the ability of the treatment centre in coping with the work required.

Thirdly, efforts will be made to enhance automation in the surveillance system. Currently, many of these types of clinical waste cannot be recovered and recycled. But in this chemical waste treatment centre, as I have seen during a personal visit to it, certain articles can be reused in the treatment process. An example is the recovery and recycling of metal. So I believe this approach will serve to further protect the health of the public. In the treatment process we hope that all the facilities, standards and surveillance related to this treatment centre, as well as the entire operation itself, can reach higher standards. This will ensure that the impact caused to the public will be kept to the minimum.

I so submit, Deputy President. Thank you.

**DEPUTY PRESIDENT** (in Cantonese): In accordance with Rule 49E(9) of the Rules of Procedure, I will not put any question on the motion.

**DEPUTY PRESIDENT** (in Cantonese): Two motions with no legislative effect. I have accepted the recommendations of the House Committee: that is, the movers of the motions each may speak, including reply, for up to 15 minutes, and have another five minutes to speak on the amendments; the movers of

amendments each may speak for up to 10 minutes; and other Members each may speak for up to seven minutes. I am obliged to direct any Member speaking in excess of the specified time to discontinue.

**DEPUTY PRESIDENT** (in Cantonese): First motion: Improving personal data privacy protection.

Members who wish to speak in the debate on the motion will please press the "Request to speak" button.

I now call upon Mr WONG Kwok-hing to speak and move the motion.

### **IMPROVING PERSONAL DATA PRIVACY PROTECTION**

**MR WONG KWOK-HING** (in Cantonese): Deputy President, I move that the motion as printed on the Agenda be passed.

Deputy President, today I have brought with me an Octopus card octopus. Like its name, this thing has got four tentacles for sucking up water, that is, money.

Deputy President, the Octopus scandal started last July, that is, July 2009, when I received complaints from many members of the public. Then I began to follow up the case. In October this year, or 16 months ever since, after 16 months of follow-up work, it can be said that some results have been obtained at this stage. And for these results I must thank the media for their concern, reports and scrutiny.

Deputy President, on the follow-up on the Octopus incident, I think that it can be divided into three stages. The first stage is from July last year to 7 July this year. In these 13 months, I may perhaps call it an exposure stage. During this period, I conducted an opinion poll together with the Public Service Monitoring Group, held a press conference, made an appointment to meet with Octopus, complained and reported to the Office of the Privacy Commissioner for Personal Data (PCPD) as well as handling complaints lodged with the Legislative Council. However, after many questions and investigations, it seemed that the

root of the problem could not be identified. It looked as if we had come to a dead-end. Fortunately, on 7 July a drastic turn of events occurred when a former employee of Cigna came forth and reported that Octopus was lying and that it had sold the personal data of some 2 million clients for profit. From then on, the scandal was formally exposed. I therefore describe this period of 13 months as an exposure stage.

The second stage is from 8 July this year to 19 October this year, that is, today. This period lasts some three months. I would describe this period as the stage of uncovering the truth. What kind of truth is uncovered? Namely, whether or not the sale of personal data for profit was a personal act by Ms Prudence CHAN alone? Or that the matter can be considered settled once she stepped down? Or that the Board of Directors of Octopus knows nothing? Or if the matter is over when Prudence CHAN assumes all the responsibility? Does the holding company of Octopus, the MTR Corporation Limited (MTRCL) know nothing about it and hence does not have to bear any responsibility? Do the two top officials on the MTRCL Board of Directors know nothing about the problem? Can they shirk their responsibility? Why can the Personal Data (Privacy) Ordinance (PDPO) not be able to protect us? Why is the PCPD a toothless tiger? At last, I was able to find the truth at this stage.

The third stage starts from today. This is because on this past Monday, the PCPD published its final report, the Hong Kong Monetary Authority also released its interim report on the investigation and the Government also published a consultation report on the PDPO. In general, the publication of these three reports provides an answer at this stage to the truth surrounding the scandal, its root and causes.

Deputy President, despite the fact that a new stage has commenced, I think that work is not yet finished and we must work hard, very much like this saying "the revolution has yet to succeed, comrades must all continue to endeavour". With respect to the new direction, I think that there is a need to follow up the legislation on criminalizing offences in personal data privacy. Work should be done to urge Octopus to return to its original role of promoting electronic money. Work should also be done to follow up the transparency in monitoring the use of personal data by organizations similar to Octopus. I would think that only if all these steps are taken that the personal data of the people of Hong Kong can be really, effectively and practicably protected. It is also by so doing that we can

remove money-suckers and blood-suckers like Octopus. Thus Octopus can resume the work that it is supposed to do and it cannot say to members of the public, "Sorry, but your data are worth a lot of money."

Deputy President, after these three stages and with the hard work of Members, the public and the media, I think that seven results have been obtained. First, we have made the Government to make a response to confirm that there is a need to amend the existing PDPO to protect personal data privacy. A response to this issue is specifically written in paragraph 147 of the Policy Address. Second, on 7 October the MTRCL fulfilled its undertaking by instructing Octopus to accept all the proposals made by the PDPC. It seems that Octopus still claimed its innocence after the press conference yesterday. But as far as I am aware, the latest news is that it has issued a statement today saying that it will not persist in claiming its innocence. I hope it can stop going astray and return to the right track.

The third result, on 7 October the MTRCL undertook to regularize Octopus and remove its irregularities. From the press conference held by Octopus yesterday, we know that its current chairman Mr LEUNG will step down at the end of this year and the former chairman of the HSBC Holdings, Mr John STRICKLAND, will be given the helm. I think this is conducive to an in-depth effort to regularize Octopus.

The fourth result is that the MTRCL has honoured its pledge of urging Octopus to return to its original business of electronic money and cease to engage in other sidelines.

The fifth result is that the MTRCL has fulfilled its pledge to urge Octopus to repay the community the remaining sum of \$13.9 million, that is, a total audited sum of \$57.9 million accumulated since 2002. That the MTRCL has announced that the sum will be donated to the Community Chest cannot be considered satisfactory under the present circumstances, but that is all we can get.

The sixth result is that the MTRCL has honoured its pledge and instructed Octopus to accept the demands of the PCPD to delete completely the personal data collected in breach of the relevant rules and which is not necessary and beyond the purpose of collection. It has agreed to set up a task force to take special charge of dealing with the issue of personal data privacy and pledged that

monitoring will be exercised and accounts of the work done will be made regularly.

The seventh result is that as a consequence of the Octopus incident, the public has exposed more incidents of profit-making by using personal data collected. The fact is that not just Octopus but other companies like Autotoll, some banks, telecommunication companies, and even some credit cards, membership cards or privilege cards, also make profits by this means. Hence our personal data privacy is not protected. Besides, it is also exposed that such data are circulated not just among the business firms in Hong Kong, but they may also be found overseas. We were very much shocked to learn that. As Roderick WOO, the former Privacy Commissioner said, the data in question may have travelled around the world 80 times in a matter of a few hours. Then how can the personal data of Hong Kong people be protected? Therefore, as paragraph 147 of the Policy Address says, I hope that the Government can fulfil its pledge and enact relevant laws in the current term of this Council and in this Session, that is, 2010 to 2011.

Deputy President, with respect to the Octopus incident, I would like to raise my denunciation and criticisms in the following four aspects. First, Octopus should be denounced. The company has fully accepted the recommendations made by the PCPD upon the instruction of the MTRCL and it has ceased insisting that it is innocent, then why should it be denounced? We think that it has exploited public trust in it and also the electronic money platform it has monopolized to make profits. It has hurt the feelings of all the people of Hong Kong and such loss cannot be repaid in money terms. It can never be repaid by donating the entire sum of some \$50 million. Personally, I think it should be denounced severely.

Second, the MTRCL should also be denounced. It made an undertaking to us in a number of aspects when it met with us on 7 October, as I have said and I will not repeat it here, but why could Octopus have acted so blatantly? It is absolutely a responsibility of the MTRCL because it is the holding company of Octopus. Had consent not been gained from the MTRCL, had plans not been approved by it and had resources not been given by it, Octopus could never have acted so boldly and wilfully. The investigation conducted by the PCPD proves that the MTRCL is responsible. The fact that Octopus is found to be at fault shows that the MTRCL's responsibility in this incident cannot be evaded. Therefore, the MTRCL cannot shirk its responsibility. But since the MTRCL

eventually admitted to its blame, so despite the fact that I proposed on 8 October that the Legislative Council (Powers and Privileges) Ordinance be invoked to pursue answers to three questions, as my goal has been reached, I will not propose this again. Although the MTRCL has now admitted its responsibility, I think it has done injustice to the people of Hong Kong. So, sorry, I think the MTRCL should be denounced.

Third, I think the Secretary for Transport and Housing, Eva CHENG, and the Secretary for Financial Services and the Treasury, Prof K C CHAN, who represent the Government and the taxpayers and sit on the MTRCL Board should be severely criticized. As accountable Policy Secretaries sitting on the MTRCL Board, they failed to note the blunders made by the MTRCL which I have mentioned. This is most baffling. How can it be said that they can only see the major directions and objectives — these are not their own words but just the way I put it — instead of noting all this? This is especially so when Prudence CHAN was found to be lying. They should find out the reasons quickly and handle it. Therefore, even if they took action after we had voiced our strong views and made appointments to see them, I think that as accountable Policy Secretaries, there is really dereliction of duty on their part. Hence they should be severely criticized.

Fourth, I think that when the Privacy Commissioner discharges his duties ..... though he has made some achievement in this incident, he should also be criticized. During the period from 2004 to 2007, as it has now been exposed, there were 12 occasions on which Octopus was found to have breached the relevant guidelines. Why did the then Privacy Commissioner not follow up but only let the matters go so easily? I think there is suspicion of dereliction of duty. So the Privacy Commissioner should be criticized. In the last report issued, although the new Privacy Commissioner had taken action, why did he not make full use of his powers and issue an enforcement notice? The most valuable thing is that he pointed out that there was fraudulence on the part of Octopus. So I call on the Commercial Crimes Bureau of the police to step in and conduct an investigation. At least, the police should call on the public to report, such that the police can take enforcement and follow-up action. Having said that, I am grateful to former Privacy Commissioner Roderick WOO for completing this interim report in the last minute, that is, before his retirement from office. I commend him for the action taken.

Lastly, I wish to thank Members for their support and assistance in various aspects during this period of more than 10 months.

**Mr WONG Kwok-hing moved the following motion: (Translation)**

"That, in recent months, 'Octopus' and 'Autotoll' operated by public transport operators, the finance and insurance sector, and the electronic communications sector, etc., were found to have contravened the Personal Data (Privacy) Ordinance ('PDPO') and engaged in unauthorized transfer or sale of the personal data collected to make profits, with extensive implication and significant impact, affecting the personal data privacy right of millions of Hong Kong people; among the above, 'Octopus', the monopoly operator of electronic money, even admitted that it had made a profit of over \$44 million by selling its clients' personal data; the 'Octopus' scandal has revealed that various smart cards currently available in the market, such as bonus cards, membership cards, credit cards, stored value cards and top-up cards, etc., are generally not in full compliance with the requirements of the PDPO, the public's personal data privacy are not properly protected and organizations are able to take advantage of the loopholes and grey areas of the PDPO to indiscriminately collect personal data beyond the scope of purpose for data collection publicly claimed by such organizations, and turn such data into their cash cows, and in the absence of monitoring, the situation has become very serious, causing considerable disturbance to people's daily life; however, due to the limited powers conferred by the law on the Office of the Privacy Commissioner for Personal Data ('PCPD') and constraint of resources, the PCPD is not able to exercise effective regulation, and the responsible government departments concerned have also failed to seriously shoulder the responsibility of protecting personal data privacy; in this connection, this Council urges the Government to immediately adopt the following measures to protect the general public's personal data privacy right:

- (a) to urge law enforcement departments to conduct a comprehensive and thorough investigation into all the companies and organizations involved in transfer and sale of clients' personal data and infringement of the public's privacy and to prosecute the same for criminal liability, and require such companies or organizations to destroy the public's personal data, which were illegally collected,

under the supervision of an independent third party and to offer an apology and compensation to affected clients;

- (b) to comprehensively review and amend the PDPO immediately to plug the loopholes of the legislation and eliminate the grey areas, and at the same time increase the criminal sanction to achieve a deterrent effect;
- (c) to provide additional resources for the PCPD, so as to enhance its efficiency in handling complaints and step up enforcement to effectively protect the public's personal data privacy right;
- (d) to introduce clear clauses and requirements to ensure that consumers have the right to opt in, so as to ensure that consumers provide their personal data within the scope of the 'purpose of data collection' as specified by the organizations concerned without threats and inducements, and to step up efforts to combat and eradicate the indiscriminate collection of the public's personal data;
- (e) to legislate the regulation of application forms for all kinds of membership cards, credit cards, etc., including requiring that the fonts and contents of the advice and terms on the protection of consumers' personal data privacy right should be reasonably legible, in terms of font size, location and surface area, to any person with normal eyesight, and ensuring that people who are unable to clearly read the terms and thoroughly understand the scope of data to be collected will still be provided with clear advice on the choices available to them and information on the protection of personal data privacy right;
- (f) to legislate the regulation of all private and public corporations in Hong Kong by stipulating that they should in no circumstances transfer any personal data to third party companies, including their partner and subsidiary companies, without the explicit written consent and authorization from their clients, nor should such personal data be sold or used for profit-making purposes; and
- (g) to make reference to successful overseas experience and the operation mode of the Airport Authority Hong Kong and actively explore the option of the public sector operating the 'Octopus' smart

card, so as to ensure that the personal data privacy of millions of Hong Kong people who have to use the Octopus card can be protected in a comprehensive and effective manner, thus fully preventing the personal data privacy of all Hong Kong people from being turned into cash cows again by public or private corporations."

**DEPUTY PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr WONG Kwok-hing be passed.

**DEPUTY PRESIDENT** (in Cantonese): Three Members will move amendments to this motion. This Council will proceed to a joint debate on the motion and the three amendments.

I will call upon Mr James TO to speak first, to be followed by Mr WONG Ting-kwong and Mr CHAN Kin-por, but no amendments are to be moved at this stage.

**MR JAMES TO** (in Cantonese): Deputy President, when we discuss this incident or scandal of the Octopus Cards Limited (OCL), actually we are talking about the sale of the privacy of millions of Hong Kong people. Many members of the public feel very annoyed for they have received many telesales calls. This is really a serious matter. Certainly, not all of the personal data are divulged through the OCL. We can also see many banks and other organizations have engaged in such divulgence of personal data.

Deputy President, a few months ago when this incident was exposed and as things became clearer, Mr WONG Kwok-hing vowed to invoke the Legislative Council (Powers and Privileges) Ordinance to conduct an investigation. Some reporters asked me about this and as the Legislative Council was in summer recess at that time, I replied that if the Ordinance was really to be invoked, it would have to wait until the Council sits again. If the Government makes use of this opportunity of a few months' time to set up a statutory committee with summoning powers, such as appointing a Judge to head an investigation committee and probe into the divulgence and sale of the personal data of the citizens by Octopus and other related organizations, then the state of affairs as we

know now would be clarified. And the relevant information may be used for reform in the future and as a basis for legislative amendment. At that time, that reporter asked me, "WONG Kwok-hing said that he would invoke the Ordinance. But why have you not mentioned that Ordinance?" I said, "I will put a wager on it that WONG Kwok-hing will not pursue the matter to the bitter end. Believe me, he won't." That reporter said, "No, this time he really vows to do it." Then my colleague said, "No, there is really a heap of information. He has said so dozens of times." I said, "Never mind. Relax. It is fortunate that the Democratic Party is still around. Do not panic." Why? Because our significance lies in the fact that if at that time the Government made use of that period of a few months and resorted to investigating the matter forcefully, so as to lay the foundation for future amendments in law, then the matter would not necessarily have to be dealt with by the Legislative Council. Honestly, the Legislative Council is now probing into the Lehman Brothers case, and work would still have to be done over the next couple of years or so. But people are quitting the Subcommittee concerned. This is because it is hard work and a lot of work has to be done. The question is, if it is for the sake of public interest ..... Deputy President, this amendment by me is meant to give the Government the last chance. I hope the Chief Executive can set up an independent investigation committee to probe into the truth of the matter. This includes what was said earlier, namely the issue of whether or not the board of directors of the MTR Corporation Limited (MTRCL) was aware of it. To be frank, if the MTRCL has got a lot of subsidiaries, then it may not be aware of it. But the question is, what if the MTRCL knows? This is because sitting on the board of directors of the MTRCL are some government officials, including some ex officio directors, that is, the few Bureau Directors sitting here. Then Prudence CHAN alone cannot bear the full responsibility, nor can LEUNG Kwok-kuen alone. Then who should bear it? If we do not dig out the truth by invoking the powers to mandate all sorts of things and just rely on the report made by the Privacy Commissioner for Personal Data (PCPD), this is really shaky, he does not even have the power to summon people. I am worried about him, because Roderick WOO, the former Commissioner, always said — he has got a great sense of humour — when he came to this Council that he was a toothless tiger. Such work should be done by us. That was the situation in 1996. But if we want to find out the truth in the absence of any amendment to the law, it would be very difficult if there is no power of summoning witnesses.

So Deputy President, besides giving the Government this last chance, I demanded in the meeting of the House Committee yesterday that the Ordinance

be invoked for a full-scale investigation. Of course, if Secretary Stephen LAM says on behalf of the Government that they will carry out an investigation first, I would think that we might as well let the Government go ahead. We may say that the OCL is like a restricted licensed bank, there are still many banks, insurance companies or telecommunications companies which may obtain some of the information from their relevant regulatory bodies. We should remember that this can only be done when these regulatory bodies are tough and take strong action in collecting information in this respect. Then there are fast-food chains with M or K as the first letter of their names or those which have the Chinese character "大" (big) as the first character of their names, or the three giant supermarket chains with links to some drugs and personal care chains, which all have more information on their clients. They will collect information on when you will buy drugs for a headache, a cold or a heart problem, and even information as to when ladies will buy their sanitary napkins and when the men will buy aphrodisiacs. How will they use such information? What kind of people will they get to sell these products to the public? The public will really be harassed. Deputy President, if we cannot dig out the truth, we can never find a good foundation for law-making.

Deputy President, the next thing I wish to say is that my amendment relates to fully implementing section 33 of the Personal Data (Privacy) Ordinance (PDPO) as soon as possible. Strangely, Deputy President, this provision has yet to be implemented since the Ordinance came into force in 1996. Of course, if Members ask whether or not there are any Ordinances which have not come into force after a long time, the answer is yes, there are. And there are ones that have not come into force after yet a longer time. And that is the law on wiretapping which I am concerned about. But in the end the Government enacted a new law. For this provision in the PDPO, it has yet to be implemented even now. The most important safeguard in this Ordinance is that if a certain place overseas does not offer protection by a privacy law like that in Hong Kong, then it is not possible for Hong Kong to transfer the related information to that place. Deputy President, at the time when the PDPO was enacted in Hong Kong, it was because the European Union would soon enforce relevant protection in 1995. And if we did not enact such a law, it would not be possible for us to exchange information with the European Union. The transactions of banks would not be possible either. Likewise, if Hong Kong transfers our data to a place which does not offer any privacy protection in law, then it is doing injustice to the people of Hong Kong and also to that kind of partnership relationship which we have with

places that have got such protection. This is because there are no boundaries to privacy, and such data can be transmitted very quickly. So far, the Government has not explained why this provision in the PDPO has not come into force. No explanation has ever been offered. Deputy President, I think the Government owes us an explanation. This is especially the case when some data is transferred to a place without such protection in law, say the Mainland. I really do not know how great our worries will be.

Deputy President, with respect to the response made by the OCL to the report of the inquiry conducted by the Privacy Commissioner, actually we should be very careful about it. This is because the OCL agrees with the recommendations made in the report, but not the ruling made. Some Honourable colleagues may not understand what a ruling means and the relationship between the recommendations and the ruling. What is the crux of the relationship between them? If that is a case, a precedent of a ruling made by the Privacy Commissioner who is the authority, then organizations which print their information in so minute fonts and which have not really gained consent may have to do a lot of remedial work at once and remove such information. Based on the same precedent, if a company collects data but it does not state that the privacy data so collected will be sold, but in actual fact it sells the privacy data of its clients, then this company has also breached the law. However, the OCL has one trick up its sleeve and it can challenge this ruling by the Privacy Commissioner. This might lead to grave consequences. If the MTRCL which is the major shareholder and which supervises the OCL allows the latter to raise such a challenge, it is actually playing the dare-devil in this fight. As a result, other similar companies can continue impinging on privacy and prolong the uncertainties in the interpretation of the existing relevant law, thereby denying the people of Hong Kong protection of their privacy as offered by this precedent.

Deputy President, I call upon all Honourable colleagues to support the forming of an investigation committee. I am making this call, in particular, on the Federation of Trade Unions (FTU), including the loudest braggart, Mr WONG Kwok-hing. Thank you.

**MR WONG TING-KWONG** (in Cantonese): Deputy President, people are enraged when their privacy is laid bare before others and unscrupulous

organizations have betrayed the trust placed in them by the public and make profits out of the personal data collected. We are most indignant about it.

Large corporations have enormous resources and they know every trick about playing with the provisions in law to maximize their profits. No matter how smart a member of the public is, he can never tell from the contents of a form he fills up every time what kind of personal data is necessary and what kind of excessive information these companies want to collect. These acts of plunder by these unscrupulous organizations are actually happening every day.

In the meantime, members of the public are getting all sorts of telemarketing calls and it is also hard for them to tell whether these calls come from authorized institutions and which calls come from companies that have bought their personal data. Some of these large corporations even resort to using bundled contracts to force people who use their service to sign and accept reluctantly terms and conditions that will make them surrender their personal data. These terms and conditions are printed in extremely small fonts and even if the prints are conspicuous, since it is a kind of bundled contract, you are forced to sign and agree to such terms and conditions as long as you need to use their services.

In this incident concerning the Octopus, this unethical sale of clients' information for profit is evident to all and the community's concern about infringement of personal privacy is aroused.

It is therefore a pressing task to conduct a thorough review of the Personal Data (Privacy) Ordinance (PDPO) to protect personal privacy. In 2009, the Constitutional and Mainland Affairs Bureau released a consultation paper on review of the PDPO. And two days ago, proposals on amending the Ordinance were made, whereby it is proposed *inter alia* that a data user is liable to criminal prosecution if he sells or transfers his clients' information to a third party without authorization. He is liable to imprisonment or a fine. The powers of the Office of the Privacy Commissioner for Personal Data (PCPD) are strengthened to enable it to provide legal assistance to aggrieved parties and to claim compensation. These proposals have responded to some of the demands made by the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) and the community.

However, there are still shortcomings in this report. As regards the proposals made by the Government to maintain the present practice of the data user offering protection by means of a contract and to maintain the voluntary notification system for data leakage, I think these proposals will not help strengthen the regulation of data leakage.

After the exposure of the Octopus incident, the Privacy Commissioner for Personal Data (Privacy Commissioner) released a report earlier on the full-scale investigation. It is pointed out in the report that although the Octopus Cards Limited (OCL) has violated the PDPO, no sanction would be necessary. Such a result is clearly unable to meet public aspirations. The DAB thinks that the Board of Directors of the OCL should revamp its senior management and conduct a thorough review of the future business direction of the company and its mode of operation. In addition, the public is still concerned about other institutions involved in the sale of personal data and how the Hong Kong Monetary Authority will handle such cases. The DAB will keep a close watch on the case.

If we demand that an independent investigation committee be set up because we are disappointed with the recommendation made by the PCPD not to punish the OCL, I would think that this would undermine the credibility of the PCPD. And it is not beneficial to the community either. Therefore, we have great reservations about the proposal made by Mr James TO in his amendment on setting up an independent investigation committee.

Another topic I would like to raise for discussion is the proposal made in my amendment to regulate person-to-person telemarketing activities. This kind of person-to-person telemarketing activities is a kind of electronic message and should come under the purview of the Commerce and Economic Development Bureau. This appears to bear little relevance to the motion today and the PDPO. However, the kind of harassment experienced by the public as a result of person-to-person telemarketing activities is really a true reflection of the inadequate protection of privacy and the fact that personal data have market value.

As early as in 2007 when we discussed the Unsolicited Electronic Messages Ordinance, I made an amendment proposal to regulate person-to-person telemarketing calls of a commercial nature. My proposal was not a total ban, but regulation of people who make such telemarketing calls. They must reveal their identity and the telephone numbers of incoming calls must be shown.

Do-not-call Registers should also be set up so that members of the public can choose to put their data into these Registers.

I recall there were two main reasons for opposition to the amendment. First, it was worried that a lot of people would be forced out of work if regulation was imposed. Second, this kind of person-to-person telemarketing calls only accounted for a small portion of the market and the focus of attention should be placed on regulating telemarketing calls generated by computers. However, the Government still has a saving clause and that is, should the problem of person-to-person telemarketing activities remains serious after the enactment of the Ordinance, a review would be conducted of the situation. This is, I think, self-contradictory. On the one hand, the authorities say that there is no urgent need to enact laws to regulate person-to-person telemarketing calls because they only account for a very small portion of the market. But on the other hand, they say that regulating this kind of calls would deal a severe blow to the livelihood of people working in the telecommunications industry. If only few people engage in person-to-person telemarketing, then how will regulation of such activities deal a severe blow to their livelihood? More importantly, even if the excuse of job opportunities is cited, we must not sacrifice the interest of the public in terms of privacy.

With respect to the question of public interest, the DAB conducted an opinion poll as early as in 2009. The findings showed that as many as 57% of the respondents had received person-to-person telemarketing calls during the previous six months and 67% to 87% of the respondents supported the idea of regulating these telemarketing calls. From this, it is evident that there are no signs of any easing of this problem of person-to-person telemarketing activities because the Government did not attach enough importance to it three years ago. So I hope that the Government and also the Democratic Party which opposed the amendment at that time can honour their pledge made then and support a review of the Unsolicited Electronic Messages Ordinance and also the regulation of this kind of marketing calls.

Please note that my amendment is comprehensive. The reason why we stress the regulation of person-to-person telemarketing activities is the protection of people's privacy and their right as consumers. We are similarly concerned about the interests of the industry. The amendment demands that section 33 of the PDPO be implemented at once to control the transfer of personal data to

places outside Hong Kong. The reason is that the section provides that companies cannot transfer personal privacy data casually and this is allowed only under certain circumstances, such as the existence of laws on protection of personal privacy data in that overseas place to which transfer is intended. So implementing this provision will protect the data of Hong Kong people from being casually transferred to an overseas place, so that such data can remain in Hong Kong. This will directly help and protect the local telecommunications industry (*The buzzer sounded*) .....

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

**MR WONG TING-KWONG** (in Cantonese): ..... and the livelihood of the marketing staff.

Thank you, Deputy President.

**MR CHAN KIN-POR** (in Cantonese): Deputy President, the Personal Data (Privacy) Ordinance (PDPO) has actually been in force for more than a decade. The direct marketing industry has all along drawn up its mode of operation according to the advice of its legal advisers to ensure that its commercial acts will not violate any law. As a matter of fact, although the Office of the Privacy Commissioner for Personal Data (PCPD) gets on average of about 900 complaints each year, and some of these cases are related to the direct marketing industry and investigations are conducted, the PCPD has never issued any new guidelines as a result of the findings reached. Hence the industry is convinced that its acts are in compliance with the law and resources are injected into developing the industry.

It was after the occurrence of the Octopus incident that all of a sudden the PCPD pointed out that the mode of operation of the industry violated the prescribed rules and regulations. This past Monday, the PCPD issued the Guidance on the Collection and Use of Personal Data in Direct Marketing. Now all sectors across the community target at the direct marketing industry and many direct marketing organizations have stopped their telemarketing activities for the

time being. This has dealt a severe blow to operators and investors of the direct marketing business. Many workers in the industry have lost their jobs.

The motion and the amendments today aim at protecting consumer rights. While I agree that consumer rights are very important, when we consider an issue, we should be impartial and refrain from making an overkill. While the privacy of consumers should be protected, the survival of the direct marketing industry should not be jeopardized.

I wish to talk about the contribution made by the direct marketing industry to society. I am sure many workers in the industry or even Members of the Council and the general public do not know well enough about this. According to a survey conducted by the industry, as many as 20% of the interviewees are willing to buy insurance products through direct sales channels. This is mainly due to the fact that the products are affordable, of high quality and convenient. This survey has more or less shown that many people are willing to make purchases through direct sales channels. For if not, the industry would have declined and there would be no room for its survival.

I would like to tell Members a true story. According to information from the direct marketing industry, there is this gentleman — of course I cannot reveal his identity — who applied for a credit card and an associated company of that credit card sold a life insurance policy to him through direct marketing. Unfortunately, that gentleman died in the hostage-taking incident that happened in the Philippines. However, his family got protection as a result of this insurance policy. This story is only one of the tens of thousands of people who take out insurance policies through direct marketing every year. And there are also tens of thousands of people who are paid insurance compensation worth millions of dollars each year. This serves to add more protection to their families.

Another example is the telecommunications industry. I am sure many members of the public get to know about the most favourable telephone plans only through direct marketing calls. And many people have joined these plans as a result.

According to information from the Hong Kong Direct Marketing Association, there are about 30 000 telesales promoters in the industry. Ever

since the occurrence of the Octopus incident, more than 300 people have lost their jobs. If the situation worsens, more people will be forced out of work. I am sure Members know very well that the direct marketing industry suits very well people with a secondary level of education. Similar jobs in Hong Kong are becoming less and less. As Members always want the Government to create more job opportunities for the grassroots, should we not treasure these jobs in the direct marketing industry?

Also, such jobs use the telephone to promote sales and so it is suitable for some disadvantaged groups. An example is that the industry has all along been hiring people with mobility impairment. According to the estimate of the industry, direct marketing organizations have as many as 25% of their staff working part-time. The industry also hires many persons with chronic illnesses, housewives, or people who do not have a full-time job. They can choose their working time according to their schedules and health conditions and they can earn money and become self-reliant.

I just hope Members will think carefully, how many more jobs like this are around in Hong Kong? If we want to use stringent measures to smother the room of survival of this industry, in the end, tens of thousands of workers in the industry would be rendered jobless. And there would also be collateral damage to the supporting job types.

As a matter of fact, apart from the telemarketing industry, sales and marketing through the mail, SMS and email are also subject to regulation of the laws and regulations concerned. Once stringent measures are adopted, these job types would be affected. It is estimated by the industry that more than 100 000 persons work in the direct marketing and related industries. Law-abiding direct marketing organizations have always complied with the restrictions of the industry and protect the privacy of their clients. For example, when they collaborate with other commercial organizations to carry out some direct marketing, they will only ask their clients to provide essential information such as name, age or telephone number. They will not ask the clients to tell them all the numbers in their ID cards. Also, to prevent leakage of information, the direct marketing organizations will encrypt their clients' data and a special program is required to decode such data. The computers used by direct marketing staff cannot access the Internet, and they will also be monitored lest the data are copied.

The Hong Kong Direct Marketing Association has compiled guidelines for compliance by its members. These requirements include: when making marketing calls, direct sales staff must reveal their identity and purpose of calling and when the clients do not want to receive such calls, they will delete the information of the clients. This is because they do not want to waste time on clients who do not want to make purchases with them. Hence we should know that deleting such information is beneficial to both parties.

I believe law-abiding direct marketing organizations are willing to do a lot of work to protect the data privacy of the clients at their own initiative. This is because they know that if the clients' privacy is infringed, the entire direct marketing industry would be seriously affected. So we must distinguish the law-abiding direct marketing organizations from those who are not. Our efforts should target those unruly black sheep.

As in every sector and industry, there are black sheep in the direct marketing industry. They will care nothing about the requirements in law and the protection of the clients' information. For those acts of harassing the clients or leaking their information, I believe most of these are done by them.

This past Monday, the Government announced that the legislative amendment exercise will be launched next year. It proposes to criminalize acts in breach of the related regulations. The relevant direct marketing organizations have stated that while the details have yet to be worked out, they will accept the major direction. It is hoped that unlawful direct marketing acts will be suppressed. When an industry is prepared to submit itself to criminal sanction, we can see how great its determination and self-confidence are.

Previously and on many occasions I have talked about harsh measures that will smother the industry's room of survival. I was actually talking about the opt-in mechanism proposed by the Privacy Commissioner. Now this term is translated by the Government into Chinese as a mechanism for acceptance. This will replace the opt-out mechanism commonly used in many places around the world. This term is translated by the Government into Chinese as a mechanism for rejection. This opt-out mechanism actually refers to the situation that when a company wants to collect information of its clients, it should state that the clients may opt out. If the clients do not opt out, their information will be used for direct marketing purposes.

Speaking in terms of the habits of human behaviour, when people come across things that they do not care so much about, they will usually be passive. If the opt-in mechanism is used, a vast majority of people will not choose to opt in. It is estimated that only 1% of the people would opt in. The result is that the direct marketing industry will lose its viability. According to information provided by the industry, all countries in Europe and North America — actually it is practically all over the world — which attach importance to personal privacy, including the United States, the United Kingdom, Canada, France, Germany, Australia, New Zealand, Japan, Korea and Singapore, have all adopted the opt-out mechanism in the telemarketing industry after considering the pros and cons in all aspects concerned.

Now I would explain the contents of my amendment briefly. My amendment seeks to ensure that, when regulatory measures are adopted, the industries and sectors can carry on their business according to the law and we must not smother the room of survival of the direct marketing industry. We should also make reference to the situation in places all over the world and in Hong Kong, as well as studying the opt-in and opt-out mechanisms *vis-à-vis* their pros and cons. A decision must not be made rashly, but only after weighing the interests of all parties concerned. Besides, I think that when information is collected, it should be stated whether or not the information can be transferred to a third party. So the most important thing is to control the scope beyond the collection of information.

Also, I have changed "it had made a profit of over \$44 million" in the original motion to "it had made an income of over \$44 million". This is because cost is not yet deducted from the sum of \$44 million gained by Octopus, and this includes computer expenses which are expensive. So this sum should be income instead of profit.

Now the Government is conducting a public consultation on the Ordinance and it is proposed that when information is collected for direct marketing purposes, the data user should provide the clients with a choice to opt out. As to whether the opt-in or opt-out mechanism should be used to authorize the sale of personal data, the Government remains open and this also coincides with my amendment.

Lastly, I hope Members can lend their support to this amendment. While the personal data of the public should be protected, the regulatory practices of countries worldwide should be considered and nothing must be done to smother the room of survival of the direct marketing industry.

I so submit.

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): Deputy President, I welcome this opportunity to hold a debate on this important question, the motion proposed by Mr WONG Kwok-hing today. I am very grateful to the three Members who have proposed amendments, evident that Members are very concerned about the protection of the privacy of personal data and related issues. As a matter of fact, the SAR Government also attaches great importance to the protection of the privacy of personal data. In 1995 we enacted the Personal Data (Privacy) Ordinance (PDPO). Work on legislating protection of the privacy of the personal data of the people of Hong Kong has made substantial achievement over the past 10-odd years. In 1996, we set up the Office of the Privacy Commissioner for Personal Data (PCPD) to enforce the provisions of the PDPO. During the period of more than a decade in the past, the developments in our society and the advances in science and technology have brought new challenges to the protection of personal data privacy. And the public has grown increasingly concerned about the protection of personal data privacy as well.

In view of this, with the assistance of the Privacy Commissioner for Personal Data (Privacy Commissioner), the Constitutional and Mainland Affairs Bureau undertook a full-scale review of the PDPO last year and consulted the public. On this past Monday, we issued the Report on Public Consultation on Review of the Personal Data (Privacy) Ordinance. The Report sums up the views expressed by the public on various recommendations made. We have also proposed a way forward for these recommendations, including some legislative proposals. The major recommendations cover areas like direct marketing, data security, the powers and functions of the Privacy Commissioner, offences and sanctions, and so on.

The views received by us show that most of the proposals raised by the Government for consultation are accepted by the public. Due to the complexity

of certain proposals, there is some divergence in the views received. In addition, owing to public concern about problems caused by the transfer of personal data of the clients of certain enterprises for direct marketing purposes, we have taken follow-up action. After detailed studies, we have made some new recommendations in the consultation report, especially on enhancing the protection of personal data privacy.

In this regard, we propose that specific requirements be introduced on the collection and use of personal data for direct marketing purposes so as to tighten the control, and to make it an offence if a data user does not comply with the requirements and subsequently uses the personal data for direct marketing purposes. Such requirements include that the data user's Personal Information Collection Statement should be reasonably specific about the intended marketing activities, the classes of persons to whom the data may be transferred and the kinds of data to be transferred. The presentation of such information should be understandable and reasonably readable by the general public. The data user should provide an option for the data subject to choose not to agree to the use (including transfer) of his/her personal data for any of the intended direct marketing activities or the transfer of the data to any class of transferees. A data user commits an offence and is liable on conviction to a fine of \$500,000 and imprisonment for three years if he/she does not comply with any of these requirements and subsequently uses the personal data collected for direct marketing purposes.

We also propose to raise the penalty for contravention of the requirement in section 34 of the PDPO on the use of personal data in direct marketing. According to the requirement, if the data subject requests the data user not to use his/her personal data for direct marketing purposes, the data user shall cease to so use the data, that is, do what the client requests. We also propose to increase the penalty from a fine at Level 3 (\$10,000) substantially to a fine of \$500,000 and imprisonment for three years.

We also propose that consideration be given to making it an offence if a data user sells the personal data obtained from a data subject without the latter's authorization, and to make it also an offence the disclosure for profits or malicious purposes of personal data obtained without the data user's consent. A person is liable upon conviction to a fine of \$1,000,000 and imprisonment for five years.

In addition, we propose to empower the Privacy Commissioner to provide legal assistance to an aggrieved data subject who intends to institute legal proceedings against a data user to seek compensation under section 66 of the PDPO. That is to say, if the personal data of the public are not protected, or respected by enterprises or other related institutions, and the principles enshrined in the PDPO are thus contravened, the members of the public concerned may institute civil action to seek compensation with the legal assistance provided by the Privacy Commissioner and the PDPC.

We also propose to stipulate the related offences and sanctions, such as to make it an offence for a data user who, having complied with the direction in an enforcement notice to the satisfaction of the Privacy Commissioner, subsequently intentionally does the same act against which the Privacy Commissioner had previously issued an enforcement notice. In addition, we propose to impose a heavier penalty on data users for repeated non-compliance with enforcement notice from a fine at Level 5 (\$50,000) to Level 6 (\$100,000), while the term of imprisonment would remain at two years.

I trust Members have noticed that the abovementioned major proposals mentioned have responded to the proposals made by Mr WONG Kwok-hing in the motion, and Mr James TO, Mr WONG Ting-kwong and Mr CHAN Kin-por in their respective amendments, on enhancing the protection of personal data privacy, especially in relation to direct marketing activities. We are positive about these legislative proposals. We hope that they can serve to strengthen the protection of privacy while also increase the deterrent effect as a result of the heavier penalties imposed. I believe all this will answer public aspirations in this respect.

Mr CHAN Kin-por in his amendment mentions that in adopting such measures, it is also necessary to ensure that all industries and trades can do business in Hong Kong according to the law and the room for survival of the industries concerned must not be smothered. We understand these very well. We know that the privacy of personal data is not absolute and other kinds of rights should also be taken into account. Factors like the interest of the public and society, as well as the sustainable development of information and communication technology should also be considered, and a balance should be struck. Efforts should also be made to avoid subjecting commercial activities and the use of the data of individual persons to an excessively onerous burden.

Therefore, we attach great importance to public concern for the protection of personal data. So when conducting a review of the PDPO for the purpose of introducing amendments, we have to gauge public views on privacy issues. In this connection, Deputy President, we will make arrangements for more public discussion on the legislative proposals under the PDPO. In the next two and a half months, we will listen to views from all sectors across the community, the public as well as the Legislative Council before finalizing the amendments in the relevant bill.

On this motion on "Improving personal data privacy protection", we are prepared to hear the views of Members and we will continue to take forward our work in the next few months to in the light of Members' views.

Deputy President, this is my preliminary response and I will supplement it after I have listened to the views of Members.

Thank you, Deputy President.

**MR LEE CHEUK-YAN** (in Cantonese): Deputy President, the incident relating to the Octopus has caused a furore in the whole community. Why is there a furore in the community? I believe that on the one hand, society was shocked by the practice of this company, which has arguably incurred the wrath of both God and mortals. It went so far as to allow insurance companies to carry out telemarketing and the data were used in ways that are beyond our imagination. As a result, the public feel that their personal privacy does not enjoy any protection whatsoever.

Another reason for the furore is that this company called the Octopus Cards Limited (OCL) is different from other companies. As we all know, the OCL is jointly owned by the MTR Corporation Limited (MTRCL) and other utility operators. The MTRCL is its biggest shareholder, while the Government is the biggest shareholder of the MTRCL. Given such a background, it really defies our imagination how this company can be so outrageous and despicable as to sell the personal privacy of the public. The public cannot help but ask who they can still trust. Although some people may say or think that if you believe in the Government, you are stupid and although it is difficult to trust the Government on some other matters, on matters relating to integrity and personal privacy, the

Government has to observe the law drawn up by itself, so the Government would at least show respect for the law and would not go so far as to sell the data of the public. However, to the astonishment of the public, even the Government could not resist the temptation of making this kind of money, having made over \$50 million. I think this is another example of how the trust of the public in the Government has dropped to a new low.

Deputy President, insofar as the handling of the whole incident is concerned, I think that right from the start Ms Prudence CHAN was meant to be the scapegoat. Ms Prudence CHAN was actually hired by those people and the reason for hiring her was to make her do that sort of thing. If they did not hire her and did not give her the instructions, how would she think up those actions? In fact, she only acted according to the instruction of the MTRCL or the Board of Directors of Octopus. The instructions from the Board were actually those of the MTRCL and indirectly, they were also the instructions of the Government. Although the Government can claim that it has nothing to do with the whole incident, it actually cannot say so. The Secretaries concerned are members of the MTRCL Board, so the Government cannot claim that it was not privy to this matter. Why is it not necessary for the Government to be held accountable to the public for this incident? The Government knew full well what the MTRCL was doing and the MTRCL also knew full well what Octopus was doing, or it instructed Octopus to do such things. However, it seems the Government does not have to assume any responsibility. On the one hand, the Government drew up the PDPO, and on the other, it infringed personal privacy. However, so far, we have not heard of any government official talk about assuming responsibility for this incident. The officials concerned may have shifted the responsibility to Secretary Stephen LAM by leaving it to him to do the work relating to the PDPO and they have also shifted the responsibility to the Privacy Commissioner, as though they do not have to assume any responsibility as members of the MTRCL Board. We can see that Ms Prudence CHAN was forced to resign, but Mr Lincoln LEUNG did not assume the post of Chief Executive Officer of the Octopus Holdings Limited. In fact, he is also employed by the MTRCL, so it does not matter. So far, all the members representing the Government on the MTRCL Board have not assumed any responsibility. How can they live up to the expectation of those people who once had a modicum of trust in the Government? It never occurred to them that they would be sold out by the Government even in a matter like this.

Deputy President, I think there is also a positive side to this incident relating to Octopus, that is, it has exposed the fact that our personal privacy is actually so devoid of protection. It turns out that in the Octopus Automatic Add Value Agreement (the Agreement) of Octopus, the prints in it are small like gnats and it may be necessary to use a magnifying glass to read them. You realize that you have been sold down the river only after you have signed the Agreement. This is not unique to Octopus. In fact, there are also small prints in the agreements of many organizations. I wonder how the Government would ameliorate this problem in future. Perhaps later on, the Government can talk about its improvement proposals for this. Another issue relates to bundling, to which the Secretary for Financial Services and the Treasury can perhaps respond later. When members of the public apply for credit cards, once they sign the application forms, they are deemed to have given consent to the banks to use their personal data. If they do not sign their application forms and strike out the part that allows banks to use the personal data of the cardholder, will they still be able to apply for credit cards successfully? Members of the public may not be able to do so because banks bundle these two matters together. Whether banks will issue credit cards or not does not depend on the credit of members of the public, rather, it depends on whether or not they agree to let banks sell their personal data. Now, there are many bundled services in society. If members of the public want to use a service, they have to sell their personal data to the service provider. This situation is really extremely unfair to the public.

Another positive outcome is that the Government will review the legislation in the light of this incident. We can all see how meaningless the existing legislation is. It is obvious that Octopus has committed three violations but the PCPD said that nothing could be done because the company had already ceased the irregularities. The only thing that the PCPD can do is to issue an enforcement notice, but it is already too late and meaningless to do so because the company has already ceased the irregularities. In fact, the biggest loophole in the entire law is that even if Octopus has committed the three violations, it does not have to assume any criminal liability. The Government said that it would take action to criminalize the irregularities. In other words, if you sell somebody's data without his agreement, you have to assume criminal liability. We all welcome this move of criminalization, but since the PCPD is often criticized as a "toothless tiger", I hope very much that the Secretary will consider thoroughly what this "toothless tiger" would become if the PCPD is not given the power of investigation and instead, the police have to carry out the investigation?

If the PCPD is only given a set of dentures, apparently, he would have bite but it would turn out otherwise and he can only make referrals to the police. The police already have a great deal of work to do, so do they really have the heart to follow up such matters? Why can the PCPD not be given the power of investigation or prosecution, so that he can follow the matter through? Take the Food and Environmental Hygiene Department as an example, anyone disposing of cigarette butts improperly can be fined \$1,500 by the Department. Why can the PCPD not penalize offenders? I really hope that the Government can give the PCPD real bite instead of dentures (*The buzzer sounded*) .....

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

**MR LEE CHEUK-YAN** (in Cantonese): Thank you, Deputy President.

**DR SAMSON TAM** (in Cantonese): Deputy President, this incident in which the Octopus Cards Limited (OCL) sold the data of its customers for profit has aroused great concern in society. I believe that in the 14 years since the Personal Data (Privacy) Ordinance (PDPO) came into operation in 1996, this incident has aroused the greatest public concern about the Ordinance. As Mr LEE Cheuk-yan said just now, the positive outcome of this incident is that it makes the public realize that we have to be keenly concerned about the legislation on the protection of personal privacy.

In the past several years, I have taken part in some of the investigations of the Office of the Privacy Commissioner for Personal Data (PCPD). I have all along reflected to the Government the fact that there is a shortage of manpower in the PCPD, in particular, the absence of any talent in information technology. It was only recently that an expert was hired. I ask the PCPD to hire staff in the information technology field because at present, a large proportion of information is uploaded onto the Internet and stored in computers, so this is very different from the conventional manner of information storage. On the question of whether or not the existing manpower of the PCPD can keep abreast of the time in monitoring and responding immediately, I believe this is certainly impossible without adequate resources and technology.

Concerning this motion moved by Mr WONG Kwok-hing, I fully support the spirit of Mr WONG's motion, but regarding some of the measures proposed therein, including some of the condemnations voiced by him but not found in the motion, I am not going to comment on them. He only talked about them verbally, but they are not mentioned in the motion, so it is difficult for me to lend him my support. Concerning the motion, in principle, I strongly support the measure stated in part (a) and hope that the Government can put it into practice. However, it is true that nothing much can be done under the existing legislation because, as the Privacy Commissioner pointed out, at present, the PCPD can only issue an enforcement notice and criminal sanction can be imposed only if the organization concerned fails to rectify its infringement. Therefore, even if the Government has carried out an investigation, it is not possible to impose criminal sanction immediately. For this reason, I hope Mr WONG will understand that although I hope the Government and the Privacy Commissioner will take measures to carry out more investigations and issue more enforcement notices as soon as possible, the existing resources are really stretched very thin. The most effective approach is to allocate more resources to enable other monitoring bodies to step up regulation, so that companies can carry out investigations and make declarations of their own accord.

As regards item (j) which is on fully implementing section 33 of the Ordinance as soon as possible to regulate the transfer of personal data to places outside Hong Kong, which is proposed by Mr James TO, it is actually questionable. At present, this provision has not yet come into operation. I hope the Government can explain why this provision has not come into operation despite such a long lapse. I also hope that the Secretary can explain whether or not, after the provision has come into operation, there will be any difference in the penalties relating to the transfer of data in Hong Kong and transfers to places outside Hong Kong. If this provision is really implemented, I believe it would present yet another time bomb. The key lies in the determination of whether the data involved are kept in Hong Kong or in places outside Hong Kong.

At present, a large proportion of information is stored in computers, the Internet or in cyberspace. Once this provision comes into operation, all companies will have to prove that their computers are located in Hong Kong. Insofar as other cloud applications, such as Gmail, are concerned, it is difficult for companies to decide where to store the data. For this reason, if the Government wants to implement this provision, it has to consider in advance the practicalities

of law enforcement. If it cannot resolve issues relating to law enforcement, the provision will only at best be an ambiguous one. If inconclusive arguments arise, it will never be possible to implement a satisfactory law. Therefore, I hope that when the Government examines section 33, it should pay particular attention to how section 33 can be effectively enforced given the virtualization of information technology nowadays.

As regards Mr CHAN Kin-por's proposal on giving special consideration to the direct marketing industry, I think this point is very important. Why is the direct marketing industry so important? Why does telemarketing still have value? Because many small and medium enterprises (SMEs) do not have the means to place advertisements, nor do they have the means to buy shops to do business. Many SMEs can reach out to their customers through the Internet or over the telephone and this direct approach can minimize their costs. This idea and mode of operation is also quite common in overseas countries, so I hope that after the implementation of the provision, the Government will not adopt a broad-brush approach to make this industry disappear altogether in Hong Kong because this will not be beneficial to consumers in Hong Kong. For this reason, I support Mr CHAN Kin-por's amendment, that is, attention must be paid to this point when enacting legislation in future.

Just now, I mentioned SMEs because after a law is enacted, basically, large companies definitely have the capacity and resources to hire lawyers and establish various departments to take follow-up actions. My gravest concern is the SMEs. Basically, these companies do not have the capacity to take action in response to the PDPO. Judging from the initial responses of SMEs, they are very concerned about the notification mechanism in future. In fact, notification systems can also be found in many overseas countries. When data are lost or computers are hacked or stolen, the immediate issue of notification is required. It seems that at present, the Government may not necessarily enact legislation to establish a mandatory notification mechanism. In this regard, I hope that the Government can strive to strike an appropriate balance. The establishment of a notification mechanism has merits. In the interest of keeping its corporate image, large companies will give notifications and take remedial actions immediately in the wake of an incident. Without a notification system, people would just turn a blind eye and no one would pay any attention. Therefore, I am inclined to supporting the establishment of a notification mechanism, but when putting in place such a mechanism, a broad-brush approach should not be

adopted. We should first study if large companies, listed companies or public organizations should be mandated as a start to give notifications or only companies in possession of sensitive information are required to do so, while other companies can be given a grace period, so that SMEs do not have to be concerned about how to give notifications and handle data, thus avoiding the imposition of a heavy burden on SMEs.

Finally, I believe that it is imperative that the legislation be implemented, so that better and more comprehensive protection for data is provided in Hong Kong. However, I think that it is even more important to study how best assistance can be provided to companies, to make them know how to handle data. For this reason, in the near future, apart from launching publicity on the importance of protecting data and personal privacy, the Government should also teach SMEs the approaches of implementation, for example, companies should pay attention to the protection of personal privacy in the course of design and ways of making use of third parties to help them complete third party audits at a lower cost. Without such mechanisms, may I ask what SMEs can do? Do they have to give up the entire database or refrain from doing business? I think the Government certainly does not wish to see this happen. I hope the Government will consider the needs of SMEs when introducing legislation and try to find ways to make SMEs raise their standards in the protection of personal privacy.

Deputy President, I so submit.

**MR WONG KWOK-KIN** (in Cantonese): Deputy President, in the last few months, Hong Kong society has been very concerned about personal privacy and the incident in which the Octopus Cards Limited (OCL) took the liberty to sell the personal data of members of the public for a profit of \$60 million has aroused increasingly extensive concern in society. This incident also highlighted the fact that in order to pursue inordinate profits, some companies have no qualms about infringing the rights of the general public and selling the personal data of several million members of the public for monetary gains on a continued basis. Moreover, this also reflected the inadequacies of the relevant law.

In present-day society, apart from the OCL, quite a number of chain stores of conglomerates also offer membership cards, bonus cards, stored value cards and top-up cards and use various kinds of special offers to attract more members

of the public. In fact, by doing so, they can obtain more personal data for the purpose of making market analyses and launching various kinds of promotion. However, this incident exposed the fact that the majority of companies do not comply with the requirements of the Personal Data (Privacy) Ordinance. As a result, a large amount of information is leaked and the personal privacy of ordinary members of the public is not protected in any way.

Several days ago, the Office of the Privacy Commissioner for Personal Data published the results of its investigation into the OCL incident and concluded that the OCL has contravened three requirements: First, collecting excessive personal data; second, failing to ensure that customers were explicitly informed of the fact that the data may be transferred; and third, selling the data for monetary gains without the customers' prescribed consent.

In the collection of personal data, apart from the telephone numbers and correspondence addresses of the public, the Octopus Rewards Programme also collects non-essential personal data such as their identity card numbers or passport numbers and even their dates of birth. Since these data are very sensitive information, once a marketing company obtains the data, it can easily keep tabs on every single move and the spending pattern of ordinary members of the public. In the highly commercialized society nowadays, personal data are an important asset. Therefore, the OCL could reap a handsome profit of \$57.9 million through the sale of these data in the market.

The public have expressed great resentment towards the sale of personal privacy by the OCL for monetary gains and they are even more dissatisfied with the fact that the MTR Corporation Limited (MTRCL) as the biggest shareholder has not exercised adequate supervision on its subsidiary, so much so that it is tantamount to condoning contraventions of the law and betraying public trust in the MTRCL and the OCL.

For this reason, I propose that the authorities must introduce additional clear provisions and requirements as soon as possible, so that consumers can have the right to choose whether or not to allow the collection of their personal data and ensure that limited personal data will be provided by consumers only on a voluntary basis. When collecting personal data, commercial organizations must adopt a legal and fair approach instead of using deceptive or misleading means to obtain data. At the same time, the authorities must also carry out regular and

random inspections to ensure that all commercial organizations would not collect excessive personal data from the public.

As regards the personal information collection statements in application forms, since the font size of the words in many of these declarations is unreasonably small and it is not easy to read them even with the help of a magnifying glass, coupled with the fact that incomprehensible legal terms are often used in the terms of application, the majority public, particularly people with low educational attainment or elderly people, have great difficulty in understanding the provisions. They would easily fall into business pitfalls as a result of this.

I propose that the Government enact legislation as soon as possible to regulate various kinds of application forms. Whenever the interests of consumers are at stake, the clauses must be printed in a reasonable font size and displayed at a conspicuous location. It should also be ensured that consumers who are unable to clearly read and understand the information will still be provided with the same information, so as to protect the rights of the general public.

Deputy President, this incident relating to Octopus shows that large companies and ordinary consumers are on a most unequal footing. Some large companies would resort to unscrupulous means in pursuing gains, thus failing the expectations of the public for these companies and their trust in them. Often, consumers are also denied access to the necessary information, so they are invariably in a passive and disadvantaged position. On the protection of personal data, the authorities should really stop dragging their feet. It is now time the existing legislation was reviewed to pre-empt the recurrence of similar incidents.

With these remarks, Deputy President, I support the motion.

**DR PRISCILLA LEUNG** (in Cantonese): Deputy President, the scandal relating to Octopus has aroused great indignation. I am also a user of the Octopus card, so I wonder if I am also one of the victims. I think that the number of people involved in this Octopus incident and its gravity has really exceeded that of the Lehman Brothers minibonds incident. Although the amount of money involved

is not great, it seems that everyone is affected. For this reason, I believe the problems arising from this Octopus incident can by no means be neglected.

I remember that at the early-stage meetings of the Subcommittee to Study Issues Arising from Lehman Brothers-related Minibonds and Structured Financial Products (the Lehman Subcommittee), I also raised some questions in a similar vein, namely on the transfer or conveyance of data involving personal privacy. At that time, I also cited my personal experience as an example. I often receive cold calls asking me to invest in one thing or another from people who know how much money I have in my bank accounts. Or, due to the fact that I have purchased certain cosmetic products, another company of a totally unrelated nature is able to obtain information relating to me. I think many members of the public must also have the same experience. This kind of horizontal transfer of information without the consent of the subject makes us receive disturbing direct telemarketing calls frequently and causes a great deal of resentment. I raised this issue specifically in the meetings of the Lehman Subcommittee, asking how this kind of situations could be prevented and consumers protected. After filling in the information, how actually can we protect ourselves? Often, the loopholes can be traced back to the parent company. The parent company concerned is involved in another business and it has 10 subsidiaries. The data of the parent company would be transferred to the subsidiaries and as a result, all trades and industries can get hold of our data.

I think the motion moved by Mr WONG Kwok-hing today is an excellent one. Basically, I agree with most of the points. However, in this debate relating to Octopus, in fact, I wish to raise some major points for discussion. If I understand some of the responses made by the Privacy Commissioner correctly, on the Government's comment that he has no power to institute criminal prosecution and the comments made by a Member that the Privacy Commissioner should have the power to summon witnesses, and even the suggestion that a mandatory report mechanism should be established, I believe all these suggestions must be dealt with cautiously and we cannot create another white elephant with enormous powers.

I notice in particular that the consultation paper has not included the points mentioned by me on the last occasion. On the last occasion, I said that if parents wanted to obtain information about their children, even children as young as six

years old can voice disagreement. I even approached the Privacy Commissioner purposely to have a discussion with him, saying that for instance, if parents wanted to obtain their children's medical information or academic results and if their children really disagreed, parents would have to approach school social workers. I think we cannot accept such an interpretation. We also pointed out that although it is very important to protect personal privacy and no one wants to be victimized, one should not overkill. Therefore, I do not agree with the suggestion that the Privacy Commissioner should have the power of criminal prosecution.

Just now, a Member also raised the question of whether or not a committee should be established now to investigate all companies. I think this is a double-edged sword which can be very dangerous. We have to consider clearly how much power we actually want to give the Office of the Privacy Commissioner for Personal Data (PCPD). Of all such matters, how many should be dealt with by the law rather than an individual or a Commissioner? I call on Members to think about this. Many companies may be involved ..... we are now talking about criminal rather than civil proceedings.

I am very cautious when considering such issues. Frankly speaking, Mr WONG Ting-kwong and Mr James TO have both mentioned section 33 of the Personal Data (Privacy) Ordinance and I have also passed the provision to Prof Patrick LAU for him to have a look. In fact, the drafting of section 33 is very lousy, a bad draft. If it were to be implemented right away, I would have great reservation about it. I think that many details have not been thoroughly discussed at all. This being so, there are many opportunities to abuse this provision, thus leading to interminable litigation. For this reason, although I consider it necessary to impose regulation of this nature, I call on Members to consider in greater detail what "practice" in the term "business practice" actually refers to. The original drafting of this provision is really ..... the Chinese text is even more incomprehensible. The English version fares better but the contents are really lousy. Therefore, I definitely do not agree to implementing the provision immediately.

It is fine to conduct a review but I do not agree with establishing a committee now to comprehensively ..... because the committee would not just look into Octopus but also other industries. Concerning the issue relating to Octopus, I think that if we ask people in the street, they would all consider that

there is no ground on which Octopus can exonerate itself. In fact, this involves an issue raised frequently by us, that is, expanding the scope of legal aid or general legal aid to members of the middle class. Ordinary people may think that the legal actions taken by them will be successful, but little do they realize that when it comes to the finer points of the law, it will not be possible for them to prevail. This is very deplorable as justice cannot prevail in society. Therefore, it is necessary for the legislation to lay down detailed stipulations, but section 33 should not be implemented immediately to expand the power of the PCPD. I think we should sit down to have discussions.

I think one point raised by Mr WONG Kwok-hing is very excellent, that is, his suggestion in item (f) that the consent of the clients themselves must be obtained. For this reason, I think the original motion is the best written. Concerning the amendment proposed by Mr CHAN Kin-por, I think that item (f) as it stands is actually a little ambiguous, not as good as the original motion. However, I can still lend it my support. As regards the other two amendments, sorry, I cannot support them.

Deputy President, I so submit.

**DR PAN PEY-CHYOU** (in Cantonese): Today, I wish to express some views on matters relating to personal data and privacy underscored by this Octopus incident.

I notice that the several Members speaking before me have focused on the infringement of personal privacy and the sale of personal data by the institution holding other people's personal data, which is the Octopus Cards Limited in this case. However, in the light of an incident involving me, I will look at the issues of personal privacy from another angle.

This case happened several months ago. A member of the public used his Octopus card to board a train in one of the MTR stations, but when he arrived at another station, he was questioned by a staff member of the MTR Corporation Limited (MTRCL) because the latter suspected that he had got onto the train in the same station and accused him of using the Octopus card inappropriately and entering the paid area without following the appropriate procedure. However, this member of the public knew full well that he had boarded the train in another

station, so he argued with the staff member. However, his interlocutor ignored the grounds cited by him and demanded that he give his name and personal information and pay a fine. Both parties remained in a deadlock for a long time and even the police were called in. Eventually, this member of the public demanded to have a look at the record as he had entered the paid area at the preceding station, so it would be possible to find the information on the Octopus card. However, after the staff member had looked at the information, this member of the public was not allowed to look at it. Hence, all parties wrangled over this matter for several hours. Subsequently, this member of the public went to a convenience store to look up the record of transactions on his Octopus card and found that no record of the transaction on that occasion could be found. Subsequently, we learnt, and the MTRCL also explained to us, that since he had not completed the transaction, it was not displayed.

This incident makes us realize one question. Although the MTRCL said later that the staff member concerned had made a mistake and this member of the public had indeed, as he said, boarded the train at the preceding station by following the normal procedure, and although the MTRCL also tendered its apology, it did not tell us why this member of the public was not allowed to look at his own record of entering the paid area at that time. Is this record of entering the paid area his personal information? Subsequently, we made enquiries with Mr Roderick WOO, the Privacy Commissioner then. The reply given by him was that while the personal information or relevant information recorded by the company on Octopus cards was considered personal privacy, the transaction data were not personal data. Given this reply, we were all at sea. Why?

Ordinary members of the public can go to convenience stores to buy newspapers or take public transport using their Octopus cards and the information relating to where they boarded public transport, where they got off and what consumer goods they bought is all clearly recorded, so why is such information not considered personal data? However, we are sure that the Privacy Commissioner gave us his reply based on his experience, his judgment and his understanding of the law, so I believe he certainly has justifications. Nevertheless, we think that if this kind of information is not considered personal data and is not covered by the Personal Data (Privacy) Ordinance (PDPO), the protection provided by this piece of legislation to ordinary members of the public is really too weak.

It can be said that the Octopus card is the most successful form of electronic money in the world at present. It is estimated that 95% of all the adults or people aged 16 to 65 years in Hong Kong use the Octopus card and the number of cards issued has exceeded 20 million and the daily sum of transaction is over \$100 million. That Hong Kong has such a large system of electronic money is something we can take pride in. However, we also have to understand that the operation of this kind of electronic money is possible because it is based on a large amount of transaction data and information held by the company concerned and on account of its mode of operation, it can acquire a large amount of information that enables it to identify individuals at the same time. The data in its possession may include information on the transactions, movements and activities of members of the public. For example, by acquiring information on the modes of public transport taken by a certain person, the location at which he alights, the items purchased by him, and so on, the information holder can know what the preferences, daily habits and movements of this person are, so how is this not considered personal data?

Therefore, I fully support the proposal in Mr WONG Kwok-hing's original motion on conducting a comprehensive review of the PDPO. I believe we have to broaden the definition of data. Even the information on transactions mentioned just now should also be considered personal data.

In addition, as this case shows, I think that unless there are reasonable grounds, the party in possession of the information cannot refuse but has to disclose the information to the subject to which the information pertains as soon as possible. In fact, there is a need to do so.

With these remarks, I support the original motion.

**MS EMILY LAU** (in Cantonese): Deputy President, the sale of the personal privacy of the public by Octopus for monetary gains has caused a furore, and it has also become an international scandal. At present, the SAR is participating in the Shanghai Word Expo and one of the things showing how great we are is the claim that Hong Kong is a smart city. However, despite all the spin, ultimately, it is all about the Octopus card. At that time, one may feel very cocky, but I believe no one dares say so now because many people, including the SAR Government, are all feeling ashamed. I think this incident has shown that both

the Octopus Cards Limited and the MTR Corporation Limited (MTRCL) have very serious problems in corporate governance, and both of them are really outrageous.

Therefore, Mr James TO has proposed that an independent investigation committee be appointed to thoroughly investigate the sale and handling of clients' personal data by Octopus and other sectors. Deputy President, the Privacy Commissioner is still investigating four banks and three telecommunications companies, so the situation is very serious. Many members of the Hong Kong public think that things have gone too far. Had members of the public been asked and their consent obtained in advance, using the data would have been fine and I also believe that some members of the public may agree to it. However, the overwhelming majority of the public think that although they did not give their consent, they have received many phone calls of late. As it turned out, this is because their personal data had been sold.

Concerning this amendment proposed by Mr James TO, Mr WONG Ting-kwong of the DAB said that he did not support it. However, he only commented very briefly on it, in one sentence, saying that he believed this would undermine the credibility of the Office of the Privacy Commissioner for Personal Data (PCPD). I do not know what he was talking about. Deputy President, if there is an investigation committee ..... however, the PCPD, which is regarded as a "toothless tiger", is already having a very hard time, so what is this talk about it being undermined? In fact, this proposal is intended to show how deplorable this incident is. If a loophole has to be plugged, action has to be taken. Dr Priscilla LEUNG also said that she did not support doing so. Since those people said one after another that they would not lend their support, Mr James TO can also foresee that it is unlikely his amendment would be passed. In view of this, Deputy President, at the meeting of the House Committee on Friday, he will make another shot. This notwithstanding, I hope that the OHL, the MTRCL and its directors, in particular, the accountability officials of the SAR, must all stay alert. No matter if an independent investigation committee would be established or not, they still have to come to the Legislative Council to answer questions, so I hope they will make preparations properly.

Deputy President, I strongly support one of the proposals put forward by Mr WONG Ting-kwong in his amendment, that is, the one to which Dr Priscilla

LEUNG did not agree just now, that is, to implement section 33 of the PDPO. Mr WONG said it should be implemented as soon as possible, that is, the transfer of personal data to places outside Hong Kong has to be regulated. The former Privacy Commissioner, Mr Roderick WOO, told us that when attending international conferences, he found that Hong Kong was the only place in Asia with a Privacy Commissioner and that other countries did not have any. In that case, if members of the public let those organizations transfer their data to all those places for various purposes, the consequences would be dire. Therefore, Mr WONG put down this proposal in his amendment. However, when he spoke just now, no matter how I cocked my ears, I could not hear him mention this proposal. But, he has really set it down. Deputy President, I will consider it as still being there. Mr James TO also said that it was necessary to do so, so the Democratic Party supports it and so does the DAB.

Just now, Mr James TO was very right in saying that, concerning this incident, the SAR Government had not said anything. I have referred to the excellent background brief prepared by the Secretariat again. It points out that a meeting was held on 11 September last year to discuss this matter and at that time, Mr IP Kwok-him raised the question of when section 33 would be implemented as it had been dealt with for a long time. At that time, the Privacy Commissioner told us that actually, everything was ready and he was only waiting for the decision of the Administration. However, the Administration has not made any decision. This consultation document was published on Monday but no matter how I searched, I could not find anything about section 33. Therefore, I also believe that the Secretary should give an explanation, particularly on ..... frankly speaking, nowadays, a lot of data may have already been transferred to the Mainland, so it is all the more necessary for us to know. Prof Patrick LAU is also nodding, so I hope he will support this.

Deputy President, when it comes to the Mainland, I feel all the more angry. Why? That day, I also said in the meeting of the House Committee that we had discussed this piece of legislation for over a decade but we still did not know whether it would apply to the organs of the Central Authorities in Hong Kong. At the meeting of the Panel on Constitutional Affairs on Monday, I asked Secretary Stephen LAM about this and he said that this matter was very complicated and he had to continue to study it. Maybe the study will not have been completed even when he steps down. But this would not do. We have to amend the law now and the Administration has to introduce the legislative

amendments early next year. I hope that they will include this provision in the legislative amendments at that time, or we will put it in for them. In that event, they must not say that we have no such power because it is very difficult for us to tell the public that the laws of Hong Kong do not apply to the organs of the Central Authorities and that they are above the law and beyond the reach of the law. Deputy President, some years ago, I fought a legal battle with them by invoking this law. I think that the Secretary was right in saying that several inconsequential provisions applied to the Central Authorities. However, this provision is essential because as you also know, many officials of the Liaison Office of the Central People's Government in the Hong Kong SAR liaise with all sorts of people and I have reasons to believe that they have collected a lot of personal data. Deputy President, you and I, as well as many other people, all want to ask what kind of information they have collected about us. Are there any inaccuracies in the information? Therefore, we hope the Secretary can plug this loophole.

Finally, I wish to talk about resources. I agree with Mr WONG Kwok-hing that although the Secretary told us on Monday that the funds allocated to the PCPD had increased from \$37 million in 2007 to \$48 million this year and that the increase was as much as one third, Deputy President, the PCPD is still doing its work slowly because it does not have adequate manpower. At present, the numbers of officers responsible for both enforcement and investigation in the PCPD add up to only 23 and the investigations they had to carry out per person per month — or rather, each year — increased from 98 cases in 2007 to 128 cases last year, while the time needed for each investigation increased from 60 days in 2007 to 93 days last year. However, the law provides that if they refuse to deal with it, they have to serve a notice on the complainant not later than 45 days after receiving the complaint. If legal action is to be taken in Court, an investigation has to be completed within six months. This being so, in 2009 alone, it was not possible to do so within six months in 33 cases (*The buzzer sounded*) .....

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

**MS EMILY LAU** (in Cantonese): Thank you, Deputy President.

**PROF PATRICK LAU** (in Cantonese): Deputy President, in Hong Kong, basically, every resident uses the Octopus card to take public transport, make purchases or have meals. The public only have to wipe an Octopus card to complete a transaction, so this is very convenient. Moreover, more and more businesses now accept payment by the Octopus card. However, although the Octopus card gives us convenience, the problem of privacy has also arisen. When it comes to privacy, in fact, this is a most paradoxical issue because many people hope that their privacy is known to other people, but there are also many who do not want their privacy to be known.

Recently, I had a meal with a former classmate and he told me that his wife was very happy, so I asked him what had made his wife so happy. Did the bank give her a refund on her ELNs, so that she could make investments again? He said "no". It turned out that just like me, his wife had applied for an elder Octopus card, which all of us have, on her 65th birthday. This card is really useful and the first time she used it to take the MTR, she found that the sound generated was not a "doo" sound. As we all know, a "beep" sound is generated and at the same time, a light at the turnstile will also light up. On that occasion, a staff member suddenly appeared and asked for an inspection of her Octopus card, so that he could check it with a machine. After checking, the staff Member said that there was no problem, so she could go through the turnstile. For this reason, the wife of my former classmate was very happy because in fact, she did not look like 65, did she?*(Laughter)* This proves that she is still young and energetic. Therefore, in Hong Kong, there are many well-groomed and rather old ladies who hope that staff members of the MTR would check their documents when they go through the turnstile. I am not joking. I have another story to tell Members.

Another classmate of mine — he is already in his eighties or nineties — told me that it was not the actual reason. He would invariably be checked by staff members at the turnstile, so he once asked a staff member if he did not look like 65. The staff member told him that that was not the reason, rather, his superior had required him to check all passengers going through the turnstile. From this incident, we can see the privacy problem. I believe that just now, Dr Priscilla LEUNG was right in saying that when collecting personal data, it is necessary to obtain the consent and agreement of clients and this is fairly important. It is because people have different interpretations of privacy, so we should avoid obtaining their consent by using the bundling approach.

In addition, I also agree with Mr WONG Kwok-hing that at present, the print of the clauses in many contracts is very small, so the words are very difficult to read clearly. Many people do not realize what information they have given to the other party. Therefore, the clauses in this kind of contracts must be clear and reasonable and must be expressed clearly to enable the public to read and understand clearly that they are providing this kind of information to the other party under reasonable conditions, so as to protect the interests of both parties. This is very important.

At the same time, I believe that public education must be enhanced, for example, by imparting knowledge about the protection of personal data to prevent the leakage of personal data at the individual level. In addition, if the public find any organization leaking personal data, they should also seek the assistance of the Office of the Privacy Commissioner for Personal Data.

In the wake of the Octopus incident earlier on, the Privacy Commissioner for Personal Data stated that the Octopus Cards Limited (OCL) had contravened three principles under the Personal Data (Privacy) Ordinance (PDPO) and Mr WONG Kwok-hing also talked about them clearly just now. Initially, the OCL denied this, but I learnt that its attitude has now improved. Earlier on, a number of Members have talked about their concerns and I believe the most important measure is to comprehensively review and amend the PDPO. The existing legislation has been in force for over a decade and it is criticized as being too lenient in the monitoring of personal privacy and in its punitive provisions. Therefore, it is now time it was amended to plug the loopholes. I very much welcome the greater effort made by the Government to review the legislation, so that contraventions such as the transfer of personal data to a third party without the consent of customers and the sale of data for profit can be criminalized. This will serve the positive purpose of deterring companies from misusing data. Therefore, I hope the Government can complete the legislative exercise as soon as possible to ensure that the privacy of the public is protected.

Finally, I believe that in order to prevent public or private companies from transferring data without the consent of their clients, the most important thing is to carefully define what the "transfer of information" or "monetary gains" mean. We must define their scope clearly to pre-empt grey areas and avoid undermining the ability of the legislation to monitor the use of personal data. Thank you, Deputy President.

**MR IP WAI-MING** (in Cantonese): Deputy President, just now, other Members have talked a great deal about why this incident relating to Octopus has aroused concern among the public. I think that with the development of Hong Kong society, the public will take the protection of personal data increasingly seriously. This being so, in view of the fact that many Under Secretaries of the Government are present on this occasion, I have to praise the Government because many departments have attached a lot of importance to this matter. If various departments can also attach the same degree of importance to many other matters, I believe the Government's administration would be even better.

(THE PRESIDENT resumed the Chair)

Concerning this incident relating to Octopus, Mr WONG Kwok-hing and I had a meeting with the OCL in a case conference of the Complaints Division. I believe that the public are actually indignant with the fact that initially, when various people and channels received complaints about Octopus, the OCL only prevaricated. I remember that on that day, when Mr WONG Kwok-hing and I met with representatives of the OCL (including Ms Prudence CHAN) in the Complaints Division, those people dared not face or respond to the questions raised by us directly. As Mr WONG Kwok-hing said, it was not until some front-line staff who were involved in this matter had exposed the relevant circumstances to the mass media that Octopus had no alternative but to admit, so it admitted that it had sold personal data. Subsequently, more such instances were found and some banks were also found to have engaged in such practices.

In fact, many people, including many Honourable colleagues here, would ask, apart from the instances that have come to light, if there are other channels through which personal data are sold or transferred for monetary gains. I believe many people, including the Secretary, must have all received marketing calls concerning low-interest loans or purchase of properties. Sometimes, one would receive several such calls from the morning to the time one reaches home, asking if, for instance, one has taken out medical insurance or needs to take out loans from the bank. Sometimes, one is already feeling very tired on reaching home, but a call may suddenly come, saying that there are some great property deals and asking if one needs to buy any property. I believe this kind of calls are actually a nuisance to many people. Sometimes, I really want to ask them how

they got my phone number. I believe that, just like me, many people must have also thought of asking this question. However, in reality, no one can give a clear answer. Therefore, we agree that amendments should be made to the law now to confer the relevant powers on the Privacy Commissioner for Personal Data (Privacy Commissioner).

I remember that in the case conference on that day, the former Privacy Commissioner, Mr Roderick WOO, described himself as a "toothless tiger". It bears testimony to why the Office of the Privacy Commissioner for Personal Data (PCPD), in releasing its report this Monday, could only express its condemnation at the most but lacked the ability to impose any sanction. Now, although the Government's response seems to suggest that prosecution will be instituted, such a power may not necessarily be conferred on the Privacy Commissioner. In fact, in the future, will the prosecutions instituted by the Government still be selective? Is it going to formally confer the power on the Privacy Commissioner? I hope the Government will consider this area further. We think that the Government should actually enhance such power of the Privacy Commissioner, so that our privacy can be better protected.

Meanwhile, although the Privacy Commissioner released the investigation report concerning Octopus the day before yesterday, as far as we know, it seems the investigation report of the Privacy Commissioner had been completed a long time ago. We know that in fact, the Privacy Commissioner had to give the MTRCL 28 days to respond to the investigation after completing the investigation report. We doubt if such a long time for giving responses is necessary. In view of this, we hope that when the Government conducts a review in this regard, this matter would be made one of the focuses of review. Since the Privacy Commissioner has already come up with the investigation results, the sooner they are published, the greater the protection for the public's right to know and their privacy. Therefore, we support the Government introducing legislative amendments to criminalize contraventions.

Lastly, I hope that the Government would consider one point, that is, recently, many members of the public, including us, have all received marketing calls without displaying the caller identity, so there is no knowing who the caller is. For this reason, we think that when dealing with this issue, the Government should beef up the Privacy Commissioner's power of investigation, so that the

public can be protected from these marketing calls not displaying caller identity and know who the callers are, as well as how they got hold of the information on the public. I hope the Government will enhance the protection for us in this regard.

President, I so submit.

**MR RONNY TONG** (in Cantonese): President, one of the many demands made by Mr WONG Kwok-hing is to have the public sector operate the Octopus smart card. President, I have great reservation about this proposal. It is not simply because I have total confidence that we should uphold the so-called "big market, small government" principle and that unless the cause of social justice warrants intervention by the Government, as in the case of the legislation on a minimum wage or fair competition, the Government should not be involved in civil dealings or commercial operation. President, I believe if we say that some companies have to become public organizations simply because of their poor operation, we will become a communist state very quickly, all companies will become state enterprises and there will not be any more commercial companies.

However, this is not the biggest problem. The biggest problem is that many people, including Honourable colleagues, do not quite understand that there is actually a very large black hole in law in our protection of personal privacy. The problem is not entirely caused by Octopus, but by the fact that there are major shortcomings in our legislation. To put it more frankly, what we now call the Personal Data (Privacy) Ordinance (PDPO) is nothing more than a virtual system and a lie to deceive Hong Kong people into thinking complacently that their rights are protected.

President, why do I say so? Members only have to look at the PDPO, including section 34. In fact, it is stated clearly therein that the first time the data user provides data to direct marketing companies, he shall inform the data subject, who can request the data user to cease to use those data for direct marketing purposes. May I ask all the people here if they have ever received such notifications? President, the answer is in the negative.

In the past six years, there were 12 complaints against Octopus for illegally using data in promotions. The Privacy Commissioner for Personal Data (Privacy Commissioner) carried out investigations on 12 occasions but not a single enforcement notice was issued. The Octopus Cards Limited just continued in its ways. President, if you go to the Hongkong and Shanghai Banking Corporation Limited (HSBC) to apply for a credit card, you will receive a so-called notice about the PDPO and one of the clauses reads like this: If the bank deems it necessary, the data about you will be transferred to other users and you have no right to opt out. President, if you tell the HSBC that you want to have the right to opt out, it would tell you just not to use its credit cards. However, no matter if you approach the Standard Charter Bank or the Citibank, the same would happen. All banks would do the same. President, why is there this situation? As it turns out, in our law, the most paradoxical thing is that a section therein — section 50 — says that if someone is contravening a requirement under the PDPO, the Privacy Commissioner has to carry out an investigation. If an investigation discovers any contravention, the Privacy Commissioner cannot simply enforce the law. If there is any contravention, the Privacy Commissioner has to confirm that the contravention is ongoing and that the contravention is likely to continue or be repeated. Still, the law cannot be enforced. Only a so-called enforcement notice can be issued. It is only when the enforcement notice is not complied with that the Privacy Commissioner has a chance to enforce the law.

President, this is very simple. Let me give an example. Today, I sell the data relating to the President to a direct marketing company and you lodge a complaint, so the Privacy Commissioner approaches me to ask me why I did so. Then, he said, "You have to behave yourself, so do not do this again.". So, just like what Octopus said a few days ago, I say, "All right, I will not do this again.". So the Privacy Commissioner leaves. On the next day, I again sell the data relating to the Secretary to a marketing company and the Privacy Commissioner comes again. He says, "Did you not say you would not do this again? So, why have you done it again? This time, I have to issue an enforcement notice to you.". In spite of this, nothing has happened to me. On yet another day, I sell the data relating to Mr TSE to a direct marketing company and it is only at this point that the Privacy Commissioner will come to me and say that this time, he will enforce the law. However, President, the point is that I have sold the data relating to you and the Secretary and this is an infringement of the rights of you

both, so why are there no consequences? Why are there consequences only after I have sold the data on Mr TSE? President, this is not the crux of the problem either because the enforcement notice is only issued to me. If Mr CHAN does the same thing tomorrow, the example given by me will be repeated. Mr CHAN sells the data on you and the Privacy Commissioner comes, saying, "Mr CHAN, be good and do not this again.". He then says that he will be good and will not do it again. The next day, the same happens after he has sold the data relating to the Secretary. This goes on and on and all the companies in Hong Kong may go through this process. Therefore, President, frankly speaking, this piece of legislation is worthless, utterly useless in protecting our privacy. It really is intended only to deceive people, that is, to tell us that there is this law, but our rights are not protected in any way.

All right, the Government said on Monday that it wanted to consult the public and improve this piece of legislation because the incident relating to Octopus had aroused great public indignation, but how will it be done? The Government still insists that this virtual system has to be retained and that the enforcement notice is necessary. President, the problems will exist forever. For example, concerning the problem of small prints, a judgment was given in the case relating to the Wing Lung Bank and the Appeal Board also said that the print could not be too small. If you look at the font size here, you will find that the size of the Chinese characters is 2 mm and the size of the English letters is 1 mm. Moreover, the text is not divided into paragraphs. My assistant enlarged it to this size with the copier, but I still cannot read the words because the text is not divided into paragraphs. Among all these clauses, only one sentence says that we can write to request that one's data not be distributed to other marketing companies. This text comes from a scheme called "MoneyBack" being run by Watson's. President, if you look at these clauses, it was already ruled in the case relating to the Wing Lung Bank that this is not allowed, so why do such instances still happen? In fact, such instances can be found in each company, so what protection has this piece of legislation afforded us? President, I hope that Honourable colleagues will understand the importance of the law and voice their opposition in the consultation on this occasion.

**MR FREDERICK FUNG** (in Cantonese): President, after the Law Reform Commission had published a report entitled Report on Reform of the Law Relating to the Protection of Personal Data in 1994 and after more than two years

of prescribed legislative procedure and preparation, the Personal Data (Privacy) Ordinance (PDPO) eventually came into formal operation in 1996, whereas the Privacy Commissioner for Personal Data (the Privacy Commissioner) appointed by the Chief Executive and the Office of the Privacy Commissioner for Personal Data (PCPD) established at the same time play the role of gate-keepers by overseeing and monitoring the implementation of the PDPO and promoting compliance with the requirements of the PDPO by the public and companies.

President, perhaps the public think that with the implementation of the PDPO, we can rest assured that, with the Privacy Commissioner to keep the gate for us, the personal data of the public will not be disclosed and misused brazenly anymore. Unfortunately, the PDPO is lenient and feeble, so it is of course no match to the ever-evolving information technology, not to mention counterbalancing business people and companies preoccupied only with pursuing profits. They only regard the personal data of the public as cash cows, so they engage in excessive milking, abuse the data obtained and get whatever they want in order to maximize profits.

President, ever since Yahoo! Hong Kong was accused of disclosing the e-mail address and information of the Mainland reporter, SHI Tao, to Mainland organs, the public could already sense some danger. Subsequently, there was a spate of incidents in which the information about the public on the Internet, including the confidential information held by the then Independent Police Complaints Council, was leaked on the Internet. The information of over 20 000 members of the public who had lodged complaints against the police could be browsed freely on the Internet. Subsequently, a number of incidents involving the leakage of confidential information on the Internet or the loss of USB memory sticks happened again. Not only were private companies involved; so were public organizations and even government departments. All these incidents reflected the laxity of companies and even the Government in handling personal data and the absence of a mechanism to prevent the leakage of information effectively.

President, the said leakage of confidential information can be controlled and ameliorated with the formulation of internal guidelines and codes of practice by organizations and departments. However, with regard to those avaricious private companies, the authorities are obviously at their wits' end. In July this year, the mass media were the first to find out that the Octopus Cards

Limited (OCL) had sold the privacy of the public for monetary gains. This incident then snowballed and more and more scandals were uncovered. The situation even evolved into a privacy disaster. Initially, the Chief Executive Officer (CEO) of the OCL firmly denied such sale. It was only when some former employees debunked the claim and public opinion exerted some pressure that the details of the incident were disclosed bit by bit, in an attempt to cover up the truth of the matter and muddle through.

Finally, as the saying goes, the cat must come out of the bag. In a hearing conducted by the Office of the Privacy Commissioner for Personal Data (PCPD), the CEO of the OCL finally admitted that over the past four and a half years, the data of 2 million customers had been given to six companies. Not only were the customers of the Octopus Rewards Programme affected, even users of personalized Octopus cards were also victimized. The extensive scope of the incident and the fallout are indeed beyond imagination.

The original intention of the Octopus Rewards Programme is to attract customers to patronize businesses and offer concessions based on bonus points, but it turned out that it had become a tool for companies to make profits by selling privacy. With design and premeditation, the OCL collected such important customer information as identity card number, date of birth, contact telephone number and address through the Octopus Rewards Programme, but this is far more than what is necessary. The privacy information obtained is totally unrelated to the reward programme and was resold for a monetary gain of \$44 million (the latest disclosure, made yesterday, was \$57.9 million) without the consent of the people concerned. Not only did this move seriously infringe on personal privacy and abuse public trust in this company, it also deviated greatly from the original intention and expectation of the public who joined the Octopus Rewards Programme. Security issues may also be involved in this matter. If some criminals manage to obtain a large amount of the personal data of the public, the consequences will really be too dire to contemplate.

President, the day before, the Privacy Commissioner released an investigation report, which pointed out that the OCL had transferred information relating to customers. It is decided that the company contravened three principles under the PDPO, including the collection of excessive personal data by the OCL from its members and the failure to explicitly inform customers of how their data might be transferred and who could use their data. The report also revealed that the OCL had allowed the CIGNA Worldwide Life Insurance

Company Limited to market insurance policies in the name of the OCL, so this is tantamount to a deception of customers. However, even though the legislation was contravened, what then? Even though the provisions are violated, what then? Apart from taking the corresponding remedial and improvement measures, the OCL was not penalized in any way, so this reflects clearly the fact that the existing PDPO is too lenient, the monitoring of personal data is inadequate and there is a lack of deterrent effect, so this has fallen far short of public expectation.

President, on this incident relating to Octopus, the Hong Kong Association for Democracy and People's Livelihood (ADPL) believes that the OCL should return the whole sum of \$44 million gained through the sale of personal data to all Octopus customers, instead of being generous at other people's expense, thinking that it can settle the matter by donating the money to charity. In view of the extremely serious problem of private organizations abusing the personal data of the public, the ADPL believes that the authorities should study the enactment of legislation to introduce criminal liability, require companies to protect the privacy of the public in earnest and specify the sale of personal data without express authorization by customers as a criminal offence. Reference can also be made to the Sex Discrimination Ordinance and Disability Discrimination Ordinance by proposing that the PCPD can provide legal assistance to the public and if the personal privacy of the public is infringed, the public can make claims in Court through the PCPD. In addition, the authorities should also examine conferring greater power of investigation and prosecution on the Privacy Commissioner.

With these remarks, President, I support the original motion and the amendments.

**MR WONG YUK-MAN** (in Cantonese): President, the Octopus Holdings Limited (OHL) is shameless and the Office of the Privacy Commissioner for Personal Data (PCPD) is incompetent. I strongly condemn the Hong Kong Government in harbouring wicked companies.

President, the right and wrong in this incident of the OHL selling the personal privacy of the public are clear-cut and this is one of the largest corporate scandals since the inception of Hong Kong. The more the details of this incident are revealed, the viler this incident is and the more one paints this incident, the

darker it becomes. Yesterday, the management of the OHL even "bit back" at the Office of the Privacy Commissioner for Personal Data (PCPD) in a press conference, saying that the PCPD had not taken any further action after the investigations into 12 cases of complaints in the past six years against abuse of personal data by the company, nor had the PCPD decided that the OHL had violated the Personal Data (Privacy) Ordinance (PDPO), so apparently, it disapproves of the high-profile approach taken by the PCPD on this occasion. The OHL is really a typical corporate thug. The OHL is arrogant and domineering and it has no respect for the law. After it was exposed to have engaged in the malpractice of selling personal privacy, it still does not consider this a scandal. I believe the Legislative Council must pursue this matter to the bitter end and invoke the Legislative Council (Powers and Privileges) Ordinance to launch an independent investigation.

In a press conference held by the OHL yesterday, when the non-executive Chairman of the Board of Directors, Mr Lincoln LEONG, and newly appointed Chief Executive Officer, Mr David TANG, were asked if the group would vow never to sell personal privacy again, they only said that the relevant programmes had been terminated. It was only on being questioned repeatedly that Mr Lincoln LEONG promised that the company would not introduce any plan to sell personal privacy. Obviously, the OHL is totally unrepentant over this incident, so either the Privacy Commissioner or the Legislative Council must follow it up solemnly.

Yesterday, Mr Lincoln LEONG announced in the press conference that he would step down at the end of this year. When asked by reporters if he was stepping down because he had to assume responsibility, he prevaricated, saying that having been the Chairman for nine years, it was only normal to step down. Mr Lincoln LEONG assumed chairmanship in 2001 and the OHL began to sell customers' data in 2002. Even if Mr Lincoln LEONG was not the perpetrator of the whole act, being a policymaker at the top, it is only natural for him to assume ultimate responsibility. In contrast, Ms Prudence CHAN joined the OHL only in 2006, so the responsibility that Mr Lincoln LEONG should assume is obviously much greater. However, although he has made a serious mistake, not only has he not been genuinely held accountable, he can still stay on as the MTR Corporation Finance and Business Development Director, that is, the second-in-charge of the MTRCL, making an annual salary of \$7 million. Do you know this, Mr WONG Kwok-hing? What responsibility has he assumed?

Is there any result? The result is that he stays on in the MTRCL and receives an annual salary of \$7 million.

I also strongly condemn the PCPD for letting the OHL off the hook time and again over the years. The law was never reviewed in a timely manner throughout all those years despite its obvious problems and no proposal to amend the law was ever introduced into the Legislative Council, so in the end, this oddity of a contravention of the law not amounting to a criminal offence has been created.

The Octopus card is widely used in Hong Kong and is highly trusted. An operator of electronic money approved by the Government was found to be involved in the sale of personal privacy, so this is also a scandal of the Hong Kong Government. The Hong Kong Government is an indirect major shareholder of the OHL. The Hong Kong Government controls nearly 77% of the stake in the MTRCL and wholly owns the Kowloon-Canton Railway Corporation. After the merger of the two railway corporations, it controls 80% of the stake in the OHL, so the Secretary for Transport and Housing, Ms Eva CHEUNG, the Secretary for Financial Services and the Treasury, Prof K C CHAN and the Commissioner for Transport, Mr Joseph LAI, are all members of the Board of the MTRCL. The OHL's actions were a serious violation of public interests and social responsibility, so the three officials who have not exercised adequate supervision should also be condemned.

The selection committee responsible for selecting the successor to Mr Roderick WOO said that 121 applications had been received. Among all the outstanding applicants, it turned out that a privacy fugitive was eventually hired. Mr Allan CHIANG was once the Postmaster General but during his tenure, an incident of installing pinhole cameras to monitor front-line staff members happened and this was a serious violation of privacy rights. When asked about this matter, the response of this guy was classic. He said, "Having gone through this matter, I have become wiser. The most important thing is that I have already made rectifications and this matter aroused my interest in the subject of privacy protection." Wow! So, does one mean that on account of the installation of pinhole cameras when he was serving as the Postmaster General, which gave him a record of infringing on privacy, he was appointed as the Privacy Commissioner? This is absurdity of the first order! What sort of government is the Hong Kong Government? This is really baffling. Getting

wise after going through something should apply to us, should it not? In that case, they should all be sacked, should they not?

Commissioner CHIANG has set a bad example and he could not defend the privacy right of the public, so he should resign. Of course, as the direct superior of the Privacy Commissioner, Allan CHIANG, you, buddy — Secretary for Constitutional and Mainland Affairs, Stephen LAM — should also apologize to the public for not knowing this person well. *(There was laughter from among Members)*

Concerning the issue of making claims, I think that social justice must be made to prevail. The OHL would rather donate the money to the Community Chest than offer compensation to the public. This is a lowly act of affecting to be gracious after gaining benefits and pretending to be charitable. The OHL refuses to assume responsibility for compensating the public and even plans to refer this case involving claims for tens of dollars to the District Court. Obviously, this is designed to intimidate the public, so that they dare not continue to pursue their claims. If this incident is escalated to the level of the District Court, the claimants will have to hire lawyers and pay lawyers' fees. The Secretary said that legal aid is available, but this is already troublesome enough, is it not? The OHL violated the three principles on the protection of personal data and the evidence is solid. The OHL cannot cite the ground of not being charged with a criminal offence to evade the civil claims made by members of the public.

President, I believe that the Legislative Council should investigate this incidence in accordance with the Legislative Council (Powers and Privileges) Ordinance. Some people hold that there are already several committees of this kind, so we should not start more fires. Why should we set this matter aside? This is practically to do as one wishes, is this not? Regarding some Members who backed down at the last minute, I express my regret.

With these remarks, President, I support the motion moved by Mr WONG Kwok-hing and the amendments proposed by Mr James TO, Mr WONG Ting-kwong and Mr CHAN Kin-por respectively. Thank you, President.

**MR LEUNG YIU-CHUNG** (in Cantonese): President, I think the Members seated here and ordinary members of the public often receive calls that keep

selling things like insurance policies or the so-called special products of banks and people are persuaded to buy them. These issues relating to personal data did not crop up only today, rather, it is a problem that has developed for months and years, since many years ago. However, it is a shame that the Government has turned a blind eye to this problem and did not show much concern or take active steps to deal with it. It was not until the Octopus incident had happened that the Privacy Commissioner told us that he had no power, so on, so forth, describing himself as just a "toothless tiger", that it was not true that he did not want to deal with the incident but his power was limited. This also makes us see that there are many loopholes in the law, so it is now necessary to forge ahead and deal with those problems.

President, today, we can only say that this is at any rate better than giving up and doing nothing. In the face of the problems that have arisen, going about dealing with them is in any event better than doing nothing and today, this is the only thing we can say. However, the question is whether or not it will do just to say these things and the problems can be solved in this way? I believe the answer is in the negative. Just now, many Honourable colleagues have kept making accusations, saying that organizations like the Octopus Holdings Limited (OHL) or banks have sold our personal data, and as a result, we are subjected to constant nuisance. Apart from creating a very serious problem, this also exposed the fact that the Government, in the face of problems, only cares about those that society focuses on, and gives no attention whatsoever to those that the general public are not concerned about.

Today, what are the problems arising from the Personal Data (Privacy) Ordinance? They relate to the OHL or banks, but is the Government concerned about the employees behind this incident? What should they do? Has the Government said a word for them or sought redress for them, or even thought about their future? It can be said that the report card in this regard is completely blank.

Today, when I came back to the Legislative Council, I met a group of workers at the entrance. They told us in sobs that today, many of the direct marketing centres of banks had ceased operation but they had worked in this industry for over a decade, so what can they do? They are the breadwinners of their families but they are simply neglected.

President, in the past, when we dealt with issues relating to environmental protection, for example, when dealing with workers in the ivory trade, since ivory is regulated and protected by the laws on environmental protection, what did the Government do at that time? The authorities considered how that group of workers could be assisted in switching to other trades and how their problems could be solved. However, what about this group of workers now? The number of people working in this trade is really considerable but at present, as in dealing with other problems, the Government is not paying any attention if nobody is making any noise, and if it is not something that the general public care about, it also ignores it. I think it really would not do to adopt such an approach of looking without seeing and hearing without listening all the time. We are now talking about the problem of unemployment and it can be said that it was caused by the Government alone. Why do I say that it was caused by the Government? Because the Government has all along tolerated the industry. It tolerated those kinds of jobs that do not live up to the requirements and the expectations of the general public. It has all along paid no attention and given them a free rein, thus causing those industries to expand and hire workers continually, so that the numbers of workers in these industries keep growing. In that case, what should be done now?

The motion today has not shown much concern for this group of workers, so today, they had to take a day off to talk to us in tears, hoping that we will care about this problem. For this reason, today, originally, I did not intend to speak but just now, I have heard many Honourable colleagues talk about various matters but hardly did anyone raise this problem. This prompted me to rise and speak, in the hope that the Government can face squarely the problem of how to help this group of workers. They are facing the problem of unemployment and they have their families to take care of, so what are they supposed to do?

Today, an elderly lady in her fifties said she was totally at a loss and did not know what kind of jobs she could look for. Will the Government give them a helping hand? How will it help them? In the past, the Government formulated some policies to help workers switch to other trades, so is it going to formulate some policies to help this group of workers switch to other trades? I long to know about this and hope that later on, the authorities can give us an answer. We must respect personal privacy and I strongly agree with the enactment of legislation to regulate and protect the rights to personal privacy and the rights relating to personal data. This is essential and we should no longer let

people misuse our data in such a way or make gains through the sale and purchase of such data without our consent. It is really necessary to impose regulation in this area. However, the development of this kind of jobs and this industry has gone on for many years, so how should this group of wage earners be dealt with? Should we enact legislation to impose regulation and think that is the end of the matter, without caring about this group of workers? I hope you can give a response to this question later.

President, I so submit.

**MR IP KWOK-HIM** (in Cantonese): President, when talking about the Octopus incident before retirement, Mr Roderick WOO, the former Privacy Commissioner for Personal Data (the Privacy Commissioner), said to this effect, "It never occurred to me, even in my dreams, that someone would be sent to jail for any contravention of the legislation.". This is really a remark with many implications. Mr Roderick WOO's remark has been proven to be entirely right because in the final report on the investigations into the Octopus incident published the day before yesterday, the Octopus Rewards Limited (ORL) was found to have violated three privacy principles but there was no need to impose sanction on it. The ORL sold the personal data of nearly 2 million members of the public for profit. Despite the gravity of the situation, it could get away unscathed. This shows that there are many loopholes in the existing legislation and that it is too lax. We really hope that the SAR Government will stop dreaming and complete the amendment to the Personal Data (Privacy) Ordinance (PDPO) as soon as possible, so as to enhance the protection for the personal data of the public.

The day before yesterday, the Government published the review report on the PDPO and proposed amendment proposals in the line of "four strategies and 37 measures". One of the four strategies targets direct marketing. In fact, at present, it can be said that direct marketing activities have become overwhelming. It is diverse and all-encompassing, ranging from insurance plans, financial products, long-distance telephone service, Internet services to slimming programmes. A female colleague in my office has received calls from a slimming company many times and the salesperson said, "Good day, Miss WONG. I am calling on behalf of so-and-so slimming company. Congratulations! You have been chosen by our company as a 'select customer'

and you can be the spokesperson of our company.*(Laughter)* Miss, may I know if you weigh 110 pounds or not?". In fact, these direct marketing companies have obviously got hold of some of Miss WONG's personal data. But Miss WONG has never given her personal data to these companies, nor does she know from what source they obtained her data. In the commercial sector, in fact, it is very common to transfer or sell customers' personal data. Although people in the trade give this practice the fine name of "customer resource sharing", it is actually a kind of business transaction.

In fact, the transfer or sale of customer personal data is neutral in nature and cannot be described as good or bad. The crux of the problem lies in whether or not the authorization of the persons concerned has been obtained. There is nothing wrong if these companies transferring or selling their customers' personal data can tell their customers the aim and purpose of the data collection clearly and definitely and the customers give their consent on a voluntary basis. This is called "one party will give and the other party will take", so to speak. This is the commercial principle and there is nothing wrong with it. The crux of the present problem is that the personal data of the majority of the customers are transferred or sold without customers having a clear idea or even being aware.

The DAB supports the proposal to make unauthorized disclosure of personal data for profit or malicious purposes a criminal offence. As to what should be considered a "malicious purpose", in order to avoid subjective interpretations which may easily make the public break the law inadvertently and ultimately affect the exchange of information and freedom of speech, the DAB suggests that reference can be made to the practice in the United Kingdom by introducing clear grounds of defence. We believe that this can strike a balance between appropriate protection for the privacy of individuals and public interest.

The DAB does not support the proposal on granting the power of criminal investigation and prosecution to the Privacy Commissioner. Although at present, some statutory bodies such as the Vocational Training Council and the Securities and Futures Commission have been granted these powers and they can institute prosecutions against summary offences, such prosecution power is to be exercised by the Council or Commission as a whole. To grant such prosecution power to the Privacy Commissioner alone will really arouse public concern about the Privacy Commissioner having excessive powers.

Moreover, the DAB also supports the proposal of conferring on the Privacy Commissioner the power to provide relevant legal assistance to a person who intends to initiate proceedings, so that the aggrieved party can have more resources when evaluating the chance of success in making a civil claim. However, regarding whether or not to grant the Privacy Commissioner the power to award compensation to an aggrieved data subject, the DAB agrees with the concern of the Law Reform Commission, that is, the Privacy Commissioner's role should be limited to determining whether or not there had been a breach of the principles on data protection and he should not have the power to determine the compensation. Such power should be left to the Court.

The DAB has some reservation about Mr James TO's proposal to establish an independent investigation committee. The reason is that an investigation should be carried out in accordance with the existing mechanism. In fact, after the Privacy Commissioner has published his investigation report, I know that two more organizations are still carrying out relevant investigations. Therefore, at present, there is no urgency in setting up an investigation committee. We can wait for the relevant organizations to complete all their investigations and publish their results before we make a decision, after analysing and studying the results. The DAB think this is more proper and appropriate. Therefore, the DAB does not support Mr James TO's amendment. Regarding the original motion and the amendments proposed by Mr WONG Ting-kwong and Mr CHAN Kin-por respectively, the DAB will give its support. Thank you, President.

**MR PAUL CHAN** (in Cantonese): President, in the past, what we heard the most about was that a certain government department or public organization had handled the personal data of the public improperly and as a result, the personal data of members of the public were made public. It was after the incident relating to the Octopus Rewards Programme (the Octopus incident) had come to light that the public realized to their surprise that what they know about incidents of personal data leakage was only the tip of the iceberg. Having looked at what is revealed by the report relating to the Octopus incident published by the Office of the Privacy Commissioner for Personal Data (PCPD) the day before yesterday and the interim report submitted by the independent auditor of Hong Kong Monetary Authority (the interim report), we realize in surprise that not only is the matter very serious, it is also very mind-boggling. In view of this, I wish to raise some concerns and proposals.

First, the Octopus Holdings Limited (OHL) did not treasure properly this brand name called Octopus that should be a matter of pride and for the sake of touching up its business performance momentarily, it disclosed consumers' personal data to third parties. This point can be confirmed and proven by the Privacy Commissioner's report and the relevant hearings. When the former Chief Executive Officer of Octopus, Ms Prudence CHAN, gave her evidence, she said that in the four and a half years from January 2006 to June this year, the profits obtained through selling customer personal data accounted for almost one third of the total revenue of the Octopus Rewards Limited and its predecessor, the Octopus Connect Limited. The OHL also confirmed yesterday that the relevant revenue amounted to \$57.9 million.

Did the MTRCL, as one of the major shareholders of the OHL, and the government representatives on the Board of the MTRCL fulfill their duty as Directors? According to the report of the Privacy Commissioner and the interim report, the Octopus Card Limited management informed its Board in 2002 of the development of business initiatives concerning the use of Octopus cardholders' personal data. There is also evidence as shown in the recent Review and Budget of the Octopus Card Limited that the Board of Directors was fully aware of the source of income from this so-called "data business" being derived from commission arising from the provision of consumer database to third parties for direct selling and marketing. If the Board of the MTRCL and representatives from the Government failed to raise queries and reminders, in fact, they have to bear the responsibility.

President, the second point is that according to the report of the Privacy Commissioner, among the consumer data disclosed to third parties, apart from such data as Hong Kong Identity Card number and month and year of birth, which should not be collected and used, there were also consumer bank codes and even partial credit card numbers. This does not just amount to what is referred to as excessive in the report; this is downright outrageous. The Office of the Privacy Commissioner for Personal Data (PCPD) should issue clear guidelines to prohibit both commercial companies and other organizations from collecting excessive customer information and step up law enforcement.

Third, the Privacy Commissioner's report points out that Octopus has violated three principles on data protection. However, it considers that an

enforcement notice may not be served as continued or repeated contraventions by Octopus are unlikely. However, the interim report told us that in 2004 and 2007, the PCPD received complaints against Octopus for disclosing consumers' personal data to third parties and about the protection of consumers' personal data but ultimately the PCPD did not take any action. Yesterday, the OHL responded to the Privacy Commissioner's report, saying the PCPD had dealt with 12 complaints in the past six years but it had never pointed out that the OHL had violated the principles on the protection of data. Is the PCPD really a toothless tiger, or is it using the "toothless tiger" as a smoke screen? Has the PCPD actually been negligent of its duties and failed to live up to public expectations?

President, the fourth point is that the Privacy Commissioner's report points out that Octopus allowed one of the companies to present themselves as Octopus' staff to promote insurance services. Such behaviour is effectively deception of customers. I believe it is necessary for the law-enforcement agencies to follow up this matter, and it cannot be just set aside without any follow-up.

Fifth, last year, the Government released a consultation paper on the review of the Personal Data (Privacy) Ordinance but after almost a year, the Octopus incident happened. After the release of the two aforesaid reports, the Government also published another consultation report on legislative proposals. I call on the Government to introduce the relevant bill as soon as possible after the completion of the consultation exercise, so that Members can complete the scrutiny and pass the relevant legislation before the end of their tenure. Otherwise, instances of not being able to impose sanctions on contraventions may recur.

Sixth, I hope that a balance can be struck between the protection of personal data and privacy and employment in the direct marketing industry. One cannot stifle the survival of the direct marketing industry all at once as there are commercial and social needs for its existence, so we cannot trim the toes to suit the shoes. Besides, this industry offers a certain number of employment opportunities and there is some market demand for it, so we cannot enact legislation in a broad-brush approach for the sake of convenience and stymie this industry. I think we should make reference to overseas experience more often and enable more discussions in society.

President, at this stage, I do not agree with the establishment of an independent committee to carry out investigations. At present, the report of the Privacy Commissioner and the investigation of the independent auditor have already enabled us to understand why this incident happened, where the problems lie and the possible directions ahead. Moreover, judging from the response of the OHL, this matter is still evolving and the final report of the independent audit commissioned by the Hong Kong Monetary Authority has not yet been completed. If the Legislative Council establishes an independent investigation committee, I am afraid that given our present workload, it may not be possible to complete the investigation in the remainder of our tenure. As a result, this matter may have to be concluded in a sloppy way. For this reason, President, at present, we should focus our energy on looking farther ahead and identifying solutions and improvement proposals.

President, I so submit.

**MR VINCENT FANG** (in Cantonese): President, news stories attracting the most attention recently are all related to the Internet world. One of them is the leakage of personal data by Internet search engine, Google; another is the war in the e-book market started by iPad of Apple.

Of course, the leakage of personal data by Google is due to a programming problem, while the issue under discussion today is different, which is about Octopus, Autotoll, the finance and insurance sector and the electronic communications sector breaching the Personal Data (Privacy) Ordinance (PDPO) by engaging in the transfer or sale of personal data. But in fact, following the rapid development of the virtual network, plenty of information is managed by computer programs and in the process, problems such as negligence, program loopholes and challenges from hackers are inevitable, thus resulting in leakage of data. In this connection, the Liberal Party very much supports the spirit of this motion. It is indeed imperative to step up protection of personal data privacy by all means. Having said that, consumers must also exercise caution when providing their personal data to the virtual network.

It is a very common business practice worldwide to use clients' personal data for marketing purposes. However, the biggest problem in this incident is that Octopus has used the personal data provided by its clients to make profits

without its clients' knowledge. This is absolutely unacceptable. More seriously is that this incident involving Octopus is not an isolated incident, as it has been revealed that banks, telecommunications service providers and stored value cards for tunnels have adopted similar practices to sell the data of their clients. It is indeed necessary to review the adequacy of the existing measures for personal privacy protection and the need to regulate by legislation the ways adopted by corporations to handle the personal data collected by them.

If a business organization can state clearly that the personal data of its clients will be used only with the consent of the clients, I think the consumers may not necessarily resist it. But if this is done furtively by way of a contract of "bundled consent" which, in effect, forces the clients to accept the service and at the same time authorize the operator to transfer their personal data for marketing or other purposes, that would certainly be unacceptable. It is all the more unreasonable to say that a client who does not state his objection is taken to have given his acceptance. In that case, consumers will certainly think that they have been sold down the river.

To address these loopholes, the Constitutional and Mainland Affairs Bureau has just published a consultation document proposing that when collecting personal data, the business operator must specifically spell out the intended marketing activities or the types of institutions to whom the data is transferred, as well as the kinds of data to be transferred. The Liberal Party supports this. But more importantly, it is necessary to put in place a simple, user-friendly "opt-in" or "opt-out" mechanism requiring business organizations to include a column on the form for clients to opt in or opt out.

If a business organization will sell the personal data collected to make profits, the Liberal Party considers it necessary for this to be handled more stringently, and the written consent of the data subject must be explicitly obtained. As for penalty, I believe the public have a strong impression that the PDPO and even the Office of the Privacy Commissioner for Personal Data (PCPD) are "toothless tigers". This is why the Liberal Party agrees that penalties should be made heavier to produce a stronger deterrence, such that companies with such intention will be deterred from acting in breach of the law and instead, they will seriously take steps to protect personal privacy.

However, with regard to the option of causing the public sector to operate the Octopus smart card proposed by Mr WONG Kwok-hing, the Liberal Party thinks that it must be handled carefully. Apart from the complications involved in turning a private sector company into a public sector corporation, it is also because this may not be the right cure to the problem, given that there have also been cases of accidental data leakage in the public sector. To ensure proper protection of the personal data of the public, the most practical way is to plug the loopholes in law, impose heavy penalties on law-breakers, and step up publicity and education to enhance the enterprises' awareness of personal privacy protection.

As for Mr James TO's proposal of appointing an independent investigation committee to thoroughly investigate the sale of clients' personal data by Octopus and other sectors, our view is that the investigation into the OHL by the PCPD, which has now been completed, has confirmed unauthorized practices by the OHL, while the Monetary Authority will also publish a report later. Moreover, the Privacy Commissioner for Personal Data is currently carrying out an investigation into the handling of personal data by other institutions. For these reasons, the Liberal Party has reservations about this proposal at the present stage.

President, I so submit.

**MR LEUNG KWOK-HUNG** (in Cantonese): President, I think the cyber world really makes people sigh in great despair. I certainly remember that Google, yielding to the pressure from the Communist Chinese Government, had handed the information on a person named SHI Tao to the Communist Chinese Government. Why did it do so? It did so all for money, for the market in China. As a result, SHI Tao was sentenced to 10 years of imprisonment. But then, Google had to pay compensation and apologize, openly making a bow to offer an apology.

Our comrades have been craving for the freedom of information. Secretary Stephen LAM, you are the Secretary for Constitutional and Mainland Affairs, have you sent any email to the Mainland? Have you typed the word "peace"? Have you typed the word "Nobel"? Have you typed "LIU Xiaobo"? Can you type these words? The proliferation of information in Hong Kong and the longing for information by our comrades in the Mainland are actually

cognate. However, what our Government and the corporations have done simply resembles the Mainland more and more. How? We can call it collusion between business and the Government, inbreeding, "the retarded sitting together at a table". I am not saying that you are retarded biologically. I can see that you are not, but you are retarded psychologically and intellectually. Why are you retarded? Because you are callous and indifferent.

LEONG Kwok-kuen — his Chinese name is more or less the same as mine; I am really afraid that I might say my name instead — LEONG Kwok-kuen hired a woman named Prudence CHAN to be the scapegoat, and he can still get away scot-free today and make \$7 million a year. Are you not green with envy, Secretary?

**MR WONG YUK-MAN** (in Cantonese): Even more than his annual salary.

**MR LEUNG KWOK-HUNG** (in Cantonese): Yes. An annual salary of \$7 million. It is the major shareholder, the MTR Corporation Limited, which is paying this man, and it is this man who orchestrated the whole thing all by himself and got a scapegoat to do the evils. It is this man who masterminded this operation called "selling privacy to reap huge profits". This is the source of their bonuses or rewards.

Right. The retarded who sit together at a table include a few prestigious guests. Secretary Eva CHENG is one of them. She is exclusively tasked to serve the major real estate developers and so, she did not have the time to get a clear picture of what was going on. The three government officials sitting in a corporation of which we are the biggest shareholder did not bother to question a source of its revenue. When the incident was exposed, they did not take the initiative to conduct an investigation; nor did they give an explanation to this Council. Rather, they made a detour — instead of being accountable to us, they made a detour by letting people outside this Council carry out the investigation. What are you trying to tell us now? I asked whether theft was involved. Is it that you have to ask your former classmate whether there was a case of theft before giving me an answer? Such accountability ..... I find it very difficult to understand why Mr Paul CHAN would say that the investigation has done quite a good job. Just take a look at the way they work and you will know. And, there

is this Allan CHIANG. When he worked in the Post Office, he installed pinhole cameras to keep an eye on people and he could still shamelessly say, "A fall in the pit, a gain in the wit, and so, I am interested in the job."

Has Secretary Stephen LAM ever heard that the team which is the last on the English Premier League standings can represent the English national team and play in the matches of the Union of European Football Associations Champions League after "A fall in the pit, a gain in the wit"? This is impossible. The team is set to be downgraded, buddy. What happens now is just the opposite. He has now been promoted and given the power to protect the personal data and privacy of Hong Kong people. I would have given him credit had he been genuinely committed to turning over a new leaf. But he really has not mended his ways. He did not dare to take drastic actions against the blunders made by Octopus. On the contrary, he responded humbly and meekly, prompting accusations from those people who should be criticized in the first place. They said, "You have never interfered in the past and you are now suddenly chiding me in a high profile, what is it that you want?" This is asking for insult. This is bluffing! Is the Secretary aware of that? He is bluffing his subordinates. Does he dare to bluff other people? He is mean and harsh to Members, but does he dare to speak up before the major consortiums? That he dares to speak up is the last thing I would believe. Let him condemn those people when he speaks later. He is mean and harsh only to the pan-democrats. This is why it is correct to say that he has come back from Mars.

What problem do we see today? It is a problem caused by a government not in any way subject to public monitoring teaming up with enterprises, businessmen and capitalist consortiums to become comrades in crimes. The Octopus card can gain such a high penetration rate in Hong Kong because of considerable patronage by public services under our control. Members, the OHL can certainly do a good deed — LEUNG Yiu-chung has just left the Chamber — As I have said, the prevalence of the Octopus card can, by doing some accounting, offer room for fare reductions in Hong Kong. The operation of major public transport services in Hong Kong by the public sector can reduce the cost, and this is achievable. But the Government has not done so. Instead, it has turned Octopus into an evil. So, the whole issue boils down to just one point. Does the Government know that it must repent and mend its ways? Will the authorities still veto LEUNG Yiu-chung's motion on half-fare concession? Do some good deeds. Do no more evils. Let me say this once

again: What they have done is a crime perpetrated by small-circle elections; it is "the retarded sitting together at a table", inbreeding, collusion between politicians and business.

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

**MR FRED LI** (in Cantonese): President, Mr James TO has made too long a speech earlier, so I would like to add just one point for him. It is about choice, or the issue of an "opt-in" or "opt-out" mechanism, meaning the choice of either to accept or refuse to accept. There has been much discussion on this point.

Let me declare at the outset that I am a member of the Consumer Council. The Consumer Council has very clearly proposed that people should be allowed to choose to opt in, unlike the arrangement currently in place. It is because insofar as Octopus is concerned, the greatest criticism of it is that a person who does not opt out is considered to have given his consent. This is also a problem with many telecommunications companies. Upon renewal of the service contract, for instance, if you do not voice your express disagreement, you will be taken as having consented to it. That would lead to serious consequences, because if one who does not say anything is taken to have given his consent, a lot of problems would emerge.

I think that in order to be fair, and of course, the direct marketing companies would like to, as far as possible ..... I have no idea whether they do it intentionally or unintentionally, as the font of the relevant clauses is very small and the Government has also provided guidance in this respect. But the Consumer Council has actually long since raised the point that the font or size of all the clauses is getting smaller and smaller, to the extent that one may not be able to read them even with his presbyopia glasses put on. Moreover, the words are very closely printed, making it difficult for people to read them in detail and it is easy to overlook the options provided to them.

The Democratic Party resolutely considers that ..... In fact, the Privacy Commissioner, be it Roderick WOO or the incumbent, Mr CHIANG, has expressed the view that consumers should be allowed to choose to accept, or to opt in, rather than being put in a passive position, meaning that if you do not

make a choice, you are taken to have given your support or consent. Besides, the Consumer Council has very clearly stated its disagreement to the "opt-out" model. In this connection, both the former and incumbent Privacy Commissioners share the view that an "opt-in" mechanism is more desirable.

From the angle of consumers, it is most unfortunate that many consumers are so busy that they pay little attention to the clauses and they do not read them carefully. Another reason is that the clauses are printed in fonts which are indeed too small to read. In this regard, we can require an enlargement of the fonts technically, but this can be done only in future and now, the print is still very small and as a result, oversight by consumers is easy. Therefore, I have to particularly stress this point, and Mr James TO of the Democratic Party has also very strongly insisted on this point.

In his amendment, Mr CHAN Kin-por has proposed to examine this issue, but such examination would not help at all because the Consumer Council's position is very clear, and while we understand that some people think that this is not a general trend in the world, I think this is the most appropriate way to ensure protection of consumers in Hong Kong. It is, therefore, unnecessary to examine it or whatever. We have clearly stated this attitude and we insist on this point. This is also echoed by Mr WONG Kwok-hing's original motion which supports the "opt-in" mechanism. But if it is amended to the effect that this will be examined, we think that it would weaken the effect, diluting its vigour.

Therefore, with regard to this amendment, we must say on behalf of Mr TO that regrettably, we cannot support Mr CHAN Kin-por's amendment because of this point — we mean this point only — as his amendment proposes to examine this issue, we, therefore, cannot give him our support.

I would like to put this on record and state this clearly.

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

**MR ALBERT CHAN** (in Cantonese): President, this Octopus incident was actually caused by the Government's neglect of privacy protection and the basic rights of the people over the years and its connivance to some people,

corporations and consortiums in their contravention of the spirit or the relevant provisions of the PDPO. This incident is precisely the result of neglect and connivance of the authorities. Had there not been such a government, and had the law not been so lax, this institution wholly-owned by the Government, or this institution with its shares substantially owned by the Government, would not have been so audacious and so ferocious and so irresponsible as to treat personal privacy as a tool to reap huge profits. This may well be a selling point of Hong Kong which has been renowned as the freest place. Even personal data can be traded here with the connivance of the Government, and its trading does not constitute an offence and is not liable to any punishment. The Government should take the blame. This is the result of dereliction of duty on the part of the Government.

In fact, with regard to the mishandling of privacy, President, back in 2008 there were already many cases involving the police, Hospital Authority, banks, and so on. Cases of loss or theft of data had happened continuously. Back in that year, Mr Roderick WOO, the then Privacy Commissioner for Personal Data, had quite unusually expressed dissatisfaction with the Government openly, a rare act by the senior echelon of statutory bodies of the Government. He openly made complaints about resource and power, which was extremely rare. However, the Government appeared to remain indifferent to all this and continued to sit on the matter.

Let us take a look at the conventional practices of the Government. Anything involving the policymaking process or internal matters of the Government is like a black hole, as nobody can see anything in it. The policy formulated by the Government may involve a plethora of interests, collusion between business and the Government, transfer of benefits, and so on. Decisions are made in the manner of a black-box operation, and it is often the case that investigation is impossible. However, as for what the public have been up to, the Government wants to know just everything. It often resorts to eavesdropping or tapping the telephone lines of the public by invoking statutory powers, but monitoring is downright lacking for these powers. So, this shows that this system, this Government wants to have a lot of protection for itself and completely neglects the rights of the public.

President, over the years, I have kept on receiving complaints about infringement of privacy, and those about nuisance caused by debt collectors are

most common. But under the present rules and regulations or the existing legislation concerned, if a person owes a finance company, a beauty and fitness company, or a telecommunications company \$100 or \$200 and if the company has transferred to debt collectors the personal data of this customer or the data of the families of this so-called debtor, that does not constitute an infringement of privacy — insofar as the existing law is concerned. When recovering debts, these debt collectors will employ various nasty means, such as pretending to be triad members by using their jargons, to intimidate the public and yet, these practices are not regulated. The use of suspected triad jargons is not regulated. Not even sending "hell banknotes" to a debtor is liable to criminal prosecution.

So, we can see that the Government has sit idly by doing nothing, in order to connive at or bring under its wings the interest of these major consortiums, and to protect these unscrupulous capitalists who have employed various despicable means to threaten and intimidate members of the public.

The Policy Bureau under the purview of Stephen LAM, the Security Bureau and WONG Yan-lung are all in a conspiracy. They are all lackeys of the major consortiums. To put it bluntly, and to borrow the rhetoric used by the leftists in 1960s when the term "Hong Kong-British crawlers" was used ..... Certainly this is not the right term to use now, and I wonder what to put before "crawlers". Anyway, they are at the service of the major consortiums. I wonder if they can be called "consortiums' crawlers", to borrow the term used by the leftists back then to describe government officials who were at the service of people with financial clout and who worked for these consortiums in a lowly manner and who could be entirely blind to their conscience.

Let us come back to the handling of privacy. Of course, many banks are doing the same. Banks have used their clients' data for publicity in advertisements or promotion of services. Last week, I received a telemarketing call promoting certain products. I said I did not have time and then the caller spoke in quite an unfriendly way. I, therefore, said that I would lodge a complaint if she continued to speak in that way. Wow! The lady who called me was so arrogant, though her voice was soft. But when I said that I would lodge a complaint, she said, "Go ahead. Go and complain against us any time." Such an attitude ..... She rang me up to promote products and when I was unwilling to talk to her, she switched to an unfriendly tone. When I said that I would complain against her, she, knowing of the support behind her, did not seem

to fear at all. She simply knew that the loopholes in law are absolutely favourable to her, and you simply can do nothing about her. Of course, she did not know that I am "Hulk". She was only making cold calls to promote products. Well, maybe she knew who I am. I wonder if she was told by the DAB to call me, right?

So, President, with regard to the handling of privacy, protection is often lacking. The most outrageous case is one that happened in 1998 in which I helped a member of the public who was a negative equity asset owner. He had owed a consortium an amount of money being the price difference, but as he did not have the means to repay it, he changed his address and disappeared. He had disappeared for five or six years and the consortium did not know his whereabouts. Subsequently, he suddenly subscribed to the telephone service of a telecommunications company under that consortium and within a month, he was located by this consortium which demanded payment of the price difference. He said, "It is impossible for this consortium to know my information and new address." My only inference is that this consortium can access the data of this telecommunications company. In that case, what privacy protection is there? The consortiums are most hegemonist. When you patronize their supermarkets or telecommunications companies or property management companies, your data may probably be stolen (*The buzzer sounded*) ..... So, I hope the Government ..... such collusion between business and the Government .....

**PRESIDENT** (in Cantonese): Mr Albert CHAN, your speaking time is up.

**MR ALBERT CHAN** (in Cantonese): ..... will be prohibited.

**MS CYD HO** (in Cantonese): President, I rise to speak with the aim of explaining why I do not support the proposal made by Mr CHAN Kin-por on opting for the automatic transfer of private personal data or allowing individual clients to make their own decision. I will state my position on this.

I think Members will still recall that the Bank of China was actually the result of a merger of 13 Chinese banks in Hong Kong, which took place before 2004 when Mr LIU Jinbao was still the one who would put his signature on the

banknotes issued. He lobbied Members of the Legislative Council for their support for the merger of the 13 Chinese banks. At that time, I raised a question and that is: Even if an individual client had provided all his personal data to these former banks when opening an account with them and when these banks merged to form a new institution, this new institution would actually be duty-bound to ask each client whether or not he agreed to the transfer of his personal data to the new institution. Later, the same question was raised when the Bank of East Asia was undergoing a merger. Insofar as these two business mergers are concerned, the institutions concerned had reacted quite positively and they were willing to write to each client explaining to them the merger process and the development, while asking them to positively agree to the transfer of their data to the new commercial institutions.

However, in this consultation document, one of the directions has, quite on the contrary, proposed to grant some exemptions for the institutions concerned in the event of business merger. This is actually saying that the transfer of personal data will be legalized by way of legislation. I hope the public will be particularly careful about this. For instance, we now enjoy great freedoms on the Internet, and assuming Yahoo! and Google will merge with Baidu in the Mainland and if business mergers can be exempted from consultation with their clients, their personal data can then be fully transferred and those IP addresses can also be transferred automatically. I, therefore, hope that the public must protect their personal data carefully. This is also one of the reasons why I cannot support Mr CHAN Kin-por's amendment.

President, another point that I have to make is that under its present proposal, the Government has refused to confer the power of prosecution on the Privacy Commissioner. As a matter of fact, we do not have a human rights commission in Hong Kong. All we have are just several watchdogs tasked to monitor the administrative operation of the authorities. The Commissioner of the Independent Commission Against Corruption is one of them. The Equal Opportunities Commission is one of them; so is The Ombudsman. There is also the Privacy Commissioner, and his principal target of monitoring actually is not only social and business institutions, but the executive authorities which are in possession of a vast amount of data and great powers. Of course, if we give the power of prosecution to the Privacy Commissioner, the business sector would certainly react very strongly, but we can also see that the Government actually has a great incentive not to give the Privacy Commissioner the power of

prosecution. It is because the Government is the owner of the largest database of personal information. If a government uses the information kept in its database for political suppression, privacy infringement or various other acts of human rights infringement, it is indeed difficult for ordinary members of the public to learn about it, and they simply do not have the ability to resist it.

This morning, we asked an oral question about Hong Kong people being refused entry to Macao. Even though the Legislative Council has the Legislative Council (Powers and Privileges) Ordinance which provides that government officials must be accountable to the legislature, we were still unable to find out the truth after repeatedly asking questions and we were again getting nowhere. What can we rely on to exercise monitoring? It is people coming forth to reveal their cases, and even if their cases can be brought to light, the Privacy Commissioner must still be empowered by provisions on prosecution in order to restrain the Government from acting too wantonly. But now, even if someone has revealed his case, we still have to give up pursuing it in the absence of provisions on prosecution. All we can do is to engage in empty talks in the Legislative Council. So, President, with regard to granting the power of prosecution to the Privacy Commissioner, I think the community should consider it clearly and we must express our views during the consultation period. I believe many human rights organizations can help the public gain a better understanding of this issue.

Moreover, the last point is that our personal data kept under the law are actually the most basic ones, which include no more than some biometric data, identity card number, name, age and sex. Such data can, of course, do great damage to us in terms of property ownership and in other aspects. But another major injury to our personal lives is the infringement or nuisance that we are subject to in private domains. This can happen in many ways, and to borrow the wording used by the Government, there may be cases of injury to feelings. I, therefore, hope that in this consultation, the Government can consult the public on whether the scope of protection should be extended, rather than just protecting personal data and information relating to a person's identity. Thank you, President.

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

**MR ANDREW CHENG** (in Cantonese): President, this topic today is the protection of personal data privacy which is triggered by the Octopus incident. In my following speech, I wish to express in passing my views on the past performance of the Octopus Holdings Limited (OHL) and the approach adopted by it in handling problems. President, certainly, I will not deviate too far from the topic. I will express my views with reference to the amendments and the very long original motion.

President, the OHL has all along given us a very strong impression indeed. With regard to its corporate responsibility and efficiency, we have a very strong feeling that it knows only to levy charges. Regarding the \$50 deposit, it has never made the slightest bit of concession. In most cases, when other countries introduce this type of electronic money and insofar as the deposit is concerned, they only charge a deposit to a few millions cards in the beginning and the deposit will be refunded later, which means that no deposit will then be charged.

If my memory is correct, and just by some simple reckoning, there are now 16 million Octopus smart cards in circulation in Hong Kong, including those bought by tourists and taken back to their own countries. Let us do some calculation here. Each card is charged a deposit of \$50 and 16 million cards mean a revenue of \$800 million generated from the deposit. But when studying the usage of the data kept by Octopus, or particularly in the context of transport issues, when we want to find out about certain personal data, for example, when Octopus cardholders want to check the amount that has been spent and the balance in their cards, for how many times can they make enquiries? President, it is found that a fee is charged for making over 10 or 20 enquiries. From this, we found that the OHL takes a very stringent attitude towards the handling of personal data, because a fee is charged even if a cardholder wants to check his own records, as many administrative guidelines, costs, and so on, are involved. However, it now transpires that Octopus can secretly sell our personal data to business enterprises to make profits.

This incident has precisely reminded us that in the past, Octopus did not take a position oriented towards the interest of the public and users on many issues. Rather, it appeared to be overly laying eyes on business gains and profits by continuously charging a deposit and charging a fee even for personal data enquiries. However, it has not consulted the public or asked the public, even in small print, whether they agree to selling their personal data to business

enterprises for the company to make profits. It simply did not care, so long as profits could be made. Subsequently, it even convened a press conference and denied it repeatedly. After looking into the incident, I have the impression that the upper management from the Secretary to the Chief Executive Officer of the OHL probably might not know what had actually happened. We are given the impression that the entire corporation is in complete chaos.

Insofar as its Board is concerned, I am sure Members must be aware that the several representatives of the bureaux are in the Chamber now. President, when I see these several representatives of bureaux in the Chamber, from my experience, I feel all the more worried because the bureaux do not know which one of them should be responsible for this. Of course, when it comes to privacy, it should be Secretary Stephen LAM; when it comes to electronic money, it should be the Secretary for Financial Services and the Treasury; then, since the MTR Corporation Limited (MTRCL) is the biggest shareholder of the OHL, the Secretary for Transport and Housing is also here. The overall impression that I have been given is that, if my memory has not failed me, the MTRCL holds 57% of the shares; the Kowloon-Canton Railway Corporation (KCRC) still exists, with a shareholding of 22%, and it makes 79% altogether. The KCRC is wholly owned by the Government, and the Government also owns 74% of the MTRCL. It means that for this so-called joint venture named OHL — Members can simply do some calculation and they will know that it is primarily government-owned, as half of its shares may be owned by the Government. Members can simply do some calculation. In spite of this, the government officials can sit here knowing nothing. They can completely wash their hands of what this company has done and all their responsibilities because this company said that it operates according to commercial principles, and the Government can only say a few words to reprimand it at the most.

So, I have risen to speak today in order to express my view that it is imperative to appoint an independent investigation committee to investigate into this blunder of Octopus, as proposed by the Democratic Party. Electronic money in Hong Kong ..... I agree that this Octopus card is quite well-known in the world, President, and it has indeed done a great job as it is very convenient in some measure, but in spite of this, at a certain stage when its corporate and managerial responsibilities are found to be unclear in many aspects and even when mistakes are made, we have to sound the alarm to alert the Government and even invoke the powers of an investigation committee, so that this company will

have the driving force and basis to conduct a major overhaul. Otherwise, these companies will only ..... just as what happened in the past couple of days when it continued to counter-attack the Privacy Commissioner, criticizing the Privacy Commissioner for raising this issue only now despite that he had never stepped in in the past, never made any accusation or conducted any investigation whatsoever. It can go so far as to adopt such an arrogant attitude. Then, all of a sudden, its Chairman may even return to the MTRCL and become its Chief Executive Officer. In such a world like this, I think that while Hong Kong people are entirely kept in the dark, there is simply no way to tackle the problem at root.

So, President, here, I sincerely urge colleagues of the Federation of Trade Unions, in particular, to support Mr James TO's amendment. Thank you, President.

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): Mr WONG Kwok-hing, you may now speak on the three .....

(Mr Paul TSE raised his hand to indicate his wish to speak)

**PRESIDENT** (in Cantonese): Mr Paul TSE.

**MR PAUL TSE** (in Cantonese): President, we have been talking about bundled clauses. As there are also bundled items in the original motion and the amendments, for the record, I would like to do some explaining for my voting preference and put it on record.

President, basically, I have reservations about Mr WONG Kwok-hing's proposed option of the public sector operating the Octopus smart card. I also have reservations about Mr James TO's proposal on an investigation committee,

particularly because, as some colleagues have said earlier, other investigations are currently underway or have been concluded with investigation results. But more importantly, I wish to make one point and that is, the proposed amendment suggests to thoroughly investigate Octopus and other sectors. This so-called "other sectors" can be very extensive. What exactly are the sectors being referred to? I think in various sectors, and even in the tourism sector, as far as I am aware, some airlines or travel agencies may use some ..... While their database may not be as enormous as that of Octopus, they will make use of some information collected by themselves, which also constitutes a breach of the principle. So, if other sectors were also investigated thoroughly, I am afraid this would become another case of "Lehman Brothers" in which the investigation would just be never-ending. In this connection, if, at the present stage, this approach or such a sweeping approach is adopted, I am afraid I cannot accept it.

Besides, with regard to section 33, before we understand the whys and wherefores of the Government's reservations about enforcing section 33 over the years and its long delay of implementing it, I think we should not urge the Government to implement section 33 immediately. A Member (whom I think is Dr Samson TAM) has earlier on given an introduction on section 33, pointing out that many technical issues will be involved in the implementation of this provision and relevant definitions. I think a decision can be made after looking into the situation at greater depth.

In fact, we do not have to be so agitated. It is because basically, what we would pass are not like laws which make it necessary to look at which provision is breached and which is not, and requires the Government to do everything that it is supposed to do accordingly. Basically, we are just talking about them and after we have talked about them, we certainly hope that the Government will earnestly make an effort to introduce legislative amendments on the basis of the consultation being conducted currently and make more reference to its results. But for the reason about my voting preference that I stated earlier, I would like to put this on record.

President, I wish to more generally talk about a couple of points on the entire issue. Many people are good at making discerning comments with the benefit of hindsight, or as an English idiom goes, "flogging a dead horse". In this case now, Octopus is the "dead horse". No matter how hard it is flogged or beaten, it will not respond to all the flogging and beating and there is no way to

fight back, but this is actually pointless. All societies, including Hong Kong, are ever evolving and progressing. There were times when it would not be a problem for one to engage in acts of "eating tofu" in Cantonese (吃豆腐)<sup>1</sup> but given the changes in law, it may now constitute sexual harassment. Some colleagues may even inadvertently fall into this trap. This is proof that society is making advancements continuously, and I do not think I need to explain this further.

If, back in 1995 when the legislation was enacted, an all-embracing net was cast right away to regulate the so-called privacy infringement in all areas and even steps were taken to criminalize many acts further, I believe that would indeed lead to serious problems. As in the case of the regulation of the so-called intellectual property rights before, there had been great resistance particularly to criminalizing infringement of intellectual property rights. Twelve years have passed and today, Hong Kong does not have a piece of intellectual property right legislation on the protection of the right to portrait. Although this is very common in the Mainland, such a law is still lacking in Hong Kong. Every society has its needs during the process of change and development. Even in the present-day United States — Over the past couple of days we can learn from Fox News many news relating to Facebook, which is still involved in suspected or similar acts of infringement by using information for purposes other than the intended business purposes. So, this is not unique to Hong Kong; nor is this unique to Octopus. The case is that some so-called rights have never been extensively discussed and explored before, and people might not be aware of them before there were problems. This incident has prompted us to pay attention to our rights in a more focused manner, which is a good thing. It has also made the Government act in a highly efficient manner in mapping out the direction of legislative amendment and the actions to be taken. I think this is a good thing out of a bad thing. That said, I think our focus and efforts should be placed on how we can learn a lesson from this incident and how we can do better. And, the legislative amendments must be in line with the general practices of Hong Kong people and business structures, while striking a balance acceptable to them. There should not be sensational remarks about, for instance, an annual remuneration of \$7 million or what the punishment should be. This is not

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<sup>1</sup> This colloquial expression in Cantonese means a man flirting with a woman, with or without the latter's acquiescence, with sexual reference.

helpful at all, for it will only give rise to even more unnecessary disputes in society.

President, for whatever new legislation to be implemented, whether it be legislation on privacy or the so-called equal opportunities, the initial approach has always been like groping across the river. Why should this piece of legislation be described as a black hole, as Ronny TONG has put it? Because the consensus in society back then seems to be more inclined to using an advisory approach, rather than making drastic changes to the culture in society in one go, which would otherwise create too great an impact and hence become unacceptable to the public. This is reasonable, and understandable. So, it is now time for us to consider the next step Hong Kong should take after a decade or so, which is even more important.

President, any free society has a price to pay. What I mean is that before legislation is enacted to impose regulation, any individual, institution and even government are allowed to engage in some acts but later, these acts may not be considered correct, particularly as some may be open to condemnation morally. However, we should not overly condemn acts which were not regulated in law in the past, or else we would be seeking to gain double benefits, in that, while we wish to have the freedoms in a free society, we do not wish to take up responsibilities for the sequelae that may be brought along by a free society. This, I think, should be cherished by colleagues. Thank you, President.

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

**MS AUDREY EU** (in Cantonese): President, I just heard Mr Paul TSE say in his speech that today's discussion on the Octopus incident is an instance of "flogging a dead horse", and that on many issues, it would not be helpful even if an investigation is carried out. He also added that in a free world, we should not seek to gain double benefits. I wish to respond to these remarks.

President, it is impossible that only the Chief Executive Officer of the Octopus Cards Limited should be held responsible for the incident. This incident involved the sale of personal data of over 2 million people which generated a profit of \$44 million. Obviously, this is not just a problem with its

Chief Executive Officer. The entire Board, and even the holding company and government officials should have been aware of it. President, this explains why the Civic Party will throw great weight behind Mr James TO's amendment on conducting a thorough investigation.

President, in his amendment Mr James TO has not specified that an investigation be conducted by a Select Committee set up under the Legislative Council. What he has proposed is the appointment of an independent investigation committee. As far as I understand it, under the laws of Hong Kong, the Chief Executive can appoint an independent person to chair a commission of inquiry. I think there is a need for the public to know what had happened in the entire incident, especially as the incident may involve even more government officials or public organizations, a higher degree of transparency is all the more necessary. Moreover, the incident does not just involve Octopus because as far as we know, the Office of the Privacy Commissioner for Personal Data (Privacy Commissioner) is now investigating four banks and three telecommunications service providers. It is against this backdrop that Mr James TO's amendment proposes to thoroughly investigate the sale and handling of clients' personal data by Octopus and other sectors. In fact, this is a very common phenomenon, but members of the public simply can do nothing about it. Many people do wish to protect their privacy but many services are necessary to the public and when providing these services, the companies have transferred or sold their clients' personal data by using very small prints or without telling their clients. According to the report of the Privacy Commissioner, Octopus has breached three privacy requirements. The Privacy Commissioner considers that nothing else can be done after Octopus has offered an apology. This has put across to the community a very wrong message, that anyone can boldly infringe on other people's privacy and when the infringement is revealed, he can get away with it simply by offering an apology. I, therefore, strongly support this amendment.

Apart from appointing an independent investigation committee, we should also consider amending the Personal Data (Privacy) Ordinance to give the public the right to choose. I hope that the public can have the right to "opt in", which means that if a person has not indicated his wish, the company cannot presume that he has consented to the transfer of his personal data by the company, and the company must obtain the person's consent for every transfer of his personal data. Moreover, I also support and call for the allocation of adequate resources to the

Privacy Commissioner. The former Privacy Commissioner, Mr Roderick WOO, had repeatedly mentioned the lack of adequate resources in the Legislative Council. Despite the enactment of the Ordinance, the lack of adequate resources for enforcement is also a major problem.

President, I also wish to clearly state on behalf of the Civic Party that while we support many motions and amendments in principle, we may have reservations about some parts of these motions and amendments. An example is item (g) of Mr WONG Kwok-hing's original motion which proposes to actively explore the option of the public sector operating the Octopus smart card. The wording used is "actively explore", not making it a must for Octopus to be operated by the public sector. Every original motion and amendment may include many parts. If we abstain or cast an opposition vote because of certain parts of it, some people may have a wrong impression of what we have done. The public often pays attention to how many times a Member has cast a supporting vote, an opposition vote or an abstention vote. It is, therefore, difficult to decide on how we should vote. The reason is that sometimes a motion and its amendments can add up to 20 items, and if you support 19 of them but oppose just one item, what should you do? Mr Ronny TONG is, in fact, strongly opposed to item (g) proposed in Mr WONG Kwok-hing's original motion, and I have tried very hard to convince Mr Ronny TONG not to vote against it. In casting our vote, we must look at the principle of the original motion or the amendment and the major message put across by it. Mr WONG Kwok-hing's original motion puts across the message of improving personal data privacy protection. If we abstain on it or vote against it, it would give people a wrong message. We hope to make it very clear that even though the Civic Party expresses support in principle, it may not necessarily mean that the Civic Party supports all parts of an original motion or amendment.

Thank you, President.

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): Mr WONG Kwok-hing, you may now speak on the three amendments. The speaking time limit is five minutes.

**MR WONG KWOK-HING** (in Cantonese): President, together with the sponsors of the amendments, 24 Members in total have spoken and I am very grateful to them. With regard to the differences between the amendments and the original motion, I wish to add a few points.

First, Mr CHAN Kin-por's amendment specifically mentions the civil rights of the direct marketing industry, and Mr LEUNG Yiu-chung also mentioned this earlier on. In fact, before the start of this debate today, I had directly heard complaints from employees in the direct marketing industry downstairs. These employees of the industry come from a Hong Kong association of telemarketing practitioners and a concern group for the rights and interest of telemarketing. They have submitted a written representation and I consider their views sensible and reasonable. Mr CHAN Kin-por's amendment has actually incorporated the views of the industry practitioners. I think personal data privacy protection and the protection of "wage earners' rice bowls" are neither mutually exclusive nor conflicting. What warrants attention is that the operation of the direct marketing industry must be lawful. However, the existing legislation has many grey areas and loopholes, and some operators with no sense of social responsibility have exploited these loopholes in law to make profits by selling or transferring personal data. This is unethical. Octopus is a typical example of these operators. Having said that, the "rice bowls" of lawful operators and practitioners should not be affected by the Octopus incident. I think the Government should positively respond to their views and demands. For this reason, I support Mr CHAN Kin-por's amendment.

Second, item (g) of my original motion particularly mentions the option of the public sector operating the Octopus smart card. In fact, the holding company of the Octopus Holdings Limited (OHL) is the MTR Corporation Limited (MTRCL), of which the principal shareholder is the Government, and this is known to us all. In other words, the capital of Octopus primarily comes from the taxpayers and it follows that the company should be subject to public monitoring. The operation of Octopus by the public sector means stepping up monitoring. However, when I met with the relevant institutions in my capacity

as the convenor of meetings to address complaints in the Legislative Council, not only the representatives of the Government, but also representatives of those institutions stated that they are private sector companies and hence, we are in no position to ask for information from them, nor are they obliged to tell us anything, and they can do whatever they like and this is why interlinked companies, the Octopus Rewards, and so on, have been set up under the OHL, adding that these are all private sector companies. It is precisely here that we saw the problem and proposed the option of the public sector operating the Octopus smart card in item (g) of the original motion. With regard to the concern expressed by some colleagues in their speeches earlier about communizing Octopus, this is not our intention at all. So, I have to make this point very clear.

Lastly, I would like to say that I also support Mr James TO's amendment. I have explicitly stated this point when I responded to the press some time ago. Mr TO said in his speech earlier that we did not propose to seek the approval of the Legislative Council for exercising the powers under the Legislative Council (Powers and Privileges) Ordinance on 8 October. When we were prepared to make this proposal back then, our objective was to obtain three items of information. In order to obtain these three items of information, we would have to secure an undertaking from the MTRCL, and the Chief Executive Officer of the MTRCL, Mr CHOW Chung-kong, expressly made an undertaking in a meeting with us on 7 October. I did clearly state this point right at the outset, so I am not going to repeat it. Such being the case, since we have managed to overpower our enemies without resorting to war, why should we further wage one? We have achieved the objective and the MTRCL has made an undertaking. So, this is what I wish to further explain here.

To conclude, since the Octopus incident is indeed closely related to Hong Kong people, I very much hope that colleagues from different political parties and groupings, as well as non-affiliated colleagues, can support my original motion. Thank you.

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): President, I am grateful to the many Members for taking part in the discussion on privacy protection which is of great concern to the community, as well as following up the Octopus incident. As society and commercial technologies continue to develop, a review of the Personal Data (Privacy)

Ordinance (PDPO), which has been in force for over a decade, is indeed warranted.

In this connection, we put forward a package of proposals the other day, pointing out the need to raise the penalty level in respect of criminal prosecution. This will be done in several ways. First, we propose to raise the penalty level for repeated contravention of data protection principles by enterprises or parties. Besides, the penalty will also be increased for repeated non-compliance with an enforcement notice issued to them by the Privacy Commissioner for Personal Data (the Privacy Commissioner). The level of penalty will be increased to a fine at Level 5 (\$50,000) and imprisonment of two years in the former case, and to a fine at Level 6 (\$100,000) and imprisonment of two years in the latter. In addition, we have put forward some other new proposals. For example, in relation to direct marketing activities, an enterprise or a relevant party which acts not in accordance with clients' or the public's authorization is subject to a maximum fine of \$500,000 and imprisonment of three years. This shows that the Government has been very active in handling this issue.

In respect of direct marketing, we have given some explanation before. The Government holds that when enterprises and various parties ask the public to provide their personal data, there are some basic principles which are very important. They must give very clear explanations to the public, and I would say that this should be like selling goods at clearly marked prices. For what purposes does the company intend to use these data after collecting them? Will they be used for direct marketing, transfer to other companies or sale to other parties? These statements, which should be printed on the application form to be filled out by the public, must be written in clear, adequately large print. The clauses must be set out expressly, so that the public can easily understand to what extent an authorization will be given to the company after signing the form.

Over the last couple of days, the media or representatives of political parties and groupings have enquired about the definition of adequacy and clarity. In fact, I can cite a very good example to explain this to Members. For some years in the past, we have made concerted efforts to discuss ways to implement a smoking ban and promote anti-smoking campaigns among the public. On the cigarette package there is a very clearly written warning: Smoking is hazardous to health. It is written in clear font and the message is clear. I think when we discuss how amendments can be made to the PDPO and the guidelines issued by

the Privacy Commissioner, it is entirely possible for us to discuss together the principles and guidelines and reach a consensus for enterprises and the relevant persons to follow in future.

Speaking of direct marketing, Mr Fred LI and other Members talked about whether regulation should be imposed by putting in place an "opt-out" or "opt-in" mechanism in future. In fact, we have actually discussed this both inside and outside this Council over the past few years. For the purposes of the enactment of the Unsolicited Electronic Messages Ordinance, we had listened to the views of many parties, and it was finally decided that the "opt-out" mechanism be adopted in that context. At that time, representatives of various sectors of the community also stated to this Council that the "opt-out" mechanism was more practical. But in this amendment exercise of the PDPO, should the "opt-out" or "opt-in" mechanism be adopted? On this question, the Bureau keeps an open mind. We will first listen to public opinions, since further consultation will be conducted on the current legislative proposals until the end of the year and a bill will be introduced only next year. In the interim, Members can continue to express their views on the "opt-in" and "opt-out" mechanisms.

Mr WONG Ting-kwong has put forward views on the Unsolicited Electronic Messages Ordinance. At present, activities involving the use of personal data for direct marketing purposes under relevant circumstances are also subject to the regulation of the PDPO.

In respect of person-to-person telemarketing calls, the Administration has conducted public consultation and an opinion survey in the industry some time ago. Subsequently, discussions have been conducted with the industries concerned to promote self-regulation by the industries.

After consultation with the industries, the Office of the Telecommunications Authority (OFTA) published a Benchmark Code of Practice on Person-to-Person Marketing Call (the Benchmark Code). The objective is to enable the industries to draw up tailored code of practices on person-to-person telemarketing calls in the light of their respective business characteristics and encourage implementation and compliance by service providers in the industries, so as not to cause nuisance to the public.

The four industries which more frequently engage in person-to-person telemarketing calls, namely, financial services, insurance, telecommunications and call centres, have reacted positively to the Benchmark Code. Among others, the Hong Kong Direct Marketing Association and the Hong Kong Call Centre Association, as well as several telecommunications companies have adopted the Benchmark Code and published their respective codes of practice on their webpages. On the other hand, the telecommunications trade association and the respective trade associations of the financial services industry and insurance industry are also in the course of drafting the relevant codes of practice which are expected to come into practice by the end of this year. We expect more trade associations and companies to gradually take part in self-regulatory schemes.

In fact, the Benchmark Code formulated by the OFTA has required practitioners to clearly state their identity when making person-to-person telemarketing calls, and their calling number must also be displayed. The Benchmark Code has also required the industries to draw up an in-house do-not-call list for registration by the public to reject telemarketing calls.

So, from the statistics provided by trade associations in these four industries which make the largest number of person-to-person telemarketing calls, the relevant Policy Bureau has estimated that there are over 20 000 local employees in the person-to-person telemarketing industry. Considering that the industries have been stepping up self-regulation, improvement is expected in respect of the nuisance caused. The authorities will continue to closely monitor the situation. We will also carefully consider the possible impact of any further restriction on the industry to ensure that practitioners would not lose their jobs.

Many Members and media corporations have, over the past few days, paid particular attention to the enforcement notice issued by the Privacy Commissioner. Some Members are concerned about the Privacy Commissioner not issuing an enforcement notice despite the Privacy Commissioner's conclusion on Octopus' contravention of data protection principles under the PDPO. Under section 50 of the PDPO, if a data user has ceased to engage in the relevant act and the Privacy Commissioner considers that there is no evidence to show signs of repeated contravention, the Privacy Commissioner cannot issue an enforcement notice to the data user.

In the case of Octopus, the company has given an undertaking to the Privacy Commissioner that efforts will be made to enhance personal data privacy protection, in order to prevent recurrence of contravention. Therefore, the objective of preventing repeated contravention has been achieved.

That said, in an effort to enhance the effectiveness of the PDPO in the protection of personal data privacy, we propose to amend section 50 of the PDPO to the effect that where the Privacy Commissioner is of the opinion that the relevant data user is contravening a requirement under the PDPO or has contravened such a requirement, the Privacy Commissioner may serve on the relevant data user an enforcement notice disregarding whether or not the circumstances will make it likely that the contravention will continue or be repeated. In general, after the amendment of the PDPO, the Privacy Commissioner will be subject to less restrictions in issuing an enforcement notice, for he can make his own judgment on whether or not to issue an enforcement notice depending on the needs and circumstances of each case.

Mr WONG Kwok-hing asked whether or not the law-enforcement agencies have fully and thoroughly investigated all cases involving transfer and sale of clients' personal data. He raised the same question at a meeting of the relevant panel two days ago. While he is supportive of the Bureau's proposal to amend the PDPO, what should we do in the interim before the Ordinance is amended? Let me explain to Members that while the existing Ordinance will continue to apply, the Privacy Commissioner has issued a new guideline to the direct marketing industry and the relevant industries. Under this guideline, which has now come into effect, if an enterprise or party does not act in accordance with the guideline and a complaint has hence arisen, once investigation has been initiated into the complaint, a judgment will be made more sternly.

In August and September this year, the Hong Kong Monetary Authority (HKMA) required banks to review and follow up the recommendations made by the Privacy Commissioner in its interim report on the Octopus incident, including not to use the arrangement of "bundled consent", and to follow the new guidelines issued by the Office of the Privacy Commissioner for Personal Data (PCPD), which clearly advises against "bundled consent". The HKMA has required all banks to actively take follow-up steps and conduct reviews, and also adopt the relevant measures.

Next, I will talk about the resources of the PCPD. Dr Samson TAM, Ms Emily LAU and other Members have mentioned issues in this respect. The Constitutional and Mainland Affairs Bureau has taken up human rights issues since July 2007 and has since 2007-2008 adopted a step-by-step approach to considerably increase the resources that the PCPD can keep at its disposal. In 2007-2008, the budget of the PCPD was \$36.2 million and it has increased to \$48.6 million in 2010-2011. In 2010-2011, we will specifically make a financial provision of over \$4.5 million to the PCPD for the creation of five new posts. In the meantime, arrangements have been made for the accumulation of the PCPD's reserve to be capped at 20% of its budget in each fiscal year, compared to the past ceiling of \$5 million. So, in the current fiscal year, the reserve of the PCPD can be accumulated to over \$9 million.

On manpower, the situation is different from the understanding of Ms Emily LAU. The PCPD has a total of 68 employees. In respect of enforcement, there are altogether 28 employees in the Operations Division and the Compliance and Policy Division, which is more than just 23 as understood by Ms Emily LAU.

Members are concerned about the restriction faced by the PCPD in enforcement. For example, when conducting follow-up investigation, the PCPD is required to tell members of the public within 45 days whether a case will be or will not be followed up. This restriction will be removed in the new proposed amendments. For cases to be referred to the Court, which must be done so within six months now, we propose to extend the time limit to two years in future.

Mr James TO and Mr WONG Ting-kwong proposed that the authorities should immediately implement section 33 of the PDPO on the transfer of personal data to places outside Hong Kong.

President, although section 33 has not come into operation, the use of personal data, including their transfer, is regulated by data protection principle 3 under the PDPO. Unless the personal data are transferred for the same or directly-related purposes for which such data were collected, the data user cannot transfer such data for use in places outside Hong Kong without the consent of the data subject. Besides, if a data user transferring personal data to a place outside Hong Kong controls the holding, processing or use of such data, the data user is also required to comply with the relevant provisions of the PDPO. Therefore,

even if the data have been transferred to places outside Hong Kong, data users are still required to meet the requirements of the PDPO in processing personal data.

Furthermore, if a data user transfers personal data to a place outside Hong Kong where a person is authorized by him to engage in any act, such as processing the data, under section 65 of the PDPO, any act done by the person on such authority shall be treated as done by the data user. In other words, this is subject to the PDPO.

We will work with the Privacy Commissioner to identify the way forward for the implementation of section 33 of the PDPO. However, the implementation of this provision will have a significant bearing on the cross-border data transfer activities of many industries, especially the banking and telecommunications industries. In this connection, we must take into consideration the relevant factors, which include consulting the relevant parties to ascertain whether the community is ready for the implementation of this provision, the relevant international developments, the need to formulate guidelines for compliance, and when the Privacy Commissioner will be prepared to publish in the Gazette the places with legislation which is broadly similar to the PDPO in Hong Kong.

Mr James TO particularly called for the establishment of an independent investigation committee to follow up the current situation. The Government has been keeping a close watch on the relevant developments of this incident. Insofar as the Octopus incident is concerned, the Privacy Commissioner and the Monetary Authority have carried out investigations and follow-up work under the PDPO and the Banking Ordinance respectively. The independent auditors commissioned by the HKMA submitted to the HKMA its interim findings on 18 October, while the Privacy Commissioner also published an investigation report on the same day, pointing out contravention of three data protection principles under the PDPO by the Octopus Holdings Limited (OHL).

The OHL has fully accepted the relevant recommendations made by the Privacy Commissioner in the investigation report. It has also undertaken to strictly comply with the provisions of the PDPO when collecting personal data for marketing purposes in future, and observe the specific guidelines set out in the Privacy Commissioner's investigation report in collecting personal data. Moreover, the OHL has undertaken to completely erase, with a third party serving as the witness, non-compliant personal data kept by the company and other

marketing partners in accordance with the relevant guidance given by the Privacy Commissioner.

The Board of the OHL held a meeting yesterday (19 October) to respond to the investigation report of the Privacy Commissioner, the report of the Monetary Authority, and the report submitted by the Special Committee appointed by the OHL to review the company's policies and practices on personal data privacy.

In view of these developments, there has already been thorough investigation into and explanation on the incident relating to Octopus's transfer of clients' personal data to third parties for marketing purposes. We, therefore, do not agree to Mr TO's proposal of setting up an independent investigation committee to investigate the Octopus incident. All relevant sectors of the community should, from now on, focus their time and effort on following up the recommendations made in the reports, with a view to enhancing personal data privacy protection.

As regards .....

(Mr James TO stood up)

**PRESIDENT** (in Cantonese): Mr TO, what is your point?

**MR JAMES TO** (in Cantonese): President, if my speech has been misunderstood, can I point out the part which has been misunderstood now?

**PRESIDENT** (in Cantonese): If you think that in his speech the Secretary has misunderstood the contents of your earlier speech, you can seek an elucidation after the Secretary has finished his speech.

**MR JAMES TO** (in Cantonese): President, if I point out later the part which has been misunderstood, can the Secretary speak again after that?

**PRESIDENT** (in Cantonese): Under the Rules of Procedure, if you think that what you said earlier has been misunderstood by another Member or the Secretary, you can rise to make a brief clarification and point out which part of your speech has been misunderstood after the Member or the Secretary has finished speaking, but this is not an extension of the debate.

**MR JAMES TO** (in Cantonese): I see. I only wish to point it out to you, so that you will understand this major point. The part of my speech which has been misunderstood is that besides Octopus, there are other sectors in society. Now that I have clarified this point, can the Secretary explain why an investigation committee cannot be set up to investigate the situation in other sectors?

**PRESIDENT** (in Cantonese): Mr TO, according to the rules of debate, you have already finished your speech.

**MR JAMES TO** (in Cantonese): President, I am not .....

**PRESIDENT** (in Cantonese): You are in effect seeking to extend the debate. We cannot be sure about whether or not the Secretary's speech can satisfy your request to him, and if you think that the Secretary's speech .....

**MR JAMES TO** (in Cantonese): If his reply has left out some parts as a result of his misunderstanding of what I said and other colleagues are hence affected, that would be unfair.

**PRESIDENT** (in Cantonese): You may elucidate the part that has been misunderstood later on.

**MR JAMES TO** (in Cantonese): OK.

**PRESIDENT** (in Cantonese): Secretary, please go on.

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): President, Mr WONG Kwok-hing mentioned that reference should be made to overseas experience and the mode of operation of the Airport Authority Hong Kong, so as to explore the option of the public sector operating the Octopus smart card.

The HKMA authorized the Octopus Cards Limited (OCL), the issuer of the multi-purpose Octopus cards, as a deposit-taking company in April 2000 under the Banking Ordinance, and has been regulating the OCL as such since then. In regulating the OCL, the primary objective of the HKMA is to ensure the safety of the money deposited by Octopus cardholders. Apart from regulation by the Banking Ordinance, the OCL is also required to comply with the Code of Practice for Multi-Purpose Stored Value Card Operation (the Code) which it voluntarily adopted in 2005 to ensure safety and efficiency in its operation. The Code has been endorsed by the HKMA.

We do not see any need to change the operation and ownership of the OCL at this stage. In fact, we think we should not lump together the issue of operating a private sector company by the public sector and personal data privacy protection. Causing the public sector to operate a company is not an effective or the only means to assure protection of personal data privacy. We should strive to provide more comprehensive, clearer and better protection of personal data privacy by improving the relevant legislation and guidelines. To this end, we have put forward a number of legislative proposals in respect of the PDPO, with a view to enhancing protection in this regard.

President, I wish to briefly respond to a number of key points before concluding my speech. Mr WONG Kwok-hing considered that we have made phased improvement, and I believe the improvement is attributed to the efforts made by this Council, various political parties and groupings, Members, as well as government departments over the last few months.

Second, Mr WONG Kwok-hing has made quite serious criticisms of a number of principal officials of the Government. I would like to say a few words here. From what I saw during summer, our Directors of Bureaux did

make a lot of efforts in this incident. The responses that have been made by the Government, the MTRCL and the OCL have reflected the efforts made by colleagues in other Policy Bureaux.

Mr James TO opined that the OCL appears to be prepared to challenge the judgment made by the Privacy Commissioner, but I have noticed that the OCL already stated some time ago that they did not intend to seek a judicial review of the findings made in the report of the Privacy Commissioner.

Mr CHAN Kin-por and Mr LEUNG Yiu-chung particularly mentioned that there are actually a large number of employees in the direct marketing industry who rely on the sustained operation and development of this industry to keep their jobs. I believe Members representing trade unions, including Mr WONG Kwok-hing and his colleagues, all understand how important this is. On the part of the Government, we do agree that on the one hand, we must enhance privacy protection and so, the regulation of enterprises needs to be stepped up but on the other hand, we also have to maintain these jobs and posts that are needed by the employees and job seekers, so as to provide an avenue for new blood to be injected into the production force. I think these two objectives are not necessarily in conflict, and with the concerted efforts of the Government and this Council, we can certainly come up with a new and effective piece of legislation.

Mr Ronny TONG expressed the view that the current legislation is far from effective. But I can tell Mr Ronny TONG and Members that we are actually working on a new set of arrangements to increase the deterrence of criminal prosecution and the effectiveness of regulation. On the other hand, for civil proceedings, legal assistance will be provided to the public through the PCPD. In the event of privacy infringement, the Privacy Commissioner can provide legal assistance to the public in taking their case to court to seek compensation. So, we have been earnestly working on new arrangements for both criminal and civil cases.

Dr Priscilla LEUNG and Mr IP Kwok-him particularly discussed the question of whether the Privacy Commissioner should have the power of prosecution apart from conducting investigation. President, under the PDPO, be it the Ordinance currently in force or the Amendment Ordinance in future, we still hope to confer on the Privacy Commissioner adequate powers to follow up all these cases. But when criminal prosecution is involved, further investigation will have to be carried out by the police. And, if recourse to court proceedings

indeed becomes necessary, the Department of Justice will make a decision because under the Basic Law, the Department of Justice shall make a decision free from any interference on whether or not to initiate criminal prosecution. The criminal sanctions in this law are different from the general fixed penalty arrangement, as each case has its own characteristics, and some cases may be more serious whereas some cases can be resolved by out-of-court settlement. So, we maintain that the existing practices should be upheld to prevent over-concentration of powers. The police and the Department of Justice should continuously handle work relating to criminal prosecution, while enforcement should be handled by the PCPD and the Privacy Commissioner.

To sum up, President, I think we can note three key points in this Octopus incident. First, on the part of enterprises, certainly they must comply with the laws of Hong Kong, especially those relating to business operation. However, if some companies are in possession of the personal data of millions of Hong Kong people and in particular, if the operation of public transport is involved, the public will have even higher expectations of these companies. This is only natural and reasonable. In this connection, these enterprises must not only comply with the laws. Their corporate conduct must reach a very high standard and they must strictly exercise self-discipline. So, with regard to the Octopus incident and the review of the PDPO, we have adopted a very positive and stringent attitude in handling them.

On the other hand, in the days ahead, when handling the review of the PDPO and amendments to it, we certainly must have regard to the interests of trade unions, employees and the industries. We must allow room for the survival of the direct marketing industry, so that our graduates in the new generation, whether they are graduates of secondary schools or tertiary institutions, will have the opportunity to join this industry.

Hong Kong is an international financial, trade and shipping centre. Our sustained development relies on the free flow of information. To achieve continuous development in these areas, we must have regard not only to the interest of business enterprises, but also the interests and rights of a workforce of over 3 million and a population of over 7 million in Hong Kong as well as their aspiration for the further development of Hong Kong society.

President, I so submit.

**PRESIDENT** (in Cantonese): Before I allow Mr James TO to make a clarification, I would like to explain a few points. When a designated public officer delivers his speech, he will certainly respond to the arguments made by Members speaking before him. Members may not necessarily agree or satisfy with the public officer's response and to those Members who do not agree with, or who are not satisfied with the response made by the public officer, they will certainly interpret it as the public officer failing to accurately understand what they said in their speeches and the public officer failing to fully grasp the gist of their speeches. If I allow Members to reiterate or elaborate their viewpoints and further ask the public officer to give a more accurate response, that would be tantamount to extending a debate. This is also against the Rules of Procedure which provides that each Member can speak only once in a debate.

Therefore, if a Member considers that a public officer has misunderstood his remarks, he must clearly point out which part of his speech has indeed been misunderstood when the public officer made reference to the Member's remarks in his speech. The Member concerned can only make a brief clarification to explain what he means *vis-à-vis* the meaning as interpreted by the Secretary. Then, the clarification will come to an end, and in no way can the debate be extended.

Mr James TO, your clarification please.

**MR JAMES TO** (in Cantonese): President, I respect and agree with the way you preside over the meeting. Were I in your position, President, I would .....

**PRESIDENT** (in Cantonese): Please make your clarification briefly.

**MR JAMES TO** (in Cantonese): I wish to state in the first place that I support your remarks earlier.

President, I have been misunderstood ....., What I am worried about being misunderstood is — I dare not say that I definitely have been misunderstood — I proposed the appointment of an independent investigation committee. What I said then was "to thoroughly investigate the sale and handling of clients' personal data by Octopus and other sectors". When the Secretary quoted my remarks

earlier on, he said that Mr James TO called for the appointment of an independent investigation committee to investigate Octopus, and he explained at great length why this is unnecessary. But I actually mentioned "and other sectors" as well, and "and other sectors" refers to other sectors, not Octopus. I am afraid I have been misunderstood. If the Secretary understands what I am trying to say but chooses not to give a response, I would accept it.

**PRESIDENT** (in Cantonese): I think you have clarified your point.

**MR JAMES TO** (in Cantonese): Or if he deliberately makes no response, I would also accept it.

**PRESIDENT** (in Cantonese): Mr James TO has clarified his point.

I now call upon Mr James TO to move his amendment.

**MR JAMES TO** (in Cantonese): President, I move that Mr WONG Kwok-hing's motion be amended.

**Mr James TO moved the following amendment: (Translation)**

"To delete "," after "That" and substitute with "privacy is a common value protected by international human rights treaties, but the privacy protection for the public under the existing legislation and regime in Hong Kong is not sufficient;"; to add "step up efforts to regulate enterprises' resale of clients' personal data and direct marketing," after "grey areas,"; and to add "; (h) to appoint an independent investigation committee to thoroughly investigate the sale and handling of clients' personal data by 'Octopus' and other sectors; (i) to urge the Privacy Commissioner for Personal Data ('the Privacy Commissioner') to expand the applicability of the register of data users to financial institutions such as 'Octopus' and banks, the insurance and telecommunications sectors, etc., require the enterprises concerned to declare to the Privacy Commissioner the collection, holding, use and disclosure of data, and submit a privacy compliance audit report to the Privacy Commissioner every two years; and (j) to fully implement

section 33 of the PDPO as soon as possible to regulate the transfer of personal data to places outside Hong Kong" immediately before the full stop."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr James TO to Mr WONG Kwok-hing's motion, be passed.

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

(Members raised their hands)

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

(Members raised their hands)

Dr Priscilla LEUNG rose to claim a division.

**PRESIDENT** (in Cantonese): Dr Priscilla LEUNG has claimed a division. The division bell will ring for three minutes.

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

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

Functional Constituencies:

Dr Margaret NG, Mr CHEUNG Man-kwong, Mr CHEUNG Kwok-che, Mr IP Wai-ming and Dr PAN Pey-chyou voted for the amendment.

Mrs Sophie LEUNG, Dr Philip WONG, Ms Miriam LAU, Mr Vincent FANG, Mr Jeffrey LAM, Mr Andrew LEUNG, Prof Patrick LAU, Dr LAM Tai-fai, Mr Paul CHAN, Mr CHAN Kin-por and Dr Samson TAM voted against the amendment.

Mr WONG Yung-kan, Ms LI Fung-ying, Mr WONG Ting-kwong, Mr CHIM Pui-chung, Mr IP Kwok-him and Mr Paul TSE abstained.

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 WONG Kwok-hing, Mr LEE Wing-tat, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr Alan LEONG, Mr LEUNG Kwok-hung, Miss Tanya CHAN, Mr Albert CHAN and Mr WONG Yuk-man voted for the amendment.

Mr LAU Kong-wah and Dr Priscilla LEUNG voted against the amendment.

Mr CHAN Kam-lam, Mr CHEUNG Hok-ming, Ms Starry LEE and Mr CHAN Hak-kan abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 22 were present, five were in favour of the amendment, 11 against it and six abstained; while among the Members returned by geographical constituencies through direct elections, 28 were present, 21 were in favour of the amendment, two against it and four abstained. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendment was negatived.

**MS MIRIAM LAU** (in Cantonese): President, I move that in the event of further divisions being claimed in respect of the motion "Improving personal data

privacy protection" or any amendment thereto, this Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.

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

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

(No Member indicated a wish a speak)

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

(Members raised their hands)

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

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion passed.

I order that in the event of further divisions being claimed in respect of the motion "Improving personal data privacy protection" or any amendment thereto, this Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.

**PRESIDENT** (in Cantonese): Mr WONG Ting-kwong, you may move your amendment.

**MR WONG TING-KWONG** (in Cantonese): President, I move that Mr WONG Kwok-hing's motion be amended.

**Mr WONG Ting-kwong moved the following amendment: (Translation)**

"To delete "," after "That" and substitute with "it is a community consensus in Hong Kong that the Government and all public and private organizations should faithfully and properly protect the public's personal privacy, but"; to add "(c) to immediately implement section 33 of the PDPO to control the transfer of personal data to place outside Hong Kong, so as to prevent the lack of proper protection on personal privacy due to unreasonable resale of personal data to overseas companies;" after "deterrent effect;"; to delete the original "(c)" and substitute with "(d)"; to delete the original "(d)" and substitute with "(e)"; to add "(f) to amend the Unsolicited Electronic Messages Ordinance and the Do-not-call Registers required under the Ordinance to regulate person-to-person telemarketing activities, so as to ensure that consumers' personal data will not be used improperly in commercial marketing activities, which may cause enormous nuisance to the consumers concerned;" after "collection of the public's personal data;"; to delete the original "(e)" and substitute with "(g)"; to delete the original "(f)" and substitute with "(h)"; to delete "in no circumstances" after "stipulating that they should" and substitute with "not"; to delete "the explicit written consent and authorization from their clients, nor should such personal data be sold or used" after "subsidiary companies, without" and substitute with "stating clearly in separate terms for confirmation by the person concerned in any contracts involving transfer or conveyance of personal data whether such personal data are transferred or conveyed"; and to delete the original "(g)" and substitute with "(i)"."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr WONG Ting-kwong to Mr WONG Kwok-hing's motion, be passed.

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

(Members raised their hands)

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

(Members raised their hands)

Dr Priscilla LEUNG rose to claim a division.

**PRESIDENT** (in Cantonese): Dr Priscilla LEUNG has claimed a division. The division bell will ring for one minute.

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

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

Functional Constituencies:

Dr Margaret NG, Mr CHEUNG Man-kwong, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Ms Miriam LAU, Ms LI Fung-ying, Mr Vincent FANG, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr CHIM Pui-chung, Dr LAM Tai-fai, Mr Paul CHAN, Mr CHAN Kin-por, Dr LEUNG Ka-lau, Mr CHEUNG Kwok-che, Mr IP Wai-ming, Mr IP Kwok-him, Dr PAN Pey-chyou, Mr Paul TSE and Dr Samson TAM voted for the amendment.

Prof Patrick LAU voted against the amendment.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Mr CHAN Kam-lam, Mr LEUNG Yiu-chung, Mr LAU Kong-wah, Ms Emily LAU, Mr Andrew CHENG, Mr Frederick FUNG, Ms Audrey EU, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr CHEUNG Hok-ming, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Ms Starry LEE, Mr CHAN Hak-kan, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr Alan LEONG, Mr LEUNG Kwok-hung, Miss Tanya CHAN, Mr Albert CHAN and Mr WONG Yuk-man voted for the amendment.

Dr Priscilla LEUNG voted against the amendment.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 23 were present, 22 were in favour of the amendment and one against it; while among the Members returned by geographical constituencies through direct elections, 28 were present, 26 were in favour of the amendment and one against it. Since the question was agreed by a majority of each of the two groups of Members present, he therefore declared that the amendment was passed.

**PRESIDENT** (in Cantonese): Mr CHAN Kin-por, as the amendment by Mr WONG Ting-kwong has been passed, you can now move your revised amendment. You may speak for up to three minutes to explain the revised terms in your amendment.

**MR CHAN KIN-POR** (in Cantonese): President, I move that Mr WONG Kwok-hing's motion, as amended by Mr WONG Ting-kwong, be further amended by my revised amendment.

Mr WONG Ting-kwong's amendment has been passed. My amendment actually seeks only to add two key points to Mr WONG Ting-kwong's amendment. When preparing these two key points of my amendment, I was very careful and I adopted as open an attitude as possible. But since this motion involves the livelihood of tens of thousand members of the direct marketing industry, and as the industry considers that the "opt-in" mechanism will stifle their means of living, my amendment, therefore, only proposes to examine whether the "opt-in" or "opt-out" model is more desirable. We have to examine why the "opt-out" mechanism is adopted for purposes of direct telephone marketing in other places in the world. Before there is any detailed study, what justifications do we have to suggest that Hong Kong be the only place in the world to adopt the "opt-in" mechanism?

**PRESIDENT** (in Cantonese): Mr CHAN Kin-por, you should only explain the revised wording of your amendment, (*Laughter*) rather than repeating why you have proposed the amendment.

**MR CHAN KIN-POR** (in Cantonese): President, I have always been well-behaved and so, please give me some time to be a bit "naughty". I have more to say. (*Laughter*) I will come to the point very soon. I have to read out my amendment, right?

**PRESIDENT** (in Cantonese): You only have to explain the revised wording of your amendment.

**MR CHAN KIN-POR** (in Cantonese): OK, let me talk about the revised wording. Basically, Hong Kong should decide on what to do only after examining the pros and cons of the "opt-in" and "opt-out" mechanisms. Moreover, we call on the Government not to stifle the industries concerned, including not to smother the room for survival of the direct marketing industry, when taking measures, thereby enabling a large number of practitioners to make a living. I hope Members will support my amendment on the premise of striking a balance among the interests of various sectors of the community.

**Mr CHAN Kin-por's further amendment to the motion as amended by Mr WONG Ting-kwong: (Translation)**

"To add "; and (j) to examine the pros and cons of adopting opt-in and opt-out mechanisms in Hong Kong with reference to the practices of different places; in adopting such measures, the Government also needs to ensure that all industries and trades can do business in Hong Kong according to the law and also must not smother the room for survival of the industries concerned, including the direct marketing industry, thereby enabling a large number of practitioners to make a living" immediately before the full stop."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That Mr CHAN Kin-por's amendment to Mr WONG Kwok-hing's motion as amended by Mr WONG Ting-kwong be passed.

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

(Members raised their hands)

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

(Members raised their hands)

Mr James TO rose to claim a division.

**PRESIDENT** (in Cantonese): Mr James TO has claimed a division. The division bell will ring for one minute.

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

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

Functional Constituencies:

Dr Margaret NG, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Ms Miriam LAU, Ms LI Fung-ying, Mr Vincent FANG, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr CHIM Pui-chung, Prof Patrick LAU, Dr LAM Tai-fai, Mr Paul CHAN, Mr CHAN Kin-por, Dr LEUNG Ka-lau, Mr CHEUNG Kwok-che, Mr IP Wai-ming, Mr IP Kwok-him, Dr PAN Pey-chyou, Mr Paul TSE and Dr Samson TAM voted for the amendment.

Mr CHEUNG Man-kwong voted against the amendment.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr CHAN Kam-lam, Mr LEUNG Yiu-chung, Mr LAU Kong-wah, Mr Frederick FUNG, Ms Audrey EU, Mr WONG Kwok-hing, Mr CHEUNG Hok-ming, Mr Ronny TONG, Ms Starry LEE, Mr CHAN Hak-kan, Dr Priscilla LEUNG, Mr WONG Kwok-kin, Mr Alan LEONG, Mr LEUNG Kwok-hung, Miss Tanya CHAN, Mr Albert CHAN and Mr WONG Yuk-man voted for the amendment.

Mr Albert HO, Mr Fred LI, Mr James TO, Ms Emily LAU, Mr Andrew CHENG, Mr LEE Wing-tat, Mr KAM Nai-wai, Ms Cyd HO and Mr WONG Sing-chi voted against the amendment.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 23 were present, 22 were in favour of the amendment and one against it; while among the Members returned by geographical constituencies through direct elections, 28 were present, 18 were in favour of the amendment

and nine against it. Since the question was agreed by a majority of each of the two groups of Members present, he therefore declared that the amendment was passed.

**PRESIDENT** (in Cantonese): As Mr WONG Kwok-hing has used up his speaking time, this debate will now come to a close.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by Mr WONG Kwok-hing, as amended by Mr WONG Ting-kwong and Mr CHAN Kin-por, be passed.

**PRESIDENT** (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion as amended passed.

**PRESIDENT** (in Cantonese): Second motion: Facing up to the transport needs of people with disabilities.

Members who wish to speak in the debate on the motion will please press the "Request to speak" button.

I now call upon Mr LEUNG Yiu-chung to speak and move the motion.

## **FACING UP TO THE TRANSPORT NEEDS OF PEOPLE WITH DISABILITIES**

**MR LEUNG YIU-CHUNG** (in Cantonese): President, in the past nine years, I have always been the first Member to move a motion at the beginning of each Legislative Session to discuss such issues as offering half-fare concession on public transport and improving barrier-free access facilities for people with disabilities.

Throughout all these years, President, I have been striving to propose discussions on such a motion at the beginning of each Legislative Session mainly because I wish to tell the Government, right at the beginning of each Session, that it should make early efforts on these areas. Unfortunately, however, when we reviewed what the Government had achieved at the end of each Session, the results were often very disappointing. But the situation this year may probably be a little bit different because the Government may say that it managed to do something and achieve some results last year. For example, it has at least made the MTR Corporation Limited (MTRCL) offer half-fare concession to people with disabilities since December last year. As a matter of fact, it is true. Besides, the Government also mentioned in the progress report last year that the half-fare concession scheme launched by the MTRCL would help encourage people with disabilities to participate in outdoor activities and establish closer links with the community, thereby facilitating their integration into society.

President, I certainly agree to the Government's stance. Besides, I also wish to take this opportunity to thank the Government for its past contribution in this respect and the MTRCL for offering half-fare concession to people with disabilities. However, as there are still many problems with the half-fare concession scheme, Mr WONG Kwok-hing will move an amendment later on today to propose changes to the scheme, and Mr Paul CHAN will also move an amendment to improve the scheme. Regarding these changes, I will give my response in the latter part of the debate. Actually, these changes have also reflected that some aspects of the scheme still warrant our special attention. Anyway, I still agree to the Government's conclusion and stance with regard to this scheme. As I quoted just now, this scheme can encourage people with disabilities to participate in outdoor activities and establish closer links with the community, thereby facilitating their integration into society.

However, has this purpose been achieved through the provision of half-fare concession to people with disabilities by the MTRCL? President, I wish to tell Members that this purpose has not yet been achieved. Because there are many places in Hong Kong which are not accessible by the MTR, and even with places which are accessible, people with disabilities may not be able to reach their destinations directly and conveniently. As we all know, hospitals are a case in point. People with disabilities often have to attend medical appointments at hospital. Unfortunately, however, many hospitals are located at rather remote areas, directly accessible by the MTR. Thus, people with disabilities have to interchange to buses or other modes of transport. Unfortunately, only the MTRCL has been offering half-fare concession so far, while operators of all other modes of transport have yet to provide half-fare concession or comprehensive complementary measures or facilities, making it very difficult for people with disabilities to take these modes of transport.

When it comes to half-fare concession, Members may recall that as the Government had been turning a blind eye to this issue for years without taking any action at all after the relevant debates, a subcommittee was set up two years ago to follow up the issue. During these two years, we invited various public transport operators to discuss the idea of offering half-fare concession to people with disabilities. Take the bus companies as examples. Earlier, they repeatedly claimed that they were unable to offer half-fare concession to people with disabilities, explaining that it would cause them to operate at a loss and bring them extra work, such as research and development work on certain systems. They argued that as quite an enormous cost would be incurred, they were indeed incapable of offering any concession.

President, all these are excuses rather than reasons. Why? About two years ago, the Government commissioned a survey by the University of Hong Kong on the provision of half-fare concession by public transport operators. According to the findings, offering half-fare concession would not cause them to operate at a loss but would bring them more profits instead. Actually, President, you may also know that public transport services are unlike other services in that whether people with disabilities use these services or not, the vehicles have to run services and thus consume fuel anyway, and the manpower requirement will not increase because of the patronage of people with disabilities. Therefore, whether or not people with disabilities take public transport, the operation costs will not change or rise as a result. On the contrary, if people with disabilities

take public transport, the operators will get extra revenue. Therefore, they will make profits instead of suffering losses. President, a person called "Cheung Tsai" is here among us in the Chamber. He can never take public transport on his own, for he must be accompanied by someone else. What is most saddening is that people with disabilities are often unable to take up employment due to their disabilities, and thus can only live on Comprehensive Social Security Assistance (CSSA). Take "Cheung Tsai" as an example. He lives in Po Lam, but he has to attend medical appointments at Queen Elizabeth Hospital in Jordan. It is a very long journey and he needs someone to accompany him. Come to think about it. As his companion already has to spend the time on doing so, how can "Cheung Tsai" ask him to pay his own transport fare? Therefore, every time "Cheung Tsai" attends a medical appointment, he has to pay, in addition to his own transport fare, the fare of his companion. As Members may know, the fare for a single journey from Po Lam to Jordan is \$9.6, and if my memory is correct, the round-trip fare is \$19.2. So, the fare for two people is almost \$40. President, travelling expenses constitute an enormous burden on him. When he has to spend that much to attend one medical appointment, his travelling expenses will be even higher if he has to attend many medical appointments. Therefore, he is indeed facing a great difficulty.

Comparatively speaking, all franchised public transport operators are making huge profits. The MTRCL is, undoubtedly, making billions of dollars in profits, and even the Kowloon Motor Bus Company (1933) Limited (KMB) is making a profit of hundreds of million dollars. In 2007 and 2008, the KMB made a profit of \$600 million; and it is not yet time for profit and loss assessment now, but a profit of \$200 million to \$300 million has already been recorded so far. I mean profits, not revenue, President. Therefore, they are making profits. Even if they offer half-fare concession to people with disabilities, there is no reason why they will suffer a loss. They will only make more gain. Why would they operate at a loss? After calculations, we find that the argument of incurring losses is only an excuse rather than a fact. Therefore, people cannot help but query how the Government could tolerate such an excuse of loss by these franchised transport operators. President, I find it most deplorable that the Chief Executive said last week here in this Chamber that the Government must do something if there is no improvement to our environmental protection situation. He pointed out that as franchised buses are the major cause of roadside air pollution on busy corridors, the ultimate policy objective of the Government is to have zero-emission buses running across the territory. When the current bus

franchises expire one after the other in the coming few years, the authorities will impose additional requirements in the franchises for the bus companies to switch to zero-emission buses or the most environmentally-friendly buses when replacing existing ones, taking into account the feasibility and affordability for bus operators and passengers. President, this is an environmental protection policy because buses emit enormous volumes of exhaust air, causing serious air pollution in Hong Kong. On the other hand, however, why is there no policy on the provision of half-fare concession to people with disabilities? Why do the authorities not impose the relevant requirement in the franchises? I think the reason is simple. This requirement is not imposed because the Government is concerned only about issues which catch public attention, fearing that failing to show concern to these issues will not only be unable to win any applause but also lead to jeering from the people. However, it has not given any regard to the socially disadvantaged, turning a blind eye to their problems as if they did not exist at all. To put it to the extreme, it discriminates against the socially disadvantaged and does not value and respect them. Hence, it has neither put in place any policy nor imposed any restriction by including the relevant requirement in the franchises. This is my strongest feeling. If this is not the case, how can the Government explain why it flatly rejected our request for imposing this requirement in the rail merger exercise while planning to include that requirement for environmental protection reasons? For people with disabilities, this demeanor suggests that they are not valued at all. It is blatant discrimination. If this is not the case, then why is it so?

President, the fact that the Government keeps delaying the implementation of this policy makes us feel that it does not care about the rights and needs of people with disabilities. Actually, when it comes to the needs of people with disabilities, I really want to invite the two Secretaries to spend some time and go out with me blindfolded to take a bus to Aberdeen, without going to places even farther away, to experience how it is like for people with disabilities to take a bus. Honourable colleagues present might as well imagine how we can go to the bus stop outside to take a Route No. 70 to Aberdeen and how we can let the bus drivers know which route of bus we want to take. Actually, they have never considered the users' needs. They really have not given any consideration or thought to their needs at all. To date, the bus stop announcement system is still not available. How can they assist the blind and the visually-impaired in taking buses? They have not put in place any measure at all. The Government always argues that it has already required the bus companies to take various actions, such

as retrofitting the bus stop announcement system. Up till now, however, the bus companies ..... Take the KMB as an example. While it is not necessarily true that the bus stop announcement system is not available on all of its buses, it is only available on half of them. Besides, the system on many of these buses is not activated, on the excuse that tests are still being done. So, the purpose is not served. What is more, the Citybus Limited (Citybus) even denied its reluctance in retrofitting this system, saying that it would be retrofitted together with the global positioning system when it is ready. The Secretary already said this here many years ago. Certainly, I do not mean the incumbent Secretary, rather I mean the bearer of the office of the Secretary has been saying this for years. However, the system is still awaiting tests. President, I do not know how much longer we still have to wait. They have said so for many years. When will people with disabilities be able to take buses? This is vitally important. Besides the blind and the visually-impaired, I also want to talk about the wheelchair-bound, whose situation is also very deplorable. As Members may know, assistance provided to the wheelchair-bound in taking the bus is far from satisfactory. Take the KMB as an example. So far, only 46.46% of its fleet are low-floor buses, and only 31.1% of the Citybus fleet, including its fleet servicing Hong Kong Island, Tung Chung and the airport, are low-floor buses. The situation of the New World First Bus Services Ltd (NWFBS) is better, with 84.8% of its fleet being low-floor buses, probably because it has fewer vehicles in its fleet. As for other bus companies, the relevant percentages are all below 50, which is indeed very bad. This is not the end of the story. What is most deplorable is that it seems the bus companies intentionally trick people by making such an arrangement that only some of the busses servicing the same route are low-floor buses, making it impossible for passengers to know when to expect a low-floor bus, which is indeed deplorable. For a route served by 10 buses, perhaps only five of them are low-floor ones while the remaining five are not. Yet, passengers waiting for the bus have no idea of this. The bus companies sometimes arrange for five low-floor buses to run the service in a row, to be followed by buses which are not low-floor ones, rather than arranging for low-floor buses and non-low-floor buses to ply the route alternately, which has made it impossible for people to know how long they have to wait. Some people with disabilities told me that sometimes they were unable to get on the bus after waiting for over an hour because they did not know when there would be a low-floor bus. I consider this inhumane. Nevertheless, it seems the Government has adopted a "couldn't care less" approach, only saying that it will advise the bus companies to make better arrangements. But the bus companies

have not made any improvement at all, and the situation remains unchanged even now.

Ashamed? I do not mean you, President. May I ask whether the officials will feel ashamed when the progress has been so minimal that it seems no progress has ever been made at all after this issue has been discussed for so many years? What can be done? Therefore, regarding this subject, I once said that ..... just now many Honourable colleagues said to me, "LEUNG Yiu-chung, our scripts have been the same all these years, and we will read out the same scripts today." I said to them, "Please do not do so!" They then went on to say, "This subject has been raised for years. What else is there to say? There is nothing new to add." President, I told my friends today that I really do not want to raise this subject again. Actually, there are many subjects I wish to raise, but so long as this problem remains unresolved, I have no choice but keep revisiting it. I hope Honourable colleagues will not grow tired of it. This is not an obnoxious subject, rather it is a subject which demonstrates our respect for human rights, humanity and righteousness. I hope Members will continue to support me.

President, I so submit. Thank you.

**PRESIDENT** (in Cantonese): Mr LEUNG Yiu-chung, please move your motion.*(Laughter)*

**MR LEUNG YIU-CHUNG** (in Cantonese): I now move my motion.

**Mr LEUNG Yiu-chung moved the following motion: (Translation)**

"That this Council passed motions on a number of occasions over the past few years calling for improvement to transport facilities for people with disabilities and offer of concessionary transport fares to them, but the Administration, some statutory transport corporations and other public transport operators still fail to fully face up to and give effect to the motions, and the crux of the problem is the Government's lack of a specific policy on fare concessions for people with disabilities and determination to make improvements; this Council strongly demands the Administration to take the lead in implementing and pushing various

public transport operators to immediately and fully respond as well as give effect to the relevant motions previously passed by this Council and the recommendations in the Report of the Council's Subcommittee to Study the Transport Needs of and Provision of Concessionary Public Transport Fares for people with disabilities in the last term; in addition, the Government must implement the following concrete measures to more comprehensively address the transport needs of people with disabilities so as to enable them to integrate into society more effectively:

- (a) to formulate a policy on fare concessions on public transport for people with disabilities;
- (b) in order to effectively assist people with disabilities in integrating into society, to adopt legislative, administrative and financial measures to press various major public transport operators to offer concessionary fares to them;
- (c) to put forth, in the near future, specific proposals and a timetable for introducing half-fare concession on public transport for all people with disabilities, so as to help them integrate into society and improve their life;
- (d) to allocate additional resources to comprehensively improve the Rehabus service and, in particular, enhance such service for people with disabilities living in remote areas and new towns;
- (e) to request the MTR Corporation Limited to expeditiously install facilities such as platform screen doors, platform gates and automatic mechanical gap fillers for all its rail lines in order to strengthen platform safety, and improve station facilities with a view to creating a barrier-free environment;
- (f) to request various public bus companies to expeditiously replace their buses with low floor type buses to cater for the transport needs of people with disabilities, and when a bus makes stops, inform passengers of the routing arrangement through its public address system for the convenience of the blind, and at the same time incorporate provisions in the new franchise agreements on public

bus services to require bus companies to offer concessionary fares to people with disabilities;

- (g) to study subsidizing people with disabilities in need to purchase electrical wheelchairs so as to facilitate them to use public transport;
- (h) to request the Transport Department to explore waiving the licence fee for people with disabilities who purchase private cars with a cylinder capacity of over 1 500 c.c. so as to make it convenient for them to carry larger and heavier electrical wheelchair and supporting equipment, provide additional auto-fuel allowances for people with disabilities, subsidize drivers with disabilities for using private tunnels and provide parking spaces for them, so that people with disabilities do not have to pay high transportation fees; and
- (i) to step up consultation with people with disabilities to fully realize the concept of 'Transport for All', and strictly regulate public transport operators in providing barrier-free facilities, so as to enable more people with disabilities to use public transport and integrate into society."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr LEUNG Yiu-chung be passed.

**PRESIDENT** (in Cantonese): Two Members will move amendments to this motion. This Council will now proceed to a joint debate on the motion and the two amendments.

I will call upon Mr WONG Kwok-hing to speak first, to be followed by Mr Paul CHAN; but no amendments are to be moved at this stage.

**MR WONG KWOK-HING** (in Cantonese): President, I strongly support Mr LEUNG Yiu-chung's motion, and my amendment seeks to improve his original motion. To start with, I would like to quote the lyrics of the song "Of all bad

traits, licentiousness is the worst" as the opening of my speech: "Alas, I beg you all in tears to have pity on us people with disabilities."

President, a lot of statistics .....

(Mr WONG Kwok-hing spoke while standing in Members' passageway)

**PRESIDENT** (in Cantonese): Mr WONG Kwok-hing, please return to your seat because you are obstructing the passageway.

(Mr WONG Kwok-hing returned to his seat)

**MR WONG KWOK-HING** (in Cantonese): President, I believe I am not causing any obstruction now. Why am I acting like a person with a disability, even taking along with me this amputated leg? Because the existing definition and application system of the Disability Allowance are extremely ridiculous, and the half-fare concession for people with disabilities offered by the MTRCL now is also very ridiculous and unreasonable. I need not provide a lot of statistics in support of this. I have brought along this amputated leg so that members of the Hong Kong public sitting in front of the television set can judge for themselves whether I, with a condition like this, should be regarded as a person with a disability and receive half-fare concession. I hope the two Secretaries will answer this. May I ask all members of the Hong Kong public whether they think the role being played by WONG Kwok-hing now should be regarded as a person with a disability and thus eligible for half-fare concession? I need not advance many arguments, and neither do I have to cite a lot of statistics in support of it. People with disabilities are not useless, and they are disabled but useful. I think what is truly useless is the existing half-fare concessionary scheme, which has caused strong dissatisfaction, which is most deplorable and unreasonable.

President, here I have a Registration Card for People with Disabilities issued by the Social Welfare Department, which states clearly that it is issued to people with disabilities, registered as such. As I now have only one leg amputated, my disability is assessed at 65% but not 100%. I can enjoy half-fare concession only if I have both legs or one arm and one leg, that is, two out of my

four limbs, amputated. Is it right? Will all members of the Hong Kong public judge for themselves whether it is right? Should people like me now be eligible for concessions? How many more justifications do we have to give? It is not acceptable at all.

President, this is an application form for half-fare concession provided by the MTRCL for people with disabilities. I have blown it up from an A4 to A3 size. One side of it is yellow while the other is white, exactly the same as the original. What does it say? In the first line — the line in red — it says: This form is only for recipients of Comprehensive Social Security Assistance (CSSA) with 100% disability. I consider this most unreasonable and harsh. How can it be? The same is also stated in the "Notes to Applicants" on the back of the application form. It seems that the aim is to exclude people like me now from the scope of eligible applicants. In doing so, the relevant Bureau and the MTRCL have contravened the principle of equal opportunities. I hope the Equal Opportunities Commission will take follow-up actions in this regard.

President, I have never imagined that such an unreasonable situation could occur in Hong Kong, which claims to be a cosmopolitan city. President, I wish to share with you here the practices adopted by overseas places and countries in offering concessionary fares to people with disabilities. Even Shenzhen, which adopted a slower pace than ours and has been a bit late in development, has overtaken us on this count. Since 2007, the metro and buses in Shenzhen have been offering free services to local people; and recently, people with disabilities, such as the one I am acting now, may take local buses and trains free of charge while visiting Shenzhen without producing any documents. Most ridiculously, the metro in Shenzhen is managed by the MTRCL. Has anything really gone wrong?

President, in Guangdong, all people with disabilities may take trains and buses free of charge, and Taiwan also offers half-fare concessions to people with disabilities for travelling by the rail, road, metro, ferry and plane. Further narrowing the scope to Taipei, buses there offer full concession to the disabled, and its trains also provide half-fare concession to them. Let us then take a look at Japan. People with disabilities may take the metro free of charge there. In the United Kingdom, people with disabilities may use all public bus services free of charge. President, among these places cited by me, some of them are less developed, some are more advanced, while others are similar to Hong Kong in

terms of economic development. Why can't such a developed place like Hong Kong offer half-fare concessions to people with disabilities?

President, the case of the MTRCL is the most regrettable of all. The Government is its major shareholder. We do not have to advance those arguments again because we have already talked about them at great length in the discussion of the last motion. Now, the Chief Executive is talking about the need to build a caring society and set up the Community Care Fund. The Government will contribute \$5 billion and the business sector will also contribute \$5 billion to support those people who cannot benefit from CSSA or various allowances. President, I wish to put forward a proposal to the Government. As the major shareholder of the MRTCL, it only needs to offer half-fare concession to people with disabilities, without really spending any money at all, to show immediately that it cares. It is already good enough, and there is no need to play all sorts of tricks, just pragmatically .....

(Mr WONG Kwok-hing flaunted a crutch which is used for supporting his lower limbs)

**PRESIDENT** (in Cantonese): Mr WONG Kwok-hing, please do not flaunt that crutch. It is dangerous.

**MR WONG KWOK-HING** (in Cantonese): Okay, thank you for reminding me of that. Therefore, I think if the Government can set a good example, all problems can be resolved. If the Government, being the major shareholder of the MTRCL, does not walk the walk and set a good example, how can it talk about care and promoting social harmony? Therefore, President, I think Hong Kong should be ashamed of this. People with disabilities in Hong Kong may enjoy free transport services in Shenzhen, but no one would have imagined that they cannot enjoy any concession back here on this side of Lo Wu. Do Members agree that this is what Hong Kong should do? If you do not, please support the original motion and the two amendments proposed by the two of us.

My dear government officials, do you agree that Hong Kong should continue to bear this shame? If you do not, please have mercy. Go back and tell the Chief Executive to make a decision and offer concessions right away.

Do something for the people with disabilities in Hong Kong ..... I think even half-fare concessions are not good enough, and free services should be offered. Right? I hope the Government will listen to our voices. Apart from people with a condition like the one acted by me now, many people are suffering from avascular necrosis, some are blind, and many others are chronically ill. They also need the Government's care. I sincerely hope (*The buzzer sounded*) ..... that the two government officials can listen to and see my condition and views.

**PRESIDENT** (in Cantonese): Mr WONG Kwok-hing, your speaking time is up.

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

**MR PAUL CHAN** (in Cantonese): President, first of all, I declare my interest as an independent non-executive director of the Wharf (Holdings) Limited, which holds an equity in Star Ferry.

I wish to thank Mr LEUNG Yiu-chung for moving this motion for the tenth year. This motion has made people sigh with mixed feelings. While Members have fought here in this Council for nine years, and the relevant motions were passed with the majority support of this Council year after year, no significant results have been achieved throughout these years, despite all the efforts made by this Council and groups for the disabled. Even though the Transport Department had set up much earlier the Working Group on Access to Public Transport by People with Disabilities, with the participation of major public transport operators and groups for the disabled, the conclusions reached by the Working Group on discussions on the provision of fare concessions to people with disabilities at its two recent meetings were disappointing. Public transport operators indicated that they would not provide any additional concession to people with disabilities other than the existing concession for all passengers on the ground that it would have financial implications for them. This is understandable because we cannot push corporate responsibilities to such an extreme and the Government should bear the greatest responsibility of helping people with disabilities and the socially disadvantaged group. As stated in the original motion and the amendments, the crux of the matter lies in the Government's lack of a specific policy on fare concessions for people with

disabilities and determination to take the lead in implementing improvement measures.

In my amendment, I proposed that the Government should set aside part of the cash dividends of more than \$2 billion receivable from the MTRCL each year to subsidize the transport fares of people in need. The purpose of this is to explore a solution to the problem from another perspective and point out at the same time that the Government has sufficient financial strength to introduce concessionary measures. Besides, the Government is indeed too rigid in its management of public finances and public assets, and there is much room for improvement in this respect. I will give a detailed account on this later on.

President, as early as in 2008 when Mr CHEUNG Hok-ming moved the motion on "Alleviating the burden of travelling expenses", I already proposed that the Government should dedicate the cash dividends received from the MTRCL each year to subsidizing the transport fares of the disadvantaged social groups and the elderly. The merit of my proposal is that on the one hand, the operation of commercial organizations will not be affected, and on the other, the MTRCL's shares held by the Government will still be very valuable assets and used for meeting the needs of the socially disadvantaged group at the same time, thus killing two birds with one stone.

President, I wish to tell Members my computations. First, in its reply to my oral question raised in this Council in May this year, the Government said that since the listing of the MTRCL, the Government had been receiving cash dividends of \$5.522 billion from over 600 million shares annually, excluding the dividends totalling about \$931 million waived to provide funding support to the MTRCL for the construction of the Disneyland Resort Line. In the past two years, the Government received from the MTRCL dividends of more than \$2 billion annually. Second, President, to my understanding, the MTRCL has all along been making profits from its daily business operation, which has remained unaffected despite the merger with the Kowloon-Canton Railway Corporation (KCRC), and thus does not require any form of government subsidy. In each of the past 10 years, the MTRCL was able to pay dividends. Even though the South Island Line, the Shatin to Central Link and the Kwun Tong Line Extension will be constructed in the next few years, the MTRCL does not have to worry about the construction costs affecting its business operation because the

Government will provide it with different forms of subsidy, including property development rights of station superstructures. Besides, some roads will be constructed with government funding and operated by the MTRCL in the form of a lease. In other words, the MTRCL will continue to make profits in the future and the Government will continue to receive dividends. Therefore, using such dividends to subsidize transport fares is definitely sustainable, and it does not constitute a cause for concern.

President, when seen from a broader perspective, the picture will be clearer and the Government will have more room for thinking. Why? The Government did not have to spend a single cent on the construction and operation of this railway. Insofar as the financial skill used in this project is concerned, the Government merits commendation because it did not have to spend a single cent in pocketing over \$80 billion. How did I arrive at this figure? First, all the dividends I mentioned just now added up to as much as several billion dollars; second, the Government got \$10.5 billion in the listing and privatization of the MTRCL back then; third, although the Government granted the development rights to the MTRCL, land premium was charged, and proceeds from land premium over these years amounted to a total of \$97.9 billion. These three amounts add up to a total of \$116.5 billion, and after deducting the cost of \$32 billion paid by the Government for the construction of the Kwun Tong Line Extension back then, the balance is the amount I mentioned just now. The Government did not have to spend a single cent in pocketing over \$800 billion. I have raised this point in the hope that Members will notice that the Government actually has a fiscal surplus of several thousand billion dollars, and does not have to cover any fiscal deficit by selling the MTRCL shares. Therefore, it can be argued that the Government has both the financial strength and the means to help people who need subsidization in transport fares, and what it lacks is only a "heart", an "understanding heart" to understand people's plights, and a "compassionate heart" that enables it to feel what the people in distress feel.

President, I wish to make a bold hypothesis. Members may know very well that in blue chips companies listed in Hong Kong, the major shareholder may already become the controlling shareholder as long as it holds up to 30% to 40% of the shares. However, the Government holds 77% of the MTRCL's shares, which is more than double the percentage actually required. My proposal is that the Government should maintain its status as the controlling shareholder, but it should reduce its shareholding to 51%, which means reducing

its shareholding by 25%. This way, based on the closing price of \$30 of the MTRCL shares on 18 October, the Government will be able to encash \$43.3 billion. I must stress that I am not suggesting that the Government should sell its chattels. I am just asking the Government to refrain from being a "miser" and make proper use of the public assets in its possession to help members of the public in need. In reducing its shareholding, the Government will be able to encash over \$40 billion. Even if this amount were passed to the Hong Kong Monetary Authority for management, which is the least ambitious and most conservative in investment, based on the average rate of investment return of 6% in the past few years, a return of \$2.5 billion will be achieved annually. This amount can not only be used to help the some 360 000 people with different types of disabilities in Hong Kong to meet their travelling expenses, but also cover the expenses incurred in the cross-district travelling allowance for the 18 districts. Besides, it is also a sustainable benevolent policy. Compared with the Community Care Fund (CCF), which has been the hot topic in town recently, I think this approach is more effective and meaningful. Having said that, I am certainly not denying the initiative of the CCF to bring together the business sector, members of the public and the Government to help people in poverty, which is also worthy of support. Nevertheless, the initiative I mentioned just now, that is, reducing shareholding for encashment and then making the best use of the amount to help people in need, is indeed worth pursuing. Besides, there is no need to hoard the amount of over \$40 billion. The authorities may further allocate part of that amount for this purpose if and when necessary. I think it is also feasible.

President, even if the Government does not give consideration to my proposal just now or needs some time to examine it, it may consider the proposal in my amendment first, which is that it may set aside a certain percentage of the cash dividends received from the MTRCL to subsidize the transport fares of people with disabilities. I remember the Secretary for Financial Services and the Treasury once said in response to my oral question that if the Government wishes to use the dividends received from the MTRCL for other purposes, it has to secure the permission of the Finance Committee of the Legislative Council under the Public Finance Ordinance. I believe that in this Council, it would not be a problem. If the relevant authorities turn down my proposal only on this technical ground, it would be a pretext. As I said just now, motions on providing support and subsidies to people with disabilities in relation to transport fares were passed nine years in a row with majority support in this Council.

President, I hope the Government can truly achieve "Sharing Prosperity for a Caring Society", and I hope that in the near future, we do not have to waste our energy on this motion debate every year here in this Chamber. Thank you, President.

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): President, assisting people with disabilities to integrate into society, including meeting their transport needs, is an important issue. The Secretary for Labour and Welfare will offer an account later on what his Bureau has done within its portfolio to cater for the transport needs of people with disabilities, thereby assisting them to integrate into society.

With respect to transport policies, the Government has spared no efforts in implementing the concept of "Transport for All", so that all Hong Kong people, including people with disabilities, can travel on a barrier-free transport system. We will make continuous improvement to our transport facilities to cater for the needs of all passengers, including people with disabilities. At the same time, we have been encouraging public transport operators to follow the same direction and actively improve their facilities for the convenience of people with disabilities.

The Secretary for Labour and Welfare and I will give consolidated replies after listening to Members' views on the topic.

Thank you, President.

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): President, first of all, I wish to thank Mr LEUNG Yiu-chung for proposing a motion on the transport needs of people with disabilities and Mr WONG Kwok-hing and Mr Paul CHAN for proposing the amendments. It has all along been the objective of the Government's rehabilitation policy to provide suitable support and necessary facilities to people with disabilities to help them develop their potentials, so that they can participate in various activities on an equal basis with others, thereby facilitating their full integration into society.

The provision of barrier-free transport facilities to people with disabilities is vital to helping them integrate into society. As the Secretary for Transport and Housing said just now, the Government has all along been committed to implementing the concept of "Transport for All", having devoted quite a considerable amount of resources throughout these years to launching improvement works for transport and road facilities and promoting a barrier-free transport system. It has also been encouraging public transport operators to improve their transport facilities to address the needs of people with disabilities. In recent years, there has been marked improvement to our transport service networks and facilities.

Besides promoting a barrier-free transport system, we have also subsidized non-governmental organizations in the operation of Rehabus, in pursuance of the welfare programme, to provide point-to-point transport services for those people with disabilities who have difficulties in using normal modes of public transport. Rehabus offers scheduled route service to carry people with disabilities to office, school and places of training in occupational rehabilitation. Besides, Rehabus also has a dial-a-ride service to facilitate people with disabilities in attending medical appointments and taking part in other social activities.

I fully appreciate the great demand for Rehabus service of people with disabilities. Therefore, we would review the service demand annually and bid for additional resources to purchase new vehicles as required. In 2010-2011, we have set aside \$8.16 million for the procurement of four new vehicles and retrofit six existing aged ones, thereby increasing the Rehabus fleet to 119 vehicles. This year, our subsidy for the recurrent expenditure of Rehabus will amount to \$38.75 million, representing 80% of its operating cost.

I am very grateful to Members for the concern expressed over the topics of improving the Rehabus service and subsidizing people with disabilities in need to purchase electrical wheelchairs. I will give a consolidated reply after listening to Members' views on the topics.

President, I so submit.

**MR IP WAI-MING** (in Cantonese): President, it is already the third year! It is the third year since I joined this Council that this subject is discussed. Quoting Mr LEUNG Yiu-chung, "it is actually the ninth year", not only the third one, that

this subject is discussed. Despite our repeated discussions, the conclusion is the problem remains unresolved. We really hope the Government will solve this problem after listening to the views of Honourable colleagues. Mr Paul CHAN has put it most correctly just now. I do not hope Mr LEUNG Yiu-chung will raise this subject for discussion again next year, as it has indeed wasted much of this Council's time. I think the Government should take concrete actions to solve this problem.

Actually, for many people with disabilities, going out is such a big event that it seems as if they had to consult an almanac to pick the right date to do so. It would surely be better if they can enjoy fare concessions, particularly when they often lack choices in the mode of transport — the Secretary said the Rehabus service is available, but it is still unable to meet the demand of people with disabilities, especially when low-floor buses are not always available on all public bus routes — very often, therefore, if people with disabilities miss a low-floor bus, they may have to wait for a long time before they can get on another one.

The Government keeps saying that we have to build a harmonious society and help the socially disadvantaged group integrate into society. We hope the Government is not preaching one thing but doing another. Not only has the Government been unable to display any keen interest in the transport needs of people with disabilities, but it has also failed to demonstrate any determination in helping them solve this problem. Otherwise, this issue would not have remained unresolved after this Council has spent nine-odd years to discuss it. We think the rights and interests of people with disabilities are actually not properly protected. In this respect, we wish to express strong dissatisfaction, and we must censure the Government for it.

Last year, I expressed concern in relation to such issues as low-floor buses and barrier-free facilities. Under Article 19 of the Convention on the Rights of Persons with Disabilities, (states parties to the Convention shall ensure that) "community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs". However, has the SAR Government discharged this duty? We think the Government must take up this responsibility and take more proactive measures to provide suitable complementary transport facilities to people with disabilities, thereby helping them integrate into society. We have made reference to the

experience of other places. In London, for example, all buses have low-floor access and are equipped with ramps to facilitate boarding and alighting by wheelchair-bound passengers.

President, low-floor buses have actually become the standard in many places over the world, but there is still an insufficient number of low-floor buses in Hong Kong. Not all routes are serviced by low-floor buses, and there are inadequate low-floor buses to meet the demand. For example, according to the statistics of the KMB, as at early 2009, the number of low-floor buses accounted for only less than 50%, not even half, of its fleet. Besides, the number of runs of low-floor bus services is very low, with only two runs of such services out of 10 on average for certain routes. Some people with disabilities often have to wait for as long as two to three hours to take such a bus, which I think is totally unacceptable to an able-bodied passenger. When these low-floor buses have to undergo regular maintenance and no replacements are available, it will become very inconvenient for people with disabilities to board or alight a bus. In the Policy Address, the Government said it will consider providing financial support to bus companies in procuring greener buses. I am wondering whether the Government should consider, in the same context, providing financial support to bus companies in procuring low-floor buses, that is, buses which are environmentally-friendly and equipped with low-floor access at the same time. I think the Government should make it one of its policy objectives to implement on a full scale low-floor bus services, thereby achieving the objective of replacing all buses with the low-floor models expeditiously.

To date, barrier-free facilities are still inadequate to meet the demand of people with disabilities. Take the MTR as an example. The screen door retrofitting works has been in progress for quite a while, but its completion has yet to be known. We do not know when a timetable will be available. It should be noted that these barrier-free facilities, as we can see, may not always be suitable for people with disabilities. In particular, the most common problem is the ramps are too steep, and examples include the ramp at the entrance of the Ko Shan Road Park, the spiral ramps leading to the Sheung Shui MTR station, Choi Yuen Estate, Tai Ping Estate and the North District Hospital respectively or the ramp at the bus stop in Kwong Fuk Estate. Very often, although ramps are available to facilitate people with disabilities in using barrier-free facilities, the wheelchair-bound will easily lose balance and tumble over when using these

ramps, or their carers may not be strong enough to push them up these ramps as their gradient is too steep. In MTR stations, as barrier-free access is only available at one exit, it may take people with disabilities a long time to find out where that exit is in big stations. Therefore, we hope that in designing these so-called barrier-free facilities, the authorities can adopt a user-oriented approach by examining carefully and thoroughly how the provision of these facilities can achieve the desired effects from the perspective of people with disabilities and their carers. We hope the Government will face up to the transport needs of people with disabilities by formulating as soon as possible a concessionary fare policy and providing facilities for people with disabilities. Thank you, President.

**MISS TANYA CHAN** (in Cantonese): President, the Central Government already ratified the implementation of the United Nations Convention on the Rights of Persons with Disabilities in China in 2008. As also asked by Mr IP Wai-ming just now, what should be the major core principle adopted by Hong Kong, as part of China? It is equality. However, has the Government really achieved equality? Judging from the fact that Mr LEUNG Yiu-chung has to propose this motion repeatedly, we may have some idea about it. It is already the third time since I became a Member that he has proposed this motion.

Although the Government has been providing continued public education on such concepts as equal rights and opportunities for people with disabilities through the media, its administration has not only disregarded the needs of and equal opportunities for people with disabilities but also granted various privileges to large consortia and tycoons in recent years, thereby giving them with various options while leaving members of the public at their mercy. Let me cite a few examples.

First of all, Hong Kong athletes who have brought honour to Hong Kong by winning trophies in international events should receive equal encouragement and recognition by society because such glory is shared by all members of the Hong Kong public. However, the monetary prize received by a disabled athlete who won a gold medal in the Olympic Games was only 10% of that received by an able-bodied athlete. What do the authorities mean by this? Have they ever truly respected the effort made by people with disabilities?

Let me cite another example. The Government has been encouraging the private sector and non-governmental organizations to employ more people with disabilities. As far as I know, however, the number of people with disabilities who have succeeded in taking up positions in the Government has been decreasing in recent years. It has been reported that the number of visually-impaired employees in the Government's 1823 call centre reached seven at one time. However, following the retirement or resignation of the relevant employees, there are now only two visually-impaired employees in that centre, with one of them retiring next year. The Government's guideline specifies that priority will be accorded to employing eligible people with disabilities, but this has not been the case in recent years. It seems that the so-called equal opportunities have already been reduced to empty talk. How can the Government demonstrate that it has acquitted itself properly?

What is more infuriating is that the Government is skewed in favour of large consortia in granting the rights to choices and decisions. Some public transport operators in Hong Kong are the subsidiaries of large consortia with considerable financial strength or large corporations which make a few billion dollars in profits annually. But the Government allows these consortia to choose whether or not to offer transport fare concessions to people with disabilities and gives them room for negotiation. It even allows them to refuse to offer any concession on the ground that "shareholders' interests should come before everything". However, what about people with disabilities? They have to attend medical appointments and find jobs, and yet they have to bear the exorbitant transport fares without any choice at all. Should they walk to their destinations? Either they take transport or they have to walk. The socially disadvantaged do not have any choice. Is this the norm in society nowadays? I believe many people will find it unacceptable.

Recently, the Chief Executive proposed setting up the Community Care Fund (CCF), pushing the situation regarding the right to choices and inequality to the extreme. Tycoons may choose whether or not and how much to contribute to the CCF, but the Government will, on behalf of all taxpayers, make a matching amount of contribution to the CCF. So, taxpayers must contribute \$5 billion in order to receive a contribution of \$5 billion. This is a platform for tycoons to fish for fame and get financial support for image building. Why should we allow the tycoons, but not the taxpayers, to choose? If the Government

continues to govern Hong Kong with this attitude of tilting towards a certain party, I am afraid that in 10 years' time, we may still have to discuss the motion proposed by Mr LEUNG Yiu-chung today.

Regarding the establishment of the CCF, the Government claims that it seeks to establish a platform to allow the business sector to participate in social services, thereby fulfilling its social responsibility. Actually, the tycoons can still fulfill their social responsibility even without the CCF, and such opportunities abound. Just now I mentioned that many transport operators are backed by large consortia. Only with a small amount of their resources, these transport operators can already provide half-fare transport concession to people with disabilities across the board, thereby fulfilling their social responsibility. In that case, why should we bother to make such a great fuss, requiring both parties to contribute \$5 billion each for this purpose?

Actually, the Government can easily ensure that the tycoons will fulfill their social responsibility, without the need to act generously at the expense of taxpayers. For example, regarding those franchised bus companies which have been refusing to offer transport fare concessions to people with disabilities, the Government actually has an imperial sword, that is, it may incorporate into the franchise agreements provisions conducive to the provision of services for people with disabilities in the review and renewal of these agreements. I support Mr LEUNG Yiu-chung's proposal of incorporating provisions into bus franchise agreements to require bus companies to provide barrier-free facilities and half-fare concession to people with disabilities in the review of such agreements.

If the Government considers it necessary to increase the resources for social services in Hong Kong, it needs not care about how much contribution the businessmen will make. If the Government is prepared to set aside \$50 billion for this purpose, it may simply use this sum of money to address the needs of the socially disadvantaged group, including the immediate needs of people with disabilities. For example, as barrier-free services have yet to be provided by many modes of public transport on a full scale, many people with disabilities have to use the Rehabus service. The few additional rehabuses provided by the authorities each year are really a drop in the bucket. The Government may set aside part of the \$50 billion for enhancing the Rehabus service to benefit more people with disabilities.

President, while I was on my way to attend this meeting here today, I saw a group of people with disabilities outside the Legislative Council Building. They have been fighting persistently for half-fare transport concessions for people with disabilities for over a decade. Their perseverance is worthy of emulation, particularly by young people. Actually, one of my assistants is a person suffering from severe visual impairment. We know that his vision is deteriorating, but we have not discussed this issue formally. In the past, I did not have much contact with people with disabilities, but after employing this assistant, I began to know how to communicate and get along with people with disabilities, and my experience is that people with disabilities may actually have very high capacity at work. With the help of suitable facilities, and given the appropriate opportunities, they can also give play to their potential and contribute to society.

With these remarks, I support the motion. Thank you, President.

**MR CHAN HAK-KAN** (in Cantonese): President, as many Honourable colleagues have said, the provision of transport fare concessions for people with disabilities has been discussed for nine years. Actually, we can see that a clear consensus has already been reached, whether in society or in this Council, yet this issue has remained unresolved.

I notice that the Government has made some responses over a period of time in the past, but I think these responses have missed the mark. The Government introduced a monthly transport allowance of \$200 in July 2008 in the hope of solving the existing problem. However, the so-called allowance currently provided by the Government is only a fixed-amount subsidy offered on a monthly basis, but what people with disabilities want is actually half-fare concession or even full concession for every public transport ride they take. Therefore, this shows that there is a discrepancy in viewpoints, and the Government has failed to put in place policies to meet the demand of the general public and people with disabilities.

Just now, many Honourable colleagues cited such neighbouring places as Shenzhen, Guangzhou and places in the Mainland as examples to illustrate that transport fare concessions are offered to people with disabilities in these places. However, I wish to talk about countries farther away. President, the United

Kingdom has been offering free transport services to people with disabilities in England during non-peak hours since 2009; in Scotland and Wales, people with disabilities may enjoy free public transport services at all time. A nearer neighbour, Japan, has put in place similar arrangements and offered even better concessions. In Japan, those people travelling with people with disabilities may also enjoy a fare discount. As we can see, such concessions are actually a universal value and practice. Why can Hong Kong, which claims to be a cosmopolitan city, not follow these successful practices?

We can see that whenever this Council requests the Government to provide transport fare concessions to people with disabilities, government officials will find all sorts of excuses to reject us. This makes us feel very disappointed, unable to feel the Government's resolve in catering for the needs of the socially disadvantaged. I notice that the Government's pet justification is that based on the spirit of business freedom, whether or not to offer fare concessions to people with disabilities is the commercial decision of individual public transport operators. The Government is worried that the fare levels will be affected if it exerts pressure on public transport operators. In other words, it is worried that the relevant operators may increase their fares in order to reduce costs. Personally, however, I do not subscribe to this viewpoint. I wish to do some calculations for these public transport operators, by starting with the system. If the MTRCL applies for a fare increase, it must do so in accordance with the fare adjustment mechanism; if minibus operators apply for a fare increase, they must lodge an application with the Transport Department for approval. The argument that offering concessions to people with disabilities will already result in cost increase is lopsided and misleading.

I remember that when this issue was discussed by the Legislative Council Panel on Transport in June, the bus companies put forward, in the most grandiose manner, the justification just now, saying that the provision of concessions to people with disabilities will affect their revenue, causing serious consequences. Besides, they clearly indicated that they would not offer concessions to people with disabilities and they even passed the buck to the Government, saying that if the Government was willing to provide full subsidy, they would consider offering fare concessions to people with disabilities.

President, will the provision of fare concessions to people with disabilities really cause a corporation to collapse or make less profits? The MTRCL has been offering concessionary fares to people with disabilities since December last year. All recipients of Comprehensive Social Security Assistance or the Disability Allowance with 100% disability may enjoy half-fare concession. Let us then take a look at the MRTCL's financial report. In the first half of this year, its fare revenue amounted to \$5.9 billion, representing an increase of 7.3%. President, the MTRCL did not record any loss but even recorded gains. This is proof against the Government's argument that the provision of concessions will necessitate fare increases or the provision of concessions is tantamount to causing transport operators to operate at a loss.

Let me further cite the example of buses, which are a popular means of transport among members of the public. Now, the two major bus companies, which are owned by large consortia, make profits every year. The Kowloon Motor Bus Company (1933) Limited made a profit of over \$130 million last year, whereas the joint venture of the New World First Bus Services Ltd and its subsidiaries had a profit of over \$400 million last year. Judging from these figures alone, we can hardly believe that the bus companies, which have been reaping huge profits, lack the financial strength to introduce transport fare concessions to benefit people with disabilities, as they claimed.

We can see that these public transport operators always organize such charity activities as firework displays to establish a positive image. President, I have an idea. Why do we not suggest that these organizations should use the expenses otherwise spent on these public relations programmes to offer fare concessions to people with disabilities direct, thereby fulfilling their social responsibility? I believe this will win the support and applause of more members of the public.

President, we can see that many people with disabilities prefer staying at home to save the transport fares of a few dollars. This is due to not only the problem of travelling expenses, but also the various difficulties they face in taking transport. Sometime ago, my office received a request for assistance from a lady, who said that her mother living in a village house in Tai Po had become wheelchair-bound after suffering from a stroke recently, and she had to attend medical appointments four times a week. She always had to wait for over 30 minutes before she could get on a low-floor bus, and once she even had to wait

for more than an hour. Even if she wished to take a taxi, the drivers often refused her hire. From this case, President, we can see that apart from the problem of travelling expenses, people with disabilities also have to face many problems arising from their mobility impairment. Therefore, I hope the Equal Opportunities Commission and the Government will urge the relevant transport operators to provide the required facilities properly.

President, the motion on transport fare concessions for people with disabilities has been discussed for nine years, very much like a long distance run. I think this is the time to reach the finishing line and bring the competition to an end. I hope the Government will seriously address the demand of (*The buzzer sounded*) ..... people with disabilities and encourage them to reach out to the community. Thank you, President.

**MR CHEUNG KWOK-CHE** (in Cantonese): President, as expected, we are speaking on this motion again, and it has already been a decade, less one year, now. While constantly claiming that it cares for the people, the Government has been turning a deaf ear to this humble demand of the socially disadvantaged. What is more infuriating is that even though the relevant motion was passed year after year, the Government simply turned a blind eye to it, blatantly disregarding the views of the general public.

Actually, according to the findings of a survey conducted by the Hong Kong Council of Social Service a few years back, the incomes of people with disabilities are generally on the low side, and the exorbitant transport fares in Hong Kong have stifled their motivation to participate in social activities. Not offering transport fare concessions to them is undoubtedly contrary to the Government's policy of encouraging people with disabilities to take up employment and integrate into society. Besides, we are not asking the Government to provide them with half-fare concession on taxis, rather we are only asking the Government to call on public transport operators to make some effort to fulfill their social responsibility. Why is it so difficult to do so?

The difficulties faced by people with disabilities in their daily lives are indeed unimaginable for people here in the Chamber. For them, even venturing beyond their home is not an easy task, and very often when they go out, they will have some peace of mind only if they are accompanied by their family members

or friends. Besides, those people who accompany them have to pay full transport fare. Therefore, the ultimate effect is that if people with disabilities go out more often, public transport operators will make more gains instead of suffering any loss. Unless the Government or the public transport operators can provide statistical evidence to prove that providing half-fare concessions to them will lead to abuses, I do not see any excuse for refusing to fulfill this internationally recognized social responsibility.

Among the various means of transport, buses are the most popular one among people with disabilities. Therefore, concessions provided by the three major bus companies in Hong Kong are most badly needed. I hope that this year the Secretary will refrain from condoning these large consortia by advancing such specious arguments as "respecting transport operators' business freedom" or "it is the commercial decision of public transport operators", causing them to disregard the pressure of society, flagrantly use public resources of Hong Kong, reap off members of the general public and refuse to fulfill their social corporate responsibility.

Let us take a look at the business performance of the KMB group. In the first half of this year, it has already made a profit of over \$600 million. According to them, it represents a rise of 94%. May I ask what excuses the KMB has to adamantly refuse to offer any concession? If the Government wishes to convince us Members, it may request these bus companies to make the relevant statistics public, so that we can determine the extent of their loss of earnings incurred as a result of offering half-fare concessions to people with disabilities, such that public apprehensions can be allayed. Otherwise, both this Council and the community will not give up this pursuit.

Public transport operators, the bus companies in particular, are not purely private enterprises. Their franchises are granted by the Government. If they failed to operate properly or comply with the provisions of the agreements, they have to surrender the franchises when they expire. From 2013 onwards, the franchises of various bus companies will expire one after another. I now urge the Government to incorporate provisions into the franchise agreements upon renewal to require the bus companies to offer half-fare concessions to people with disabilities. That way, we do not have to engage in endless debates on this motion anymore, and Mr LEUNG Yiu-chung will then be able to propose other motions next year and in subsequent years.

We may find some comfort in learning that last year the MTRCL agreed to provide half-fare concessions to recipients of Comprehensive Social Security Assistance or the Disability Allowance under the Social Welfare Department aged 12 to 64 with 100% disability. Unfortunately, as many organizations have pointed out, only 110 000 people have benefitted, which is only one third of the total of about 300 000 people with disabilities in Hong Kong. I hope the MTRCL will expand this scheme as soon as possible so that other people with disabilities may also benefit from it.

Chief Executive Donald TSANG used the phrase "Sharing Prosperity for a Caring Society" in the Policy Address. As an accountability official, should he not ponder over this phrase and adjust his mindset of governance?

Finally, I wish to add that the widespread public grievances in society have sparked off an anti-business and anti-rich sentiment among members of the public. This is actually related to the Government's failure to give regard to public views in its governance, its suppression of the socially disadvantaged and practice of favoritism towards large consortia. Donald TSANG said Hong Kong people are neither anti-business nor anti-rich, but only anti-injustice. He is not wrong in saying that, only if moguls and tycoons will fulfill their social responsibility and act according to their conscience. Granting that, we will also agree with him and refrain from making further criticisms.

Actually, members of the general public vent their grievances and anger on these large consortia because even though they can rival governments in terms of financial strength and have reaped huge profits, they are still avariciously exploiting the grassroots. If the governing team of Donald TSANG insists on adopting a self-deceptive approach in dealing with this social problem, social conflicts will only be intensified in the end, causing greater difficulties in governance in the future.

President, I so submit.

**MS MIRIAM LAU** (in Cantonese): President, this is already the ninth year since Mr LEUNG Yiu-chung first proposed such a motion in 2002. Just because the authorities have been responding to the transport needs of people with disabilities at a dead-slow pace over the past eight years, fare concessions to people with

disabilities are so far only provided by the MTRCL and the three ferry companies, namely the Star Ferry Limited, the Hong Kong and Kowloon Ferry Limited and the New World First Ferry Services Limited. This is indeed disappointing.

The Liberal Party supports helping people with disabilities integrate into society, and the provision of transport fare concessions is one of the incentives that can encourage people with disabilities to participate in social activities. However, the Government has all along been passing all the responsibilities to public transport operators, on the excuse that the provision of fare concessions is the operators' commercial decision. It is unfair indeed.

Actually the Liberal Party thinks that both the Government and public transport operators have the duty to give a helping hand to people with disabilities who have mobility difficulties. Therefore, the authorities should adopt the principle of shared responsibilities, proactively engaging in discussions with public transport operators and providing financial incentives to encourage them to offer as much fare concession as possible to people with disabilities.

Last year, the Government provided a one-off subsidy of over \$2 million to the MTRCL to facilitate the latter's implementation and promotion of the new concession initiative. This was a very good example. Certainly, as we all know, the Government is the major shareholder of the MTRCL, but compared with other transport operators, it lacked sincerity. In the end, because of this lack of sincerity, the three major bus companies were unwilling to follow suit.

Regarding the options for the offer of concessions, the industry already put forward various options for the Government's reference as early as in 2007. For example, the then Mass Transit Railway Corporation put forth a proposal under which the Government will underwrite any deficit and reap any surplus — that is, if the cash flow from fare revenue increases instead of decreases following the provision of concessions, the surplus will go to the Government; and if there is a deficit, the Government will make up for the shortfall. The Liberal Party considers this a very fair approach and hopes that the Government will give consideration to it again, so that transport fare concessions for people with disabilities can be introduced expeditiously.

People with disabilities also need the help of the Rehabus service to go out and about. The Rehabus fleet in Hong Kong currently comprises 115 buses, providing 73 scheduled routes and three feeder routes. However, its service is unable to meet the demand of people with disabilities, particularly those living in remote areas, who have an even greater demand for the Rehabus service. Although the number of buses in the Rehabus fleet has been increasing rapidly, and four rehabuses will be procured this year, thereby increasing the carrying capacity from 680 000 passenger trips to 710 000 annually, we have to meet the daily transport needs of 360 000 people with moderate to severe disabilities. The Rehabus service is indeed unable to meet the demand.

Although there are also the Easy-Access Transport Services (ETS) and the Accessible Hire Car (AHC) service, apart from the Rehabus service, the delivery of these services is unsatisfactory. The ETS introduced by the Hospital Authority is run by 24 buses, which take patients with mobility difficulties to and from hospitals and clinics. However, a patient pointed out that he managed to book the service only thrice during a period of two months; as for the AHC service, it was launched in October 2008 and sponsored by the Hong Kong Jockey Club. There are 20 vehicles to provide dial-a-ride service. However, as there is a minimum charge of \$100, it is indeed hardly affordable by people with disabilities whose incomes are generally rather low.

To solve the transport problems of people with disabilities, apart from allocating additional resources for the procurement of rehabuses, the Government should also actively explore diversified transport services to give people with disabilities more choices. The Liberal Party once proposed that the Government should introduce large-size multi-purpose wheelchair accessible taxis and the taxi voucher scheme. I hope the authorities will consider these proposals seriously. As for the proposals of subsidizing people with disabilities to purchase electrical wheelchairs, providing tax concessions to disabled drivers in purchasing vehicles and providing concessions on tunnel and parking fees, they merit consideration. We very much hope that the Government will adopt a multi-pronged approach to meeting the transport needs of people with disabilities effectively.

The Liberal Party has all along been supporting the concept of "Transport for All", which seeks to provide facilities that can cater for the needs of people with disabilities. In recent years, various public transport operators have made

some improvement in this respect. For example, half of the bus fleets is retrofitted with ramps and low-floor access; about 70% of the buses are equipped with the bus stop announcement system; and the retrofitting of platform screen doors at pre-merger MTR stations conducted by the MTRCL will be completed in 2011.

Nevertheless, the retrofitting of platform screen doors at the MTR East Rail Line stations has yet to commence. The MTRCL explained that as the platforms of the East Rail Line stations are more curved with wider platform gaps, technically, the MTRCL needs to explore the feasibility of the mechanical gap filler (MGF) system first. As far as I know, however, the MTRCL already completed the tests on the MGF system at the end of last year. Why have the retrofitting works not been launched yet? We hope the MTRCL will implement the relevant projects as soon as possible. Besides, for the convenience of wheelchair-bound passengers, we also hope the MTRCL can expeditiously install lifts at the 16 stations where lifts linking up the street level are not available. The Liberal Party believes that there is still much room for improvement for the various means of public transport. I hope the Government and the relevant operators will listen more to the needs of people with disabilities and enhance the facilities for them, thereby improving the barrier-free transport services in Hong Kong.

Regarding the amendments proposed by Mr WONG Kwok-hing and Mr Paul CHAN, the former proposed expanding the scope to cover all people with different degrees of disabilities in Hong Kong. This is a well-intentioned proposal which seeks to enable more people with disabilities to benefit from concessions, and we have no objection to it. However, the definition of disability under the Disability Discrimination Ordinance is very broad. According to the definition under the Ordinance, if all people with different degrees of disabilities are covered, the number of beneficiaries will reach over 1.2 million. We are a bit worried that with such a large number of beneficiaries, a large amount of money will be involved, and public transport operators who are prepared to offer concessions to people with disabilities will be scared away. In that event, this will make the situation even more complicated and may achieve the opposite result ultimately. This is our concern. The latter amendment proposed that the Government should set aside a certain percentage of the cash dividends received from the MTRCL each year to subsidize the transport fares of people with disabilities. While we have no objection to this novel proposal, we

think that even (*The buzzer sounded*) ..... without the cash dividends received from the MTRCL, the Government has adequate resources to provide fare concessions to people with disabilities.

**MR WONG YUK-MAN** (in Cantonese): President, there is favoritism towards plutocrats and discrimination against people with disabilities. Since 2002, "Facing up to the transport needs of people with disabilities" has been this Council's regular debate question every year. This is the ninth time it has been moved, and the relevant motions were passed on seven occasions in the past. Apart from fighting for fare concessions for people with disabilities, the content of Mr LEUNG Yiu-chung's motion this year also includes various proposals to facilitate people with disabilities in integrating into society, such as improving the Rehabus service, requesting the MTR Corporation Limited (MTRCL) to install platform screen doors, providing more low-floor buses, providing subsidies for the purchase of electrical wheelchairs and waiving the licence fee for people with disabilities who purchase private cars. However, only the proposal on fare concessions has achieved some results, with half-fare concession offered only by the MTRCL to people with 100% disability starting from last year; while all the other proposals have failed to achieve any satisfactory results, despite the fight for so many years.

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

Martin Luther KING once said in the fight for equal rights for black people, "the colored American lives on a lonely island of poverty in the midst of a vast ocean of material prosperity". In the expression of the Reverend Martin Luther KING, here in this place today, we can say that "people with disabilities live on a lonely island of poverty in the midst of a vast ocean of material prosperity."

In Hong Kong, the per capita income is over US\$30,000; the foreign exchange reserve amounts to more than US\$250 billion and the fiscal reserves also stand at some HK\$500 billion. In a society with such material prosperity, we think the Government definitely has the capability to provide protection to people with disabilities in a more humane manner.

All civilized societies would encourage people with disabilities to integrate into society and help them overcome barriers in transportation by offering transport fare concessions to them, thereby enabling them to live in dignity. May I ask in which developed country or place, apart from Hong Kong, is concession not provided for bus rides? May I ask what justifications there are for the SAR Government, which is in sound financial position, to treat people with disabilities so heartlessly?

Even if the Government does not make subsidizing the transport fares of people with disabilities part of its welfare policy, it should not turn a blind eye to the callousness and unrighteousness of the affluent franchised public transport operators.

With franchises granted by the Government, the bus companies operate in a monopolistic position. In other words, the Government has conferred on the operators the rights and responsibilities to provide public transport services. The operators definitely should not only accept the rights but not the responsibilities, and the Government definitely has the capability and the duty to see to it that the bus companies fulfill their corporate social responsibility. The question is whether the Government has adopted the philosophy of governance of "striving for the well being of the socially disadvantaged groups".

The MTR was constructed with a capital injection by the Government and operates on a commercial basis, with the Government still being the major shareholder. The MTRCL is duty-bound to provide half-fare concession to people with disabilities and should not have delayed the implementation of the initiative until last year, as if it was already granting a great grace to them, right? Both the Kowloon Motor Bus Company (1933) Limited (KMB) and the New World First Bus Services Ltd (NWFBS) are subsidiaries of large real estate developers. Apart from the permitted return granted by the Government, these two franchised bus companies also own a number bus depot sites. This is a story of getting rich under the present hegemony of developers in Hong Kong, and the large real estate developers holding stakes in the two bus companies have certainly reaped huge profits.

The Government argued that in order to maintain a free business environment, it can only encourage public transport operators to consider offering fare concessions to people with disabilities. It has advanced this argument for years. Does it ever get tired of it? Is it going to keep on talking about it? The Government has been acting like a tape-recorder. Hong Kong is a capitalistic society, right? However, all these bus companies and the various means of public transport operate in a monopolistic position and all of them enjoy franchises. Why can the Government not impose restrictions on them? It is evident that the Government is shirking its responsibility, condoning the hegemony of developers and widening the wealth gap.

The KMB once undertook at a meeting in this Council to follow the example of the MTRCL if the latter would offer half-fare concession. However, the KMB now denies having made this undertaking. The SAR Government should demonstrate its commitment to people with disabilities at this critical moment by incorporating provisions into the agreements to require the offer of fare concessions to people with disabilities, thereby compelling the KMB to honour its undertaking and expeditiously fulfill its social responsibility as a public service operator.

The report of a survey conducted by the Social Science Research Centre at the University of Hong Kong released in early 2007 pointed out that transport concessions can attract more people with disabilities to use public transport, and the trips on buses made by people with disabilities would increase by 72%. Most means of transport would see a significant increase in patronage because of the provision of these transport concessions. Even though the provision of half-fare concession may cause a drop in revenue, its impact will not be significant. Therefore, the KMB really does not have any reason not to offer half-fare concession, refusing to fulfill its corporate social responsibility.

With the so-called anti-rich sentiment heating up in society, the Policy Address proposes setting up the Community Care Fund, which is nothing but a means to develop a positive image of benevolence for those plutocrats and alleviate the grievances in society. However, we think that these will all be futile. After all, Hong Kong people are not anti-rich, especially when Hong Kong is a capitalistic society in which everyone wants to become a mogul. What Hong Kong people hate really is the Government's favoritism towards plutocrats and collusion between business and the Government. During the fight

for half-fare concession for people with disabilities, the Government refused to exercise its public power to compel public transport operators to introduce half-fare concession for people with disabilities, on the excuse of "maintaining a free business environment". This has enabled all members of the Hong Kong public to see clearly that this Government does show favoritism towards plutocrats and discriminate against people with disabilities. This is the root cause of the anti-rich sentiment.

The same motion was debated by the Legislative Council in every past year, and it was almost always supported by the majority of Members. Just like increasing the "fruit grant" for the elderly, the provision of fare concessions to people with disabilities is a consensus reached among the various political parties and groupings of the Legislative Council. Over the years, however, the Government has been adopting a perfunctory approach in response. The Government must see to it that all the other public transport operators, including the NWFBS, the Citybus Limited (Citybus), the KMB, the New Lantao Bus Company (1973) Limited (NLB) and the tram operator, provide half-fare concession to people with disabilities, or else this society in which the rich are callous and unrighteous will only see more public grievances, resulting in social unrest.

With these remarks, Deputy President, the League of Social Democrats supports the original motion and all the amendments.

**MR LEE CHEUK-YAN** (in Cantonese): This subject is debated again today, and all I can say is that it is "frustrating". It has been nine years. This subject has been discussed for nine years. Just now when I asked Mr LEUNG Yiu-chung, he was not very sure. It has been discussed for so many times that he has forgotten how many times it has been discussed. Nine years — now you are acting like a human tape-recorder again, and so are we. After all these discussions, the Government still refuses to take up its responsibility.

The Government adopts a *laissez-faire* approach towards the large consortia, allowing them to decide whether or not to provide half-fare concession to people with disabilities from the business perspective. From the business perspective, they will certainly refuse to offer any concession. However, has the Government got no way to solve this problem? What is most frustrating is that

actually the Government has some ways to solve this problem. Since the time of Sarah LIAO to the time of Eva CHENG, who has just spoken, the Government has only said one thing, and that is "encouragement". Why do we need to encourage them to offer concessions? Why can't we compel them to do so? Why can't the Government truly help the most disadvantaged group in Hong Kong as a responsible leader and in a responsible manner?

The Government will not do so. Every time government officials attend meetings here in this Council, they will defend for the consortia, saying that they are commercial corporations and their commercial decisions should be respected. However, is it not necessary for the Government to respect the demand of people with disabilities and help them solve their problems? The Government has been advocating inclusive society and equal rights, which are indeed very appealing ideas. We really hope to build an inclusive society with equal rights. However, if the Government does not take the lead in taking actions and compelling public transport — not the public sector, but public transport operators — to take up their responsibility, we can never see eye to eye with them.

Last time, I made concessions and suppressed my emotion because during the last discussion at the relevant committee of this Council, the Government undertook to discuss with the bus companies to find out how much money would be involved if concession was to be provided and who should bear such costs. So, they had to examine how much money would be required, and I thought it would already be a step forward.

Frankly, the Government only managed to reach a consensus with the MTRCL after nine years, which was indeed a dead-slow pace. We now hope that it can take another step forward by reaching a consensus with the bus companies. The last time, I thought we could take a step forward because I remember they even said in the Ante-Chamber that they would discuss with each other and take follow-up actions in order to give us an account on the subsequent occasion on how much money would be required.

As far as I know, however, after discussing with the Transport and Housing Bureau, the bus companies told the Bureau that they were unable to provide any concession. Frankly, I do not understand why they were unable to do so. Why do the bus companies not do some calculations on how much money will be

involved if they are to provide half-fare concession to people with disabilities? Frankly, no one knows how much money will actually be involved because it is possible that more people will use the bus services as a result. Even if half-fare concession is offered, the costs incurred will be offset by the additional revenue generated if the number of passengers doubles. Frankly, the additional revenue will be more than enough to offset the costs incurred because we have not taken into account their companions. Actually, this is kind of a con game. If they are given half-fare cards, they may simply wipe their cards to identify themselves, while all the other passengers will have to pay full fare. This way, we can find out the costs involved. Actually, we have not taken into account their companions. Even if we do not take them into account, at least we will be able to know the costs incurred. However, the bus companies even refused to do so.

I do not know whether Eva CHENG will give an explanation on why they were unable to offer any concession. If they are unable to do even this, then what will happen next? We will just be staying where we are now, without making any progress. I am tired of repeatedly censuring government officials or the Government here for collusion between business and the Government, practising favoritism towards consortia and not taking any actions. We are really tired of this. We are also tired of always staging protests at the bus companies. However, I must make it clear that even though I am tired of all these, we will continue with our efforts. Here, I also wish to make an appeal to people with disabilities. In the past, there were not many of us, and perhaps we were too kind and not "radical" enough. May I ask whether we have to take more "radical" actions to get some results?

Sometimes, it really breaks my heart. They will experience many difficulties when they come out. Yet, in order to achieve this goal, we have to encourage more of them to join us on every occasion, and we may even have to take more "radical" actions. Actually, I do not want to do so. It is already very difficult for them to come out, but we are asking them to take even more "radical" actions. Frankly, it is easy for us to climb over mills barriers, but it is very difficult for them to do so, and even if we wish to take more "radical" actions, we will face some difficulties. Therefore, this is something that we really do not want to do.

Social movements aim at caring for the socially disadvantaged. We do not always want to ask the socially disadvantaged groups to come forward, and we only hope to solve the problems. Secretary, the Government has been unable to meet such a humble demand of theirs throughout these years. Actually, there is an opportunity in front of us, but in order to seize this opportunity, the Government has to take the initiative and refrain from telling us again that it will encourage the bus companies to provide half-fare concession. The Government has failed to honour its word and achieve any result over these years. What should it say now? It should state clearly that if the bus companies fail to comply with the principle of offering half-fare concession, they will not get the franchises; and if they want to get the franchises, they must offer half-fare concession.

In order to protect the environment, the Chief Executive mentioned in the Policy Address that with respect to the franchises, the Government will require bus companies to take proactive measures to use zero-emission buses or environmentally-friendly buses. This is a move to use the franchises as a means to compel bus companies to achieve zero emission. Therefore, why can't it use the franchises to compel bus companies to provide half-fare concession? Would it not be more simple and straightforward that way, saving the need to beg them to do so? As the Government has this power, it should make good use of it, rather than adopting a perfunctory approach by preaching the need for inclusion and claiming that it supports their demand for half-fare concession, while actually refusing to exercise the relevant power in its hands. This is most offensive and disappointing to us.

I very much hope to hear today that the Government will agree to take up its responsibility by using the franchises as a means to compel bus companies to do what they should, which is to provide half-fare concession.

Thank you, Deputy President.

**MR FREDERICK FUNG** (in Cantonese): Deputy President, I wish to thank Mr LEUNG Yiu-chung for moving this motion again. Since 2002, he has been proposing this motion debate every year. I really admire his perseverance. However, this feeling of admiration aside, I also feel sad. This motion has been proposed once, twice, thrice ..... for nine times. Why do we still have to

discuss it? Do I have any new points today? We have discussed this motion for as many as nine times now, and we have said all that we should have. Actually, it should not be debated anymore. The demands stated in this motion are supported not only by us, the so-called Members whose agenda is livelihood issues, but also by the vast majority of Members of this Council. Throughout these nine years, why has the Government always turned a deaf ear to this? We have been repeating our views times and again, and the Government has been repeating its views just the same. I have to point out that all its views, though expressed repeatedly, are false. Regarding the Government's mindset of governance, I think the Government has placed too much trust in the free market. The Government keeps saying that the market will help us solve the problems. Over these years, however, it is evident that the market has not helped us solve the problems. Yet, the Government still believes in the market!

However, it is not exactly right to say that the Government has placed too much trust in the free market. In the Policy Address, the Chief Executive said funding would be provided to bus companies convert Euro II and Euro III buses so that they can meet the relevant Euro IV standards. They are all very weird, and the Government will help beautify them. The Government is going to help improve these machines, but it has failed to do what it should do and help those who need help. It is not a free market. If it is, why should the authorities give them subsidies and allow them to use these subsidies to make profits? Why do they not use the additional earnings to help members of the community and people with disabilities? It really beats me. Actually it is not a free market, and the Government is helping the business sector.

Similarly, if a free market knows how to care for the socially disadvantaged groups, it will take actions on its own initiative. The Chief Executive proposed setting up the Community Care Fund (CCF) in the Policy Address precisely because this free market is not willing to take actions. In order to induce the business sector to make contributions, the Government hopes that for every dollar it contributes, the business sector will contribute an equal amount. Besides, the CCF will be chaired by a person who is a hot candidate for the next Chief Executive. So, without much lobbying, members of the business sector will take the initiative to make contributions one after another. If the business sector is willing to take actions, there is actually no need to set up the CCF. Public utilities should make it a policy to care for society. Even if their

contributions made to the CCF will be used for subsidizing the transport fares of people with disabilities, I still think that it is not right. All policies involving money are money-oriented. Is Hong Kong such a society that money can be so clearly separated from humanity, love and care? Regarding emotion, care and money, will you be so clear cut with your parents, brothers and sisters, instead of acting like a family by helping each other when problems arise?

Recently, many people said that they hope the CCF will help ease the anti-business sentiment because in the past year or so, the anti-business sentiment has been heating up. Should this really be the case, the problem is even more serious. Some people wish to make use of the CCF as an embellishment to disguise the problem. However, it is evident to all that with such a disguise, it is fake beauty. It is artificial and not beautiful inside, and no matter how it is disguised, it is still ugly inside. Certainly, if some people would like to make contributions, I would not refuse them altogether, but I would wonder whether it is the best way to deal with and address the transport needs of people with disabilities. In community care initiatives, I believe neither people with disabilities nor we would want to see a situation in which the rich is giving away alms to the poor. We should turn our society into a barrier-free society by not only converting the stairs into ramps but also enabling people with disabilities, be they rich or poor, to take the bus.

Apart from hardware, software is also very important because it will have a great impact on how people with disabilities get along with other people and their friends, and on their integration into society. If money is the only barrier in providing these tools, we should reduce and remove this barrier. If you ask me whether Hong Kong has the means and capability to do so, I would think it does. I have said plenty of times that in 2009, the total asset per capita in Hong Kong was US\$30,000, and expressed in Hong Kong dollar, it was HK\$20,000 per capita per month. The total asset per capita in Hong Kong is among the top five in the world. Are you telling me that such an affluent society does not have the capability to do so? It has the capability to help not only people with disabilities, but also the elderly and all the people in need.

We should incorporate the elements of fairness and justice into policies which have a direct impact on people's livelihood — even if they are commercial policies — so that corporate social responsibilities will not be reduced to empty

talks, and these policies will become feasible rather than empty talks. In this regard, if the Government does not call on, encourage or even compel the business sector to do so, I cannot see why the business sector, in a so-called free market which aims at reaping the greatest profits, will take the initiative to do so. Therefore, to enable people with disabilities to fully integrate into society, we have to enable them to participate in all daily social activities on an equal basis. The Government has to provide the necessary hardware. Apart from barrier-free facilities, it also has to provide complementary transport facilities, transport fares and access facilities on buses.

Do not ever think that after the business sector has made one-off contributions to the CCF, this problem can be solved by dishing out money drawn from it. The Government keeps saying that poverty alleviation is not a matter of dishing out money, yet the Government is going to give it away. Poverty alleviation is a matter of "acting with a heart", so that people will feel that you care, so much so that you will turn your caring thoughts into actions. Thank you, Deputy President.

**MR WONG SING-CHI** (in Cantonese): Deputy President, this is already the ninth time since 2002 a motion on "Facing up to the transport needs of people with disabilities" is proposed. Even I find it boring to talk about it. It seems that it is going to stay with us forever. I hope it will not, and I do hope this wish of mine can be realized this time around. Should this motion be proposed again, it will really last forever, and that will kill us. It is really ridiculous that the last Chief Executive and the incumbent have failed to bring this issue to an end. Should it remain unresolved, we will have to wait for the next Chief Executive. How can that be? Why should it take three Chief Executives to resolve it? Actually, it is still unknown if it can be resolved when the third Chief Executive comes into office. I think that some problems in Hong Kong, such as the wealth gap and care for the socially disadvantaged, will really become an international laughing stock. How difficult is it to offer half-fare concession to people with disabilities? Mr LEUNG Yiu-chung has even exhausted his words. I think his hair has turned from black to grey. It is really ridiculous that even when we become people with disabilities one day, this problem would still remain. This is impossible. However, the Government has only responded by saying, "Fine, we will make some encouragement." The Secretary said she hopes to raise

matter in the next negotiation on franchise. If we have to wait until then, then this group of people with disabilities will have to continue to suffer for a while.

I recall a commitment made by the Kowloon Motor Bus Company (1933) Limited (KMB) in a Subcommittee set up to address the transport needs of people with disabilities in 2007. Deputy President, I think all Members can continue to raise this issue. They should raise this issue whenever this motion is proposed for discussion, so as to make KMB feel ashamed. KMB once proposed that it would follow suit should the MTRCL introduce half-fare concession. This remark was made by KMB a couple of years ago. But nothing has been offered hitherto. Both Members and members of the community must have this question in mind: Why can these public transport operators eat their own words? And yet, they can continue to make profits.

If Members care to look up the relevant information, they would learn from the results announced by Transport International Holdings Limited (TIH), the parent company of KMB, in 2009 that KMB had made a lot of money after tax, though there is no point for me to discuss how much it had made. Not only did they make profits, they could even distribute special dividends to their shareholders. But the shareholders may prefer giving away the dividends to help people with disabilities, perhaps they would feel uneasy should they take the money. Deputy President, the Government said it would give some encouragement. Let us look at the remarks made by Mr Ronnie CHAN, Chairman of Hang Lung Group, to this effect today, "I will not donate any money if you force me. CCF, what is it? I will not support it if you force me." Buddy, even if you use force, some organizations will still not give in. Just as KMB has been forced over the years, it is still unwilling to offer any concession. Now you are asking KMB to assume social responsibility voluntarily, I would suggest you not harbour such hope. I hope the Secretary can tackle this problem more proactively.

Actually, I think that the Secretary can give us a brief explanation. Has the MTRCL recorded any losses, or profits, since its introduction of half-fare concession for people with disabilities? Obviously, the more people with disabilities go out, the higher transportation fees they will pay. Not only do they have to pay their own transportation fees, they have to pay full fare for the able-bodied family members accompanying them. Insofar as public transport

operators are concerned, I believe their reputation will be raised should they offer half-fare concessions to people with disabilities. Moreover, their revenue will increase, too. I do not know why they are unwilling to offer concession. Obviously, they still wish to keep this society under control, reluctant to bear their social responsibility. Actually, this announcement by the MTRCL to provide half-fare concession to people with disabilities has already opened the gate — public transport operators can actually offer fare concessions. Therefore, I hope that other public transport operators can also make complementary efforts. I also greatly sympathize with Secretary Eva CHENG, who is currently faced with these major consortia and enterprises, not only in the transport sector, but also in the housing and real estate sectors. At the mercy of property consortia, she cannot even raise her head, and land prices remain high. Eventually, she has to resort to legislation to threaten the property companies. In my opinion, these public transport operators behave exactly like these property companies. Secretary, you can no longer rely solely on encouragement. You must resort to your "lethal weapon", by making some effort in the franchises, or perhaps enacting legislation. The Government should not remain silent and wait for these unscrupulous enterprises to make all sorts of pretences that they have fulfilled their corporate responsibility. There is no point in saying so.

Honestly, the CCF is set up by force. Nevertheless, with a little bit of force, the Chief Executive can now give his strong assurance that he can compel the consortia to contribute \$5 billion. However, I do not understand why the Secretary can still not give us an assurance that she will force these bus companies or public transport operators to offer half-fare concession to people with disabilities.

Deputy President, I would like to say a few more words about the demand for Rehabus. Regarding the remark made by Secretary Matthew CHEUNG that Rehabus is currently in operation, of course, it is, why not? But the problem is that the demand for Rehabus is alarming, with its patronage increasing from 590 000 in 2006 to 680 000 passenger trips in 2009. The demand for Rehabus is evidently enormous. This is why we hope that the Government can, apart from compelling public transport operators to offer half-fare concessions, enhance the Rehabus service, especially to remote areas in new towns. I hope Secretary Matthew CHEUNG can really assure us that he will strive to provide more services for people with disabilities.

Deputy President, we earnestly hope for a harmonious society. The Secretary was perfectly right in saying just now that we really have to care for and take care of the needs of the socially disadvantaged groups, and this is our responsibility, not good deeds or charity. Everyone in society should enjoy equal rights and opportunities to attain their ideal and go out to participate in activities. Now, we are only doing something to enable people with disabilities, who have already encountered obstacles in their life and daily living, to get back their lost opportunities, or to give them their entitled rights in view of their obstacles or circumstances. We are not talking about any good or worthy causes. Obviously, these public transport operators are unscrupulous should they refuse to offer any concession.

In view of this, I hope the two Secretaries can make some efforts in addressing the transport needs of people with disabilities. In particular, Secretary Eva CHENG, please do not hesitate to employ your "lethal weapon". *(The buzzer sounded)* ..... Thank you, Deputy President.

**DR PAN PEY-CHYOU** (in Cantonese): To start with, I would like to say something about a case encountered by me personally. Actually, this case is not an isolated instance. Instead, we will repeatedly encounter similar cases during our work in hospitals.

Several months ago, I met a wheelchair-bound patient who was in his 80s. As he had difficulty in walking, he was accompanied by a helper when he attended follow-up consultations. Actually, he was living with the helper. When I found that he required an earlier follow-up consultation because his conditions were not too stable, I gave him an appointment date and bade him to come back for follow-up consultation four weeks later. However, he did not turn up on the appointed date. As a result, I gave him another date for follow-up consultation. Subsequently, he made another appointment and changed it twice before I finally saw him. When I asked him why he had not turned up for follow-up consultation as scheduled, he told me that he could not make it because there was no transport to carry him to the hospital. I told him that there were some non-emergency ambulances in the hospital to pick up patients. However, he said that when he attempted to make a booking, my colleagues in the out-patient department told him that he was not qualified because he was not

living alone, considering that he was being taken care of by a helper who was living with him. I then asked him: What about the Easy-Access Bus? He replied that the Easy-Access Bus could not be booked within such a short notice, and so he could not come to the hospital for follow-up consultation and had to change his appointment. For the same reason, he had not taken medication for a couple of weeks. Come to think about this. His condition was originally unstable; that is why I had to bring his follow-up consultation forward. However, because of the lack of transportation, he had not taken medication for several weeks. This would only make his clinical condition even more unstable. However, such cases would be encountered by us again and again in out-patient departments. Today, the two Policy Secretaries are present in this Chamber. Both non-emergency ambulances and Easy-Access Bus actually fall within the ambit of the Food and Health Bureau. I hope the two Secretaries can relay this request and view of mine.

I think that the transport needs of people with disabilities have not been taken seriously for a long time, just as this is already the ninth year this motion is moved by LEUNG Yiu-chung. Do people with disabilities have no transport needs? According to the statistics published by the Census and Statistics Department (C&SD), approximately 21% of people with disabilities are working; 83% of people with disabilities need to attend regular follow-up consultations or receive treatment; and 81% of people with disabilities will go out to participate in activities. It is clear that, like other members of the public in Hong Kong, people with disabilities need to work and participate in activities. However, due to their health conditions, they have a greater need for follow-up consultations or treatment.

What problems do they face when they go out? Let me give Members a general picture here. First, they have to face high transportation fees. People with disabilities generally earn less than their able-bodied counterparts. We can tell from the figures provided by the C&SD that the median monthly wage of people with disabilities is \$6,800 — this is the monthly income of people with disabilities who are employed, including those working in sheltered workshops. On the other hand, the median monthly wage of able-bodied persons or the employed population is \$10,100. So we can see that the income of people with disabilities is apparently much lower than that of normal people. And yet, they have to face high transportation fees.

There are many modes of transport that are not accessible to them. The bus is one of such examples. As pointed out by Mr LEUNG Yiu-chung earlier, if they are visually impaired or mobility-handicapped, they would find it quite difficult to use buses. As for trams, I believe it is impossible for people with disabilities to use them. This means that they will use MTR, taxis or, as pointed out by me just now, Rehabus. But in comparison, these modes of transport cost dearly.

Another problem they have to face is the lack of adequate facilities on many modes of public transport. A survey conducted by the C&SD has also found that, because of the lack of suitable modes of transport, the transport needs of people with disabilities are now mainly satisfied by public transport such as buses, taxis, MTR, and so on. However, all these modes of public transport have quite serious problems. For instance, many MTRCL stations are not yet installed with screen doors. This would pose great potential danger to the visually impaired. Some buses are not low-floor buses. Even if people with disabilities choose taxis, they would encounter great difficulty and require a lot of time in boarding or alighting from them. Without assistance, it is simply impossible for them to travel by taxi. Therefore, all these problems have to be resolved. I hope the Government can address them squarely.

**MR CHEUNG HOK-MING** (in Cantonese): Deputy President, just now, Mr CHAN Hak-kan compared this motion debate to a long distance run, as we all hope to draw a conclusion on this motion. I was returned as a Member of the Legislative Council in 2004 and since then, I would speak on this motion every year. Why is there a need for the Legislative Council to conduct a debate on the transport needs of people with disabilities every year? The crux of the problem lies the Government failing to let us see so far the finishing line.

Since the beginning of this year, transport fares have been on the rise, with the Star Ferry, the Peak Tram, buses, tunnels and even trams applying for fare or toll increases. Deputy President, it is indeed very hard for the normal Disability Allowance, now standing at only \$1,400, to catch up with inflation. It is actually most disappointing that the Chief Executive failed to propose any effective initiatives in the Policy Address unveiled last week to provide relief for the inflationary pressure facing the elderly, the vulnerable, the injured and patients in their living. All of us must take up the joint responsibility of providing more support for the disadvantaged in society. The Government and

public utilities are even duty-bound to do so. While public transport operators are maximizing their profits, can they examine their own conscience and ask themselves whether they have done anything to fulfil their corporate social responsibility? Has the Administration faced up to the problems confronting people with disabilities?

Deputy President, the Rehabus service currently provided in the community is grossly inadequate. Taking account of the additional buses to be provided in 2010 or 2011, the total number of rehabuses in the territory will still be less than 120. It is expected that the capacity of Rehabus will be increased to 710 000 passenger trips in 2010. Let us do some calculation. If there are 300 000-odd people with disabilities in Hong Kong according to a preliminary survey, this would mean that each of them will have an average of only two rebus rides per annum. Despite the provision of the Easy-Access Transport Services (ETS) by the Hospital Authority, it must be borne in mind that ETS is confined to patients over the age of 60. Moreover, the chance of making a successful booking is extremely low. Some people have to go to hospital for follow-up consultations on a weekly basis, but they can only manage to make three successful bookings in two weeks. For a long time, the demands for the Rebus service and ETS have been keen. It is hoped that the Government can provide additional resources to further increase the number of rehabuses.

Deputy President, here I cannot help mention that the assistance provided by the MTRCL to the visually impaired or wheelchair-bound commuters is evidently inadequate. When the platforms are packed with commuters, it is basically impossible for the blind to use the tactile guide paths. Moreover, the noise generated by MTR trains pulling in can easily affect their judgment. Very often, wheelchair-bound commuters will find it most embarrassing that the wheels of their wheelchairs are caught in the gap between the trains and the platforms, and they must seek assistance from other commuters to get them out of the plight. It is hoped that the authorities can urge the MTRCL to strengthen manpower on the platforms to help commuters with disabilities to board or alight from the trains and put in place the testing system for platform gap fillers expeditiously to ensure the completion of screen door retrofitting works for all its rail lines at an early date.

Deputy President, Mr WONG Kwok-hing's amendment urges the major transport operators to provide fare concessions for all people with disabilities in Hong Kong. However, the scope of "disabilities" is extremely wide. Can a person without one finger be regarded as a person with disabilities? Can he enjoy fare concession? In view of this, both the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) and I share the view that for the convenience of administrative management, there is a need in future to clearly define the degree of disability and criteria for offering concession.

As regards the MTRCL's provision of half-fare concession to only those who have 100% disability, which means that only 110 000-odd people out of the 300 000-odd people with disabilities in Hong Kong can enjoy half-fare concession, the yardstick is indeed too stringent. We hope that the MTRCL can expeditiously relax the eligibility criteria to enable more people in need to benefit after the degree of disability and criteria have been determined by the authorities.

As regards Mr Paul CHAN's amendment, it is demanded that the Government use the dividends received from the MTRCL to subsidize people with disabilities. Given its philosophy of assisting the socially disadvantaged group, the DAB will definitely support all proposals which are beneficial to the public and practicable. The DAB once put forth to the Government a proposal whereby half-fare transport concessions for people with disabilities would be shared among the Government, enterprises and members of the public. In other words, the Government and transport operators will bear 50% of the fares, whereas the remaining 50% will be paid by people with disabilities themselves.

Both the DAB and I believe that these two proposals on sharing responsibility will not exert excessive financial pressure on transport operators or the Government. We hope that the Government can give a positive response to these proposals.

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

**MS LI FUNG-YING** (in Cantonese): Over the years, Deputy President, the first debate on Members' Motions would invariably be on the motion "Facing up to the

transport needs of people with disabilities" proposed by Mr LEUNG Yiu-chung. Although the motion was passed by this Council every year, it was not taken by the Government seriously every year. This year, this Council again urges the Government to face up to the transport needs of people with disabilities. However, the needs of people with disabilities are more than transport needs. Deputy President, as I have already spoken on this topic for nine years in a row, I do not intend to repeat my remarks already made here in this Chamber. I only wish to point out that the passage of a minimum wage law in this Council should bring about an opportunity to comprehensively improve the public services for people with disabilities.

Under the Minimum Wage Ordinance, the Government has introduced a mechanism accepted by employees, employers and the Government to assess the productivity of people with disabilities. Although the mechanism is set up to assess the productivity of people with disabilities, it is also a recognized standard for objectively judging people with disabilities. I propose that, on the basis of this mechanism, the Government should provide voluntary assessment for people with disabilities territory-wide and issue disabilities cards, similar to the existing Senior Citizen Cards, to eligible people with disabilities so as to enable them to enjoy priority in access to government services. Moreover, the Government should urge other public service operators to offer concessions to these cardholders. In my opinion, the establishment of a recognized mechanism for assessing the identity of people with disabilities in society can more effectively push different sectors in society to provide a wide range of services for these people, including offering transport concessions on public transport to them.

Deputy President, there are three approaches to enhancing the services provided for people with disabilities. First, the identity of people with disabilities has to be established, as I mentioned just now. The other two approaches concern the hardware and software of society. Insofar as the hardware is concerned, public facilities in society must not pose obstacles to the movement of people with disabilities. What I am talking about is not only confined to giving consideration to the needs of people with disabilities during the construction of public facilities. More importantly, the Government must ensure that these measures, during their daily operation, can be opened to effective use by people with disabilities after the completion of the facilities. Deputy President, let me cite an example. At present, in some of the railway stations where there are heavy flows of commuters, there are simply no automatic

lifts providing direct access to the platforms. As it is very difficult for wheelchair-bound people to use the facilities therein, they must be accompanied by someone. Moreover, they must seek assistance from the staff in the stations before they can use the facilities there. Therefore, it is quite troublesome. In our daily life, for instance, it is not difficult for us to find some toilets specifically provided for people with disabilities locked or packed with all sorts of items, or even occupied for other purposes. People with disabilities either find it impossible to use these facilities or greatly inconvenient in using them. Therefore, I think that there is also a need for the Government to step up monitoring the use of facilities designated for people with disabilities.

Deputy President, as Members have expressed a lot of opinions on the issue of software in the motion debate today, I will not repeat mine again. However, I do hope the Government can really face up to the views repeatedly put forth in this Council. I have spoken today in support of the original motion and the amendments. Thank you, Deputy President.

**MR RONNY TONG** (in Cantonese): Deputy President, I was tendered a reminder today by someone who said, "This is already the ninth year this question is debated in the Legislative Council." What does this mean? Regrettably, Deputy President, I think that the answer suggests that we Members of this Council have the heart to do something but we lack the strength; whereas the Government hears without listening. Furthermore, Members have no power to introduce bills and formulate policies. If the Government is reluctant to act, we can only bring up this issue for an annual debate here.

I was asked by another person this question: "But look, the law on minimum wage has been passed, hasn't it? The issue of a minimum wage has also been debated annually for almost a decade." Again, what does this mean? Deputy President, minimum wage affects hundreds of thousands of the working poor. They would take to the streets and make a loud noise when they were on the streets. What we are discussing today is a handful of the most disadvantaged people in society, and they will not take to the streets. Even if they do, their noise will actually be very low. This Government fears the strong and bullies the weak. This is why minimum wage can succeed, whereas half-fare concessions, despite much discussion, can still not be attained.

Deputy President, I was again reminded by another person who said, "Actually, the amount of money Members are talking about is not at all large. According to a study conducted by the University of Hong Kong, the so-called half-fare concession proposal will actually make transport operators make money. In that case, how difficult would it be to request the Government to act as an "underwriter"? Why can't this not be done?" What does this mean? Deputy President, I think that the Government does not consider this its responsibility. It is not about the amount of resources, just that the Government does not find it necessary to do so. As a case in point, Deputy President, in the Policy Address this year — the Chief Executive has spent two hours here delivering a 171-paragraph Policy Address — only a small paragraph is about people with disabilities, and not a single long-term policy or relief measure is mentioned. Whether our society is in a boom or a recession, the Government, as in the past, remains indifferent.

Is our Government the same as the governments of other places? Deputy President, the answer is actually in the negative. Some people have recently given us a reminder. For instance, the Hong Kong Council of Social Service has reminded us that Quebec Province in Canada set up a dedicated department in 1976 to deal with transport arrangements for people with disabilities. What is more, a public transport policy honoured by Quebec was passed in 2006 to provide its citizens with better options. We need not look at such a faraway place. Even Shenzhen started offering transport concessions to people with disabilities as early as 1985. Furthermore, there was also one apparently long-term policy — various form of public transport are required to be enhanced before 2010 for the promotion of barrier-free access. If a government does not find this its own responsibility, or it behaves as if this is not its concern, it is actually very difficult to change the *status quo*.

Deputy President, the Community Care Fund (CCF), which was discussed in the Panel on Welfare Services this morning, is a case in point. The Government said in a high sounding manner that the business sector would contribute \$5 billion, and that the Government would contribute \$1 to every dollar contributed by the business sector. But now — Deputy President, this CCF is laid before a hot favourite for the office of Chief Executive. Meanwhile, members of the business sector are scrambling to make donations for fear that they cannot jump onto the bandwagon. When the Government learnt that the

donations would very likely exceed \$5 billion, it chickened out, saying that it might not be able to make \$1 to \$1 matching funding.

Deputy President, if many people in Hong Kong describe the business sector as unscrupulous, is the Government not even more unscrupulous than the business sector? I think that the business sector is worth commending for its willingness to contribute money to help the socially disadvantaged groups, because the business sector is, by definition, profit-oriented. By the same token, the Government obviously exists in order that the community can share the fruit of the community. The Government has this responsibility, has it not? How can the Government say, "If you contribute, I will follow suit; if you do not contribute, I will also follow suit"? How can it behave in such a manner?

In fact, Deputy President, some transport operators are prepared to offer the half-fare concessions under discussion, as we eventually managed to find some transport operators who were willing to provide concessions last year. However, many transport operators are still reluctant to follow suit. Even if these transport operators are willing to offer concessions, can all the people with disabilities be benefited? The answer is in the negative. Deputy President, according to our figures, about two thirds of the 340 000 people with disabilities in Hong Kong, or 230 000, have actually not been benefited, because under the so-called stringent requirements laid down by the Social Welfare Department, a person having lost one hand, one leg or one eye is still not regarded as 100% disabled, which means that there is no likelihood of receiving the so-called monthly supplement of \$200 from the Government. This is why Mr WONG Kwok-hing has put a leg on the table. Though he is very good at using props to draw attention from the community, he still fails to get the attention of the Government.

Deputy President, a point raised during our discussion on people with disabilities is that the issue is not about whether or not they have working capacity. Even if they have working capacity, the wages they can fight or bargain for will still be lower than those earned by other workers. There are provisions in the existing minimum wage law that there is no need to pay people with disabilities the full minimum wage. Why does the Government insist that only people without any working capacity can benefit from the Government's so-called assistance measures? What are the reasons for that, Deputy President? To sum up, are people with disabilities actually beaten, though they appear to

have won? Honestly, I do not think the Government has really lived up to its name, given its attitude.

Deputy President, this year is already the ninth year. Like many of Honourable colleagues, I have no idea how many more years the discussion will drag on. Obviously, I will not be here for a very long time, but I hope (*The buzzer sounded*) ..... the new blood in this Council .....

**DEPUTY PRESIDENT** (in Cantonese): Time is up.

**MR RONNY TONG** (in Cantonese): ..... will carry on the fight.

**MR ALAN LEONG** (in Cantonese): Deputy President, as with Mr Ronny TONG, this is the seventh time I join in the debate on this motion moved by Mr LEUNG Yiu-chung in this Council. As this subject had already been discussed for two years before we joined this Council, it is actually the ninth year this motion is debated here.

Deputy President, on the one hand, I am very grateful to Mr LEUNG for his care and concern for people with disabilities and his perseverance. On the other hand, however, I feel very sad for, after so many years, both the Government and the business sector have failed to come up with measures to satisfy the transport needs of people with disabilities.

Hong Kong has boasted itself as a world-class city, with the coffers hoarding thousands of billions of dollar in reserve. Is it so difficult to give more care to enhance the mobility of the less fortunate members of our community?

Of course, Deputy President, we cannot say that there has absolutely been no progress in the offer of transport subsidy to people with disabilities, as the MTRCL has already provided people with disabilities with half-fare concession. Perhaps the Chief Executive can also say that, in the Policy Address delivered not long ago, he has already made an undertaking to provide a monthly travelling allowance of \$600 to low-income earners, of whom some might also be people with disabilities. However, is the allowance adequate?

First of all, unemployed people with disabilities cannot be benefited, because the statistics provided by the Census and Statistics Department (C&SD) have revealed that the unemployment rate of people with disabilities has reached 10.5%, or 3.4 times the overall unemployment rate in Hong Kong. Without any fare remission, it will be even harder for people with disabilities to go out looking for jobs. Although some of them might be covered by the Comprehensive Social Security Assistance Scheme, Members should all be aware that they are already living in dire straits. Without further assistance, very often, they can only stay home and they can hardly integrate into mainstream society.

Second, as the details of the transport subsidy scheme have yet to be announced, it is still not known how "low income" will be defined. Deputy President, it is pointed out in a report by the Hong Kong Council of Social Service that, because of a shortage of employment opportunities, people with disabilities mostly engage in low-income jobs, with approximately 40% of them earning a monthly income of less than \$5,500. If "low income" is so defined that it is set at an exceedingly low level under the scheme, many people in practical need can simply not be benefited.

Third, some people with severe disabilities might need escorts to accompany them whenever they go out. This has been mentioned by some Members earlier. For people with disabilities and their companions, the travelling expenses have already constituted a heavy burden and pressure. The Civic Party has been calling for the provision of half-fare concession for the companions of people with disabilities. Only through an indiscriminate method of providing half-fare concessions on all public transport for people with disabilities and their companions can this problem be resolved effectively.

In the speech delivered by me last year in the debate on this motion, I mentioned that, according to "A Guide to Public Transport for People with Disabilities 2009", 51% of the franchised buses are not equipped with wheelchair accessible facilities, and nearly 30% of the buses are not equipped with broadcast and display systems. In the Policy Address this year, the Chief Executive has decided to procure some hybrid buses for bus companies, fund the installation of devices on old buses for lowering emissions, and impose additional green requirements in new franchises when the current franchises expire in the next few years. Of course, these initiatives are all welcomed by us.

However, I cannot help asking this question: Given that the Government can provide funds to assist bus companies in introducing green facilities, can it not also require bus companies to fulfil their corporate responsibilities in the same manner by expeditiously converting their buses to facilitate their use by people with disabilities?

A survey published by the University of Hong Kong a couple of years ago also revealed that transport concessions could effectively lure more people with disabilities to use public transport. For instance, the frequency of people with disabilities taking buses will be increased by 72%. Given that transport concessions can create a win-win situation whereby social integration can be enhanced and the turnover of enterprises can be raised, I very much hope that the Government can throw its heart and soul into promoting such efforts.

Deputy President, I would also like to say a few words about the issue of Rehabus. It was mentioned in the Special Topics Report No. 48 published by the C&SD in 2008 that nearly 160 000 people with limited physical ability in Hong Kong had to be assisted with wheelchairs and ancillary tools. It is also believed that quite a large number of these people have to rely on Rehabus to go to hospital for follow-up consultations. A live example was cited by Dr PAN Pey-chyou just now. However, the Rehabus service in Hong Kong is not adequate, as there are only 109 rehabuses in the territory servicing 560 000 passenger trips per annum. Furthermore, the fixed routes of Rehabus are distributed mainly in various urban areas. Moreover, they can only operate from Monday to Saturday during limited periods in the morning and afternoon every day. No fixed-route Rehabus service is provided after 7 pm.

Deputy President, the transport services required by people with disabilities are an issue of great urgency. I very much hope that, after nine years of debate on this issue, the Government can had good advice, so that it can really satisfy the needs of people with disabilities.

Thank you, Deputy President.

**DR RAYMOND HO** (in Cantonese): Over the past many years, Deputy President, motions related to the transport needs of people with disabilities have been proposed in this Council almost every year. According to the relevant

figures provided by the C&SD, among the 360 000-odd people with disabilities in Hong Kong, about 238 900, or 66.1%, are people with one disability, and the remaining 122 400, or 33.9%, are people with more than one disability. These figures show that people with disabilities are not the absolute minority in society. This is why the difficulties encountered by them in their daily lives, including their transport needs, warrant our attention.

It can be said that the authorities concerned have for years failed to pay attention to the transport needs of people with disabilities. I had been a member of the Hong Kong Red Cross Schools Management Committee for years for the management of five special boarding schools and 11 hospital schools. Through this meaningful voluntary work, I managed to understand more the various needs of people with disabilities in their daily lives and felt the unreasonable neglect rendered them in society.

Although Hong Kong can be said to have one of the world's most convenient, speedy and safest transport networks, people with disabilities in Hong Kong have been unable to enjoy the convenience and accessibility offered by the network, despite the Government's claim to the outside world its commitment to fully realizing the concept of "Transport for All" and implementing a barrier-free transport network for the convenience of all people in Hong Kong, including people with disabilities, for access to different places. Over the years, I have made repeated appeals in this Chamber to urge the MTRCL to make sure that escalators are provided at entrances/exits of all railway stations and adequate lifts provided for the convenience of people with disabilities, and even the elderly in need. Many people have made similar appeals at the top of their voices, too. However, most entrances/exits of railway stations are still not equipped with escalators. Despite years of discussion and exploration, some stations are still not installed with screen doors, or even gates. As a result, there is great disappointment with the Government and the MTRCL.

Let me quote this, "Given that the existing number of low-floor buses is not adequate to meet demands, do the authorities concerned have any plans to provide more low-floor buses? Various franchised bus companies have agreed to procure low-floor buses when ordering new buses." (End of quote) It appears that even the Transport Department has admitted that the existing number of low-floor buses is not adequate to meet demands. In view of this, many wheelchair-bound people with disabilities who wish to take buses often need to

wait for a number of buses until a low-floor one appears. As a result, they have very often found their arrangements upset and their social life greatly affected.

As regards the Rehabus service, although the number of rehabuses has increased over the past several years, and coupled with the six additional Rehabuses purchased with the funds allocated last year, there are only 115 Rehabuses in the entire fleet. I believe the number of rehabuses still falls short of the needs of the relevant people.

Exorbitant transport fees are also another difficulty facing people with disabilities. Although the MTRCL has provided a concessionary fare scheme for CSSA recipients aged 12 to 64 with 100% disability and recipients of Disability Allowance in the same age group, and some ferry routes and green minibuses have also provided limited concessions, exorbitant transport fees have forced the vast majority of people with disabilities to refrain from going out. As a result, these people are still subject to enormous constraints in terms of mobility. We feel very ashamed that we still lag behind the Mainland in many aspects.

Deputy President, people with disabilities are also members of Hong Kong society. We often say that Hong Kong is an advanced city, but what we have done in this aspect is so inadequate. How can we say that we have kept pace with the needs of the times, and how can we feel proud of ourselves in the world? Actually, the needs of people with disabilities in living warrant our attention. The Government can simply not hear without listening or listen without taking concrete actions year after year. It must realize the concept of "Transport for All" with practical actions and refrain from saying one thing and doing another, or making empty promises. With these remarks, I support the motion and the amendments. Thank you, Deputy President.

**MR ALBERT HO** (in Cantonese): Deputy President, I speak in support of Mr LEUNG Yiu-chung's persistent efforts over the past nine years in proposing a motion debate on "Facing up to the transport needs of people with disabilities". Apart from paying tribute to Mr LEUNG, I have to express indignation at the unscrupulous behaviour and cold-bloodedness of some major enterprises,

including the bus companies in Hong Kong, as well as the Government's lack of interest and actions over this issue.

Actually, the so-called "A Society for All" policy proposed by a civilized and advanced community to express its care for people with disabilities in order to promote their integration into society through promoting barrier-free access, striving to provide concessionary transport policies and even providing a variety of modes of transport and facilities for convenient use by people with disabilities should be effectively implemented and launched in a comprehensive manner. However, we are greatly disappointed, and even the people of Hong Kong find it ashamed, that the efforts made in this area in Hong Kong are indeed grossly inadequate, and it is absolutely impossible to manifest the caring spirit boasted by our community.

On this front, it must be pointed out that the MTRCL has done a pretty good job by taking the lead in launching policies to implement half-fare concession. I remember the KMB once remarked that it would consider following suit should the MTRCL be willing to offer concession. However, KMB has failed entirely in living up to the expectations of Hong Kong society and fulfilling its promise. As far as I know, the KMB once indicated that it would study the Octopus fare mechanism, compile statistics on the use of half-fare concession offered by the MTRCL to people with disabilities and then collate the data so collected to assess the profits or losses incurred as a result of introducing a half-fare policy before submitting the findings to the Legislative Council for discussion. But unfortunately, the KMB has so far not done anything to follow up the matter. The bus company has again and again failed to live up to its words and disappointed us.

I said that the Government is lack of interest and actions because, on the one hand, it says that it will not intervene in the commercial decisions of transport operators and, on the other, it says that its role is confined only to co-ordination or lobbying. However, not a single measure has been put in place to effectively press bus companies into introducing concessionary policies. I wonder if the Secretary really thinks in such a simplistic manner, that the Government can only assume a co-ordinating or lobbying role. Is it the case that there is nothing the Government can do if those transport operators are reluctant to act? Actually, as everyone knows, the Government has many powers. It might even exercise its powers when it is not supposed to do so. Very often, the Government would

suppress the people, even when I thought that the Government was not supposed to use such power. Let me cite a simple example, which I have mentioned recently. The "Goddess of Democracy" statue was forcibly snatched by the Food and Environmental Hygiene Department because the Administration said that it had the power to do so. The Administration also demonstrated that it had another power by disallowing vessels seeking to defend the Diaoyu Islands from leaving the territory. Of course, such power is overriding and illegal. However, many lawful powers and policies can be used to induce enterprises to implement some reasonable policies. Why do the authorities concerned fail to do so? For instance, the Secretary can give a brief response in connection with the fuel duty concession currently enjoyed by bus companies. Given the response of the bus companies, why should the Government offer fuel duty concession to them? Why does the Government not levy full fuel duty on them and use the duty collected to support people with disabilities? Do we owe the bus companies anything? Why should they be offered fuel duty concession? The Government can actually exercise these powers. Why does it not make good use of these powers to achieve the effect of benefiting public interest? I hope the Secretary can explain to me later why this is not done and consideration is not given to this and why the Government has failed to implement policies expected by us to benefit people with disabilities.

Of course, many colleagues have talked a lot about such matters as the Rehabus, which is in urgent need of improvement as its existing service is far from adequate. The Government has also requested the Hong Kong Jockey Club Charities Trust to subsidize the Accessible Hire Cars Service. However, we cannot rely on the charity services provided by such organizations. The Government is actually obliged to provide people with disabilities with barrier-free access as well as transport services which can facilitate them in integrating into society. It should not rely solely on some charitable organizations for their assistance, or even grace. In my opinion, the Government has not fulfilled all the fundamental responsibilities it is supposed to. Of course, Mr LEUNG Yiu-chung has also mentioned automatic mechanical gap fillers. If we continue to provide additional facilities like these, we might (*The buzzer sounded*) ..... prolong .....

**DEPUTY PRESIDENT** (in Cantonese): Time is up.

**MR ALBERT HO** (in Cantonese): Alright.

**MS CYD HO** (in Cantonese): Deputy President, nine years have already passed. Every year, we managed to reach an all-party consensus; we all shared the view that all transport operators and the Government should offer assistance to people with disabilities to enable them to integrate into society; and we insisted that these people should live each day like everyone else does. Nevertheless, the progress brought as a result of the all-party consensus reached over the past nine years is actually very little. Honestly, having debated for such a long time, we have spelt out all justifications and data very clearly.

Deputy President, I do not wish to repeat what colleagues have already said. I only wish to highlight one point. Actually, every one of us, regardless of our physical function, needs to get into touch with society, other people and different groups. No one can stay home all by himself. Otherwise, society will suffer losses. People with disabilities and their family members will also face very heavy burdens. I have great admiration for those people who, despite their disabilities, can still strive to live like ordinary people.

Deputy President, both Mr Frederick FUNG and I had difficulty in walking in mid-July this year during the examination of the bill on minimum wage. As both Mr FUNG and I could hardly rush back to this Chamber from other parts of the Legislative Council Building in one minute, this Council made an unprecedented move at that time to extend the time allowed for divisions from one minute to three minutes. I was very grateful to Members for their tolerance. They did not mind waiting for three minutes despite having worked here for such a long time. Thanks to Members' tolerance and the convenience we were allowed to enjoy, Mr Frederick FUNG and I were able to participate fully in the examination of the minimum wage legislation in mid-July and propose amendments. This shows that if the community can offer people with disabilities convenience and assistance, many people with disabilities can still bring their ability into play and serve the community.

Given that the entire Council was able to bring this spirit into play in mid-July, why can society as a whole not offer more assistance and care to people with disabilities? Actually, the construction of a barrier-free city involves more than transport fares. Most importantly, policymakers and influential

organizations and government officials must feel for others and appreciate the hardship facing people with disabilities. This way, early consideration can be given to the needs of different people in different areas in the course of procuring services and carrying out town design and planning.

After all, years of debate have brought a little progress, though it is very little and can hardly be described as satisfactory. For instance, although the MTRCL is currently offering concessions to people with disabilities, its definition of disabilities is very harsh, whereas the KMB has done nothing to follow up. Despite the Secretary's remark that there had been an increase in the number of rehabuses, we found out after listening carefully that the number was actually nearly the same as that of last year. In other words, there were four new rehabuses and \$8 million would be allocated for the conversion of six vehicles. Actually, this is grossly inadequate. This Council has also introduced an improvement measure — sign language interpretation service is provided by a staff member who knows sign language throughout the meeting today. However, I still have one hope. Can sign language interpretation service be provided in this Council from now on to enable people with hearing impairment to get to know the affairs handled by this Council every week and find out what is happening in society?

Lastly, Deputy President, I hope to use the only sign language I know to make a commitment to those people with hearing impairment who are sitting in the public gallery. I will be mindful of working hard in this Council and following up every issue. This is an applause with no sound.

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

**MR LEE WING-TAT** (in Cantonese): Deputy President, a number of colleagues have expressed their views on this issue. Actually, there is not much I would like to add. However, I find that the Government has shown very little concern for people with disabilities in the Policy Address this year. The proposal of establishing the Community Care Fund is meant to seek the public's approval of the efforts made by the Government on this front this time around. Nevertheless, the Government should also be aware that when Donald TSANG ran for the election a couple of years ago, he undertook to the properly developers ..... no, it should be businessmen that profits tax would be reduced by 1%, with

property developers actually being the true target. I was told by Mr Paul CHAN that the 1% cut amounted to more than \$6 billion. In other words, one election has already cost the Government an annual revenue of more than \$6 billion, or more than \$20 billion over a period of four years. On top of the \$5 billion now contributed by the Government, the industrial and commercial sectors will be requested to chip in \$5 billion. Of course, they will be more than willing to make this contribution, for they have paid \$20 billion less over the past four years. Now, the Government is merely collecting \$5 billion from them in one go. Actually, it is easy to see whether the Government has the heart to do anything in this respect, for the calculation is very easy.

There is another figure I would like to mention. During our meeting with Chief Executive Donald TSANG this year, it was mentioned that the Government was expected to have a so-called "windfall revenue" this year because revenue from land sales and stamp duty this year would definitely be tens of billions of dollars higher than expected. While the additional revenue is estimated by me to be at least \$30 billion, Mr Paul CHAN estimated it to be even higher. As Mr Paul CHAN is an accountant, his estimate may be more accurate. So, on the one hand, the Government will have a windfall of \$30 billion to \$40 billion this year, and on the other, we have not made any request for the Government to reduce tax. Yet, there are really a lot of people in need in society, such as the elderly and people with disabilities. How much would be needed if measures to offer transport subsidy were implemented? Even if it would cost the Government several hundreds of million dollars per annum, the so-called "windfall revenue" this year would already bring in tens of billions of dollars. This sum of money would not be exhausted even after two decades. Sometimes, we are really saddened by the Government when conducting debates on such issues.

Secretary Matthew CHEUNG will definitely say that he has made some efforts this year by extending the transport subsidy to all districts of the territory. However, discussions on this have been going on for three or four years before the subsidy scheme is now implemented territory-wide. I have no idea of the additional annual expenditure to be incurred. Perhaps the recurrent expenditure will be increased by several hundreds of million dollars. However, we can be described as very rich. Discounting the \$1,000 billion reserve for supporting Hong Kong dollar, the Government still has a disposable reserve of more than \$400 billion. Even if this sum of money and the principal are not taken into account, the annual return from investment is not a small sum of money. When

everything is factored into the computation ..... I really do not entirely understand what the Government is doing.

Secretary Eva CHENG might say later that the MTRCL, being a listed company, has to make profits, and it is unreasonable to require it to pay that much. The Government is actually putting money into two pockets inside the same purse, for it holds more than 70% of the shares of the MTRCL. If the Government does not feel like it, it can reduce its stake in the MTRCL, which is currently standing at 75%. After all, the share price of the MTRCL has been rising recently at a respectable rate because of the upturn in property stocks, which have risen by \$30. Even if the Government sells 20% or so of its stake so as to reduce its stake in the MTRCL from 75% to 51%, it still has a controlling stake in the MTRCL, and yet it can also make a profit of \$40 billion, according to the tally made by Mr Paul CHAN for me. These figures were worked out instantly during our chat recently.

From every angle, the Government is actually very rich. Of course, the Government will say, "Mr LEE Wing-tat, Honourable Members, our money is spent not only on these people." However, the amount of money spent by the Government on the socially disadvantaged groups, even added together bit by bit, is not large. When it comes to the socially disadvantaged such as the elderly, I was told by Mr WONG Sing-chi that the total amount of money spent on providing an additional 1 000 or so residential care places is trivial, and expenditure on travelling subsidy is also negligible. Despite the Government's claim that expenditure in all areas is quite substantial, we can tell from the figures collected for all areas that the additional expenditure incurred for helping the needy is actually not large. Given that the Government hoards such a generous sum of money, if the money is not used for helping the needy, what use is it for the Government to save so much money? This is why I think that my colleagues are very sincere. I am also very grateful to Mr LEUNG Yiu-chung. Nevertheless, I sometimes feel that we are facing a merciless government. I believe even parliamentary assemblies in overseas countries would find us extremely conservative should they hear how debates are conducted here in this Council.

Let us look at Europe. A strike is now being staged by workers in France just because they are required to work four and a half days and slightly extend their retirement age. This has already stirred up a lot of grievances. Six months ago, similar incidents also took place in Greece. In my opinion, this

Council in Hong Kong has been extremely prudent in handling public expenditure. From a certain angle, I can even describe it as extremely conservative. Not only have we not allowed our Government to raise foreign loans, colleagues have also seldom proposed exhausting our reserves, despite its abundance. Instead, they have only requested the Government to spend a small portion of the reserves. Members have become even more and more conservative by allowing the Government to keep the principal for fear that it will incur losses. Instead, they have merely requested the Government to spend the interest earned. It can be said that such views have become increasingly popular for fear that the Government will use up the principal. As a result, the Government is requested not to spend the \$400 billion. Instead, it can only spend the 5% return made from investment, that is, 5% of the \$400 billion. In general, the Hong Kong Monetary Authority can earn 5% or 6%. As six times four equals 24, not 240 ..... is it more than 200? Sorry, I am not good at mathematics. It should be more than \$20 billion. No matter how the calculation is done, my colleagues have absolutely no intention to knock down the Government and use up the reserves. I do not think any colleague will do so.

This is why sometimes I really feel very angry. Is it the case that the Government will become even more reluctant to listen to advice should this Council behave more gently? Is it the case that the Government will only take action if Members of this Council behave in a more radical and united manner? Should the relations between society, the Legislative Council and the Government come to this pass, it will actually be the Government's sorrow. While the Government refuses to heed our prudent suggestions, it will only accuse us of going too far when we step up our actions and failing to put forth any good ideas. Actually, the Government should examine its own conscience and ask this question: With its abundant reserves, what has it done for people in need, not only people with disabilities but also the elderly and other needy people? Thank you, Deputy President.

**MR LEUNG KWOK-HUNG** (in Cantonese): Deputy President, I was requested by some people with disabilities off the entrance of the Legislative Council Building this morning to display this placard. The reason they asked me to do so is simple — although the MTRCL has agreed to offer half-fare concession to

people with 100% disability, other public transport operators have not followed suit. This is why they want me to display this placard here.

Actually, I was overwhelmed with feelings and sentiments when I heard Mr WONG Kwok-hing sing the song "萬惡淫為首"<sup>2</sup> here begging mercy for people with disabilities. The present situation is really like this. The Government just does whatever it likes. When it walks past us, it treats us as if we are beggars. If it feels like it, it will throw us a penny. Of course, this is not just our sorrow. When some people with disabilities I met today requested me to say something, I asked them what else I could say. Though nine years have passed, the progress made has been so little. How can we muster up sufficient courage to face them?

The only way to resolve the present dilemma is for the Government to exercise its public authority to ensure that transport operators which have been granted franchises or public transport operators which are funded and fully controlled by the Government must fulfil their social responsibility. In any pleas for mercy, to those people granting it, it is the smallest order of sentimental consumption. However, an appeal for rights is different. From the time when a poverty law was enacted in Britain (because the conditions of the poor were really too terrible) to today when the International Covenant on Economic, Social and Cultural Rights (ICESCR) has been put into effect by the United Nations, men have walked a long, long road. However, in this Council today, there is still a mentality of performing for the sake of pleading for mercy. At the same time, the Government gladly revels in the present situation — it is still clinging onto its mentality of giving away alms when faced with this Council and people who are supposed to enjoy every right under the ICESCR. Of course, I am not talking nonsense. All regions or countries which have signed the ICESCR and have a Gross National Product similar to our Gross Domestic Product have already fulfilled such responsibility, whether it is because of the mandatory measures adopted by their governments or commercial organizations wish to exchange for other benefits.

Honourable Members, the Government will launch the Community Care Fund to plead for mercy from capitalists. I wonder if the Government can

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<sup>2</sup> The title of a Cantonese song which means "Of all bad traits, licentiousness is the worst".

enlighten me. Actually, I have raised this matter with Secretary John TSANG for nearly five times. I proposed to him that stamp duty be raised a little bit. I have done some calculations — raising the stamp duty by 0.02% per annum might bring the Government tens of billions of dollars. Yet, the Secretary refused to listen. He has even requested capitalists to take a small sum of money out of their pockets while speculating on stocks. What is the difference between this and begging for alms? There is no mention of obligations. It seems that they have no obligations or responsibilities at all. Instead of imposing obligations on them, the Government is expecting Members of this Council stage performances to beg for mercy. Actually, the Community Care Fund is a "none of my business Fund", right? Those who have paid can then assume that things do not exist as if they cannot be seen. They have already paid, buddy, right? Yes, they have.

Honourable Members, we have so much money to spend. What is more, we can even get abundant resources through introducing progressive profits tax or levying stamp duty. Yet, the Government has told us that it will not do so. It also said that it would not allow capitalists to do anything in breach of commercial principles. The Government has said "no" to everything, hasn't it? Not only has it refused to exercise public authority, it is also reluctant to exercise public authority to levy tax or impose conditions.

My dear friends with disabilities, during the merger of the two railway corporations, the scope was narrowed by the Government to such an extent that we were disallowed from discussing this topic. When conditions were imposed on bus companies on franchise renewal two years ago, the Government did not heed our advice. However, the Government has now chosen to subsidize its "brothers" to install catalytic converters for the NWS Transport Services Limited and other companies operated by them. Buddy, the Government can even act in this manner on the pretext of protecting the environment. May I ask the Government if humans are part of the environment? Without humans, what is the point of protecting the environment? Therefore, the logic is actually very simple. While people begging for mercy might do this out of goodwill, they should not have any hesitation to help the vulnerable. If the Government is incapable of doing so, it should step down and go to bed. What is the difference between this and a servant refusing to rescue his dying master, or someone refusing to care for his dying mother, or a father refusing to raise his new born baby?

Honourable Members, I feel very ashamed. I hope we can launch a fierce attack at the Chief Executive during the next demonstration — by specifying the Chief Executive. The Government will not do anything unless the Chief Executive loses face. We must pinpoint Donald TSANG (*The buzzer sounded*) .....

**DEPUTY PRESIDENT** (in Cantonese): Time is up.

**MR LEUNG KWOK-HUNG** (in Cantonese): ..... and make him lose face in front of the international media.

**DEPUTY PRESIDENT** (in Cantonese): Mr LEUNG Kwok-hung, time is up. Does any other Member wish to speak?

**MR PAUL TSE** (in Cantonese): Deputy President, I would like to add a few points. According to many colleagues, despite nine years of relentless campaigning, we are still campaigning without success. I think that there are only two reasons for this: First, our demand must be fine-tuned; and second, our approach must be fine-tuned. I have often adopted the mindset that we will only get the same result if we use the same method to do something we have often failed to achieve. I have also attempted to think from the angle of the Government and government officials: What difficulties are confronting them? It is very easy to make promises, especially when Members are so united in their request. What makes government officials ..... to put it nicely, they are being prudent, but to put it crudely, they are being stubborn. Why must they act in this manner? Does it have anything to do with money? Perhaps they are worried that, after this policy is made, the Government will have less revenue and be required to provide additional subsidies. Furthermore, it will need to spend more on matching facilities. Besides, will the efficiency of certain modes of public transport be affected? Just as Ms Cyd HO pointed out earlier, at times of injuries, it took Mr Frederick FUNG and her a lot of time to come in to cast their votes.

According to my wild thinking, apart from concern about money, will some transport operators have other concerns about accepting this incentive? Actually, they do not welcome too many people with disabilities to use them for fear that their efficiency might be affected. There might be a lot of negative views like this. Perhaps they are worried that once this door is opened, thereby turning some charities or obligations into rights, the Government will make endless requests. There are always all sorts of similar considerations. However, I think that the Government should exchange views with us frankly to let us know the reasons why the transport operators find it so difficult to offer concessions. Are there any hidden agenda and hardships? This is the first point.

Second, I wonder if the Government has other ways to at least give other transport operators a better impetus to do something, apart from making the MTRCL offer half-fare concession. For instance, can the Government do something about the definition of "people with disabilities" to prevent too many people from enjoying the concession all at once? Regarding the period for offering concessions, is it possible for a trial scheme to be operated during non-peak hours for people with disabilities who are not employed but do not want to be home-stayers to go out to keep social contact and relation? I find Mr Paul CHAN's proposal pretty good. With an annual profit of \$2.3 billion or to \$2.6 billion, the MTRCL dividends can be used for more efforts. Just now, Mr Albert HO also raised the issue of fuel duty. Actually, we should consider many similar duties and concessions. However, I always have the feeling that while we appear to be "pushing forward" relentlessly, the Government has continued to "reject our demands". There must be some problems. I think that the time is now ripe, and there should be no more delay for another year. If the Government can figure out ways to make some small concession, then the first step can be taken and the relevant approach can then be assessed to see if the door can continue to be opened a little bit. This is somehow better than us making a basket of requests here and yet the Government is unwilling to make any concession for fear of bringing endless trouble after offering the concession. This is the first point.

Second, concerning the demands made, if there is no common ground or no concession can be made, then other approaches might need to be used, instead of simply proposing motions. It is indeed necessary to do something else, but what should be done? Of course, other colleagues have more ideas, suggestions, and even actions, than I do. I will let them to be the leaders. However, should

similar motions be again moved in this Council, I am afraid it will be a waste of energy even if we repeat what we have said once again. In this regard, I hope colleagues can demonstrate more creativity, vitality and organizational power than me, apply new methods and mentality to their demands and approaches, and refrain from marking time here.

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): Mr LEUNG Yiu-chung, you may now speak on the two amendments. The speaking time limit is five minutes.

**MR LEUNG YIU-CHUNG** (in Cantonese): I am very grateful to Mr WONG Kwok-hing and ..... excuse me, Deputy President. *(The Member put on his microphone)*

Deputy President, I am very grateful to Mr WONG Kwok-hing and Mr Paul CHAN for proposing amendments, for their amendments have indeed added some points not mentioned in my original motion. Nevertheless, I would like to take this opportunity to tell Mr WONG Kwok-hing that actually I understand, and so do many colleagues, that only 110 000 people with disabilities are eligible for the half-fare concession offered by the MTRCL, whereas other people with disabilities are not eligible. We felt very unhappy on learning this.

We had discussed this issue with people with disabilities and their concern groups whether or not this arrangement was acceptable. We had great struggles because we felt that the arrangement would give rise to two problems or two phenomena. Firstly, this will cause division among people with disabilities, as some people with disabilities can enjoy the concession while some others cannot. Another phenomenon is that some friends basically have no opportunity at all to be included. This is unfair to them. We are fully aware of these two problems.

Nevertheless, as pointed out by a colleague earlier, we have fought for so long. Paul even asked: Does it make any sense to carry on our fight? After eight years of campaigning, we have finally seen a little progress, that is, the MTRCL has agreed to providing half-fare concession. We might end up having nothing, not even the half-fare concession, had I not persisted for eight years. This is why I will persevere with this fight.

Even if no progress is made this year, I will continue with my fight next year, as I have no idea whether there will still be any opportunities for little progress made in other areas. Although I do not necessarily have new ideas, I will definitely persist in fighting.

Just now, Ms Cyd HO said that she found this debate very special because a friend here is providing sign language interpretation for us. I would like to tell Members that the interpreter is a volunteer, and he is not employed by the Legislative Council. He had intended to stand in the public gallery instead of here. However, according to the Rules of Procedure, sign language is regarded as a language, and people wishing to express themselves in language are not allowed to stand there. This made us very embarrassed. What could we do? Subsequently, we came up with a compromise after discussion with Pauline, and the interpreter was arranged to stand here.

Deputy President, what do I actually wish to say? It seems that I have strayed off the subject, but actually I have not.

**DEPUTY PRESIDENT** (in Cantonese): You should speak on the two amendments.

**MR LEUNG YIU-CHUNG** (in Cantonese): Actually, I have not strayed off the subject, why? I wish to point out that our Council is precisely a case in point. As no Member in this Council is a person with disabilities, we have never thought of the needs of people with disabilities, or the need for a sign language interpreter to convey messages.

Today, it is stated clearly in the amendment proposed by Mr WONG Kwok-hing that, in addition to people with 100% disability, other people with disabilities also have such needs, only that we do not realize it.

Actually, I know that Mr WONG Kwok-hing is helping a member of the public to fight for this concession because he is classified as having 50% disability and is not eligible for the half-fare concession offered by the MTRCL. The problem precisely lies here — some people really cannot realize or appreciate the needs of people with disabilities. Our Council is a living example. This is why I have cited this example to illustrate my point.

I hope everyone can understand that people with disabilities actually have many needs. Normal people can actually not realize or appreciate their needs. I hope we can be more understanding. Just now, I invited two Bureau Directors to join me on a bus ride. This is a case in point. I hope they can realize the needs of people with disabilities from this angle. We must appreciate the plight of people with disabilities, otherwise, the problem cannot be resolved.

The issue we are discussing today involves many areas in addition to half-fare concessions. I have to thank Mr Paul CHAN for proposing to resolve the problem with dividends. This is very important, a point I have never mentioned before. I hope the Government and the MTRCL can study this proposal. If not, I will definitely heed this proposal and raise it again next year.

Anyhow, many colleagues are tired of this boring topic. I hope I would not have to raise it for discussion again next year. However, it appears that the chance is very slim because the Secretary insisted earlier that the Government would encourage public transport operators to make some efforts. How can the Government succeed if only encouragement will be given? If it did not work over the past eight years, how can it succeed in the ninth by giving mere encouragement?

In view of this, I hope Members will support my original motion and all the amendments. I so submit.

**SECRETARY FOR TRANSPORT AND HOUSING** (in Cantonese): Deputy President, I would like to thank Honourable Members for their views. I will now give my response in relation to the transport policy as follows.

For purpose of making sustained improvements to the provision of public transport facilities and services for people with disabilities, the Transport Department and the Labour and Welfare Bureau join us in holding a "Working Group on Access to Public Transport by People with Disabilities" (the Working Group) meeting once every three to four months with 18 disabled groups and various major public transport operators to listen to the views of relevant groups. Since its establishment, the Working Group has been assisting the Administration and public transport operators in suitably introducing and replacing public transport facilities and services for the implementation of a barrier-free transport system and upholding of the vision of "Transport for All" to facilitate all people in Hong Kong, including people with disabilities, in travelling to different places. I would like to take this opportunity to brief Members on the progress of the relevant projects.

(THE PRESIDENT resumed the Chair)

On franchised buses, several major franchised bus companies have implemented plans to procure wheelchair-accessible buses when procuring new buses. Over the past year, approximately 260 super low-floor buses with access ramps were procured by various franchised bus companies, thus raising the number of such buses to nearly 3 200, or 55% of the entire fleet. Various franchised bus companies will continue to procure super low-floor buses with access ramps to facilitate access of wheelchair-bound passengers.

In addition, the entire fleets of buses operated by the KMB and the Long Win Bus Company Limited have already been retrofitted with the Bus Stop Announcement System for the convenience of passengers, especially the blind. According to a contract granted by the Citybus Ltd in the first half of 2010, the installation of the Bus Stop Announcement System on its entire fleet of franchised buses serving the whole territory and cross-harbour routes, that is, approximately 760 buses, is expected to be completed within 2011. If the System proves to work well, the franchised fleet operated by the Citybus Ltd in North Lantau and the Airport, that is, approximately 170 buses, and the fleet operated by the New World First Bus Services Ltd, that is, approximately 700 buses, will also be retrofitted with the Bus Stop Announcement System in phases.

On the provision of platform screen doors and platform gates, 30 underground MTR stations were already retrofitted with platform screen doors by the former MTRCL in 2006 before the merger. As regards the remaining ground level and elevated MTR stations, the MTRCL has already commenced works on retrofitting automatic platform gates at these stations in phases. The relevant works will be brought forward by one year for completion within 2011.

As regards East Rail stations, we appreciate the public's aspiration for installing automatic platform gates. However, the installation of facilities in any of the railway systems must take into account the operational safety of railway services and the impact on such services. The trial scheme implemented by the MTRCL on automatic mechanical gap fillers for the installation of platform gates has already completed. The data collected during the trial scheme indicate that the reliability of the relevant system is unsatisfactory. Moreover, the operation of the system has also led to additional platform dwell time and longer journey time as a whole. In addition, the installation of automatic platform gates and automatic mechanical gap fillers involves some technical difficulties. As a result, the signalling system and trains might need to undergo large-scale upgrading works. The MTRCL is actively conducting studies to resolve the relevant problems. We have been following up the matter with the MTRCL with a view to expeditiously finding proper solutions.

In addition to public transport facilities, we appreciate Members' grave concern about the provision of fare concessions for people with disabilities. Apart from regulating basic fares, we have always encouraged public transport operators to, having regard to various factors, including the overall socio-economic environment, market conditions, operational situation of transport operators and the needs of commuters, to provide fare concessions as far as possible, so as to lower the public transport expenses borne by members of the public, including people with disabilities. At present, major public transport operators are providing a variety of fare concessions to commuters, including fare concessions specifically for people with disabilities.

After heeding the advice of various sectors, especially having regard to the need to adopt an objective identification standard and the definition of "transport supplement recipients", the MTRCL has, since 22 December 2009, started offering fare concessions to people with disabilities who are recipients of Comprehensive Social Security Assistance aged 12 to 64 with 100% disability

and recipients of Disability Allowance in the same age group because these people are the most in need of incentive and assistance. People with disabilities holding Personalized Octopus cards with "Persons with Disabilities Status" can enjoy fare discount of about 50% on all MTR commuter lines, Light Rail routes and MTR Bus services. As of 30 September 2010, about 78 000 Personalized Octopus cards with "Persons with Disabilities Status" have already been issued by the MTRCL.

People with disabilities can also enjoy fare concessions when using services provided by certain ferry routes and green minibus services. While fare discounts ranging from 10% to 50% are offered to people with disabilities on 19 ferry routes, a fare discount of about 15% is offered on three green minibus routes.

Furthermore, various major public transport operators, including the MTRCL, franchised bus operators, major ferry service operators, trams, peak trams and some Public Light Bus operators, support the annual International Disabled Day and offer one-day free rides for people with disabilities. This year, free rides will be offered on 21 November.

In line with the spirit of free enterprise, the provision of fare concessions is a commercial decision of individual public transport operators. We are mindful of the need for the operators to keep their fares at reasonable levels while maintaining their operational and financial capabilities to provide proper and efficient public transport services. If the Administration mandates the public transport operators to provide specific types of fare concession for specific groups of passengers, the financial impact on the operators will eventually be reflected in the fares. Therefore, we will consider very carefully the view concerning the inclusion of specific provisions in franchises.

We fully appreciate the appeal by disabled groups for franchised bus companies to provide fare concessions for people with disabilities. The proposal was also discussed by the Labour and Welfare Bureau, the Transport and Housing Bureau, the Transport Department and disabled groups in a joint meeting held by the Legislative Council Panel on Transport and Panel on Welfare Services on 29 June 2010 and a Working Group meeting held on 6 July 2010. We appreciate the aspirations of people with disabilities and hope to come up with a feasible and sensible proposal through joint discussions. Following the two meetings, it was agreed in a meeting held in October that we should first explore

the feasibility of using the existing Octopus system to collect data on the expenses incurred by people with disabilities in taking buses for reference. We are now discussing with franchised bus operators ways to follow up the collection of such data.

As regards the proposal raised by a Member for the Government to set aside a certain percentage of the cash dividends received from the MTRCL each year to subsidize the transport fares of people with disabilities, the cash dividends received by the Government from the MTRCL are accounted as part of the Government's general revenue under section 3 of the Public Finance Ordinance (Cap. 2). Such revenue will be spent on the public at large through various policy areas. The Government will give holistic consideration to utilization of resources before making suitable deployments. The provision of fare concessions involves public money, and so adequate justifications are required before fare concessions can be introduced. Moreover, consideration must be given to allocation restrictions and the priorities of various welfare services. The Labour and Welfare Bureau keeps a constant watch on the well being of people with disabilities and has introduced many measures to support them.

Later on, the Secretary for Labour and Welfare will give his response in relation to his policy area. Thank you, President.

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): President, I would like to thank Members for putting forward a lot of valuable and constructive views on the transport needs of people with disabilities earlier in the debate. Now I am going to give a more detailed response in relation to two areas, namely the Rehabus service and the subsidy for people with disabilities in need to procure electrical wheelchairs.

As the scope of service and facilities provided by bus and railway networks have continued to improve and transportation connecting various parts of the New Territories has become more and more convenient in recent years, more modes of transport are now available for people with disabilities to choose from when they go out. Within the ambit of welfare services, I will continue to uphold the concept of "Transport for All" and, having regard to the transport needs of people with disabilities experiencing difficulty in using public transport,

fight for resources to procure new vehicles and replace the old ones to further enhance and improve the Rehabus service.

In fact, during the past three fiscal years, the Government has procured 20 new vehicles for the Rehabus fleet. In 2010-2011, we will procure four new vehicles to increase the fleet to 119 vehicles. Apart from enhancing the dial-a-ride service, three of the four new rehabuses will also be deployed to run scheduled routes service to meet the needs of people with disabilities on the waiting list, including servicing people with disabilities living in new towns and remote areas. The carrying capacity of the Rehabus fleet has increased from 590 000 passenger trips in 2006 to nearly 680 000 in 2009. With the expansion of the Rehabus fleet, it is estimated that the capacity of Rehabus will increase to over 720 000 passenger trips in 2010.

Apart from procuring new vehicles and replacing the existing ones, the Rehabus will continue to consolidate its present routes to meet the needs of users. At present, the scope of service provided by Rehabus covers Hong Kong, Kowloon and the New Territories, including remote areas, new towns and even rural areas such as Tung Chung, Tuen Mun, Tin Shui Wai, Tseung Kwan O, and so on. Currently, 59 of the 73 scheduled routes are serving new towns, including Tin Shui Wai, Ma On Shan, Tseung Kwan O, Tuen Mun, and more remote areas, such as Pat Heung, Kwu Tung, Ho Sheung Heung, and so on, to provide services required by people with disabilities in need. The Rehabus dial-a-ride service is not subject to any geographical and time restrictions. Arrangements can be made completely in accordance with the special needs of individual applicants.

Apart from procuring new vehicles, the Government is also replacing older rehabuses. Over the past three fiscal years, the Government has replaced more than 37 rehabuses. With the procurement of four new vehicles and replacement of six old ones, the average age of the Rehabus fleet will fall from 5.8 years in 2006 to 4.7 years, and the service quality of rehabuses will be further upgraded.

In addition, my colleagues from the Transport Department, who are responsible for overseeing the operation of the Rehabus service, will continue to employ their expertise and experience to conduct constant reviews of the operational arrangements of Rehabus, such as the number of vehicles of the Rehabus fleet, bus routes, mode of service, and so on, as well as making

recommendations on service improvement in various areas, with a view to ensuring the continuous upgrading of the standard of service provided by Rehabus.

Apart from Rehabus, since the commissioning of the barrier-free Hire Car service, also known as the Accessible Hire Car (AHC) service, funded by the Hong Kong Jockey Club Charities Trust, in October 2008, the passenger volume has risen to more than 211 000 passenger trips. This provides people with disabilities one more option in addition to ordinary transport services. The 20 AHC vehicles can provide around-the-clock personalized transport services for wheelchair users to facilitate their contact with their family members and the community, thereby promoting their full integration into society.

On subsidizing people with disabilities in need to procure electrical wheelchairs, under the CSSA Scheme, CSSA recipients with disabilities can, on the recommendation of healthcare personnel, be granted a special allowance to pay for the procurement of electrical wheelchairs to meet their special needs. Furthermore, eligible people with disabilities can apply to different funds, such as the Yan Chai Tetraplegic Fund, Samaritan Fund, Ho Kam Yung Foundation, Li Po Chun Charitable Trust Fund, Tang Shiu Kin and Ho Tim Charitable Fund, Kwan Fong Charitable Foundation, Brewin Trust Fund, and so on, to purchase rehabilitation equipment such as electrical wheelchairs.

The Government will continue to achieve the objective of its rehabilitation policy to provide the services required by people with disabilities to enable them to participate in various social activities with equal opportunities. It will also continue to review and improve transport services and relevant facilities to provide people with disabilities with the support they need for full integration into the community.

President, I so submit. Thank you.

**PRESIDENT** (in Cantonese): I now call upon Mr WONG Kwok-hing to move the amendment to the motion.

**MR WONG KWOK-HING** (in Cantonese): President, I move that the amendment, as printed on the Agenda, be passed.

**Mr WONG Kwok-hing moved the following amendment: (Translation)**

"To add ", as the Government advocates the cultivation of a people-oriented, loving and caring social culture, and in retrospect," after "That"; to add "all" after "transport facilities for"; to add "in Hong Kong" before "and offer of concessionary transport fares"; to add "and even though some public transport operators have given effect to the motions, they only do so in an unfair and selective manner," after "give effect to the motions,"; to add "take the lead to" after "determination to"; to delete "and" after "implementing" and substitute with "in those public transport operators with the Government as the major shareholder and set an example for"; to delete "for people with disabilities" after "fare concessions on public transport" and substitute with "which covers all people with disabilities in Hong Kong, including those with different degree of disability"; to delete "them" after "major public transport operators to offer concessionary fares to" and substitute with "all people with disabilities in Hong Kong"; and to add "in Hong Kong" after "on public transport for all people with disabilities"."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr WONG Kwok-hing to Mr LEUNG Yiu-chung's motion, be passed.

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

(Members raised their hands)

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

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the amendment passed.

**PRESIDENT** (in Cantonese): Mr Paul CHAN, as Mr WONG Kwok-hing's amendment has been passed, you may now move your revised amendment. You may speak for three minutes to explain the revised terms in your amendment.

**MR PAUL CHAN** (in Cantonese): President, I move that Mr LEUNG Yiu-chung's motion as amended by Mr WONG Kwok-hing be further amended by my revised amendment. As the details have already been distributed to Members, I will not repeat them here. Thank you.

**Mr Paul CHAN moved the following further amendment to the motion as amended by Mr WONG Kwok-hing: (Translation)**

"To add "(e) to set aside a certain percentage of the cash dividends received from the MTR Corporation Limited each year to subsidize the transport fares of people with disabilities;" after "new towns;"; to delete the original "(e)" and substitute with "(f)"; to delete the original "(f)" and substitute with "(g)"; to delete the original "(g)" and substitute with "(h)"; to delete the original "(h)" and substitute with "(i)"; and to delete the original "(i)" and substitute with "(j)"."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That Mr Paul CHAN's amendment to Mr LEUNG Yiu-chung's motion as amended by Mr WONG Kwok-hing be passed.

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

(Members raised their hands)

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

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the amendment passed.

**PRESIDENT** (in Cantonese): Mr LEUNG Yiu-chung, you still have 15 seconds for your reply.

**MR LEUNG YIU-CHUNG** (in Cantonese): President, just now, I did not have time to say this: Some people with hearing impairment have told me that they encounter great difficulty in communication when they go to hospital for consultation because healthcare personnel do not know sign language. I hope the Secretary can reflect this to Secretary Dr York CHOW to see whether it is possible for sign language interpretation service to be provided in clinics or hospitals to enable the hearing impaired to communicate with healthcare personnel, thereby making life easier for them. I hope Members can support this. Thank you, President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by Mr LEUNG Yiu-chung, as amended by Mr WONG Kwok-hing and Mr Paul CHAN, be passed.

**PRESIDENT** (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by

functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion as amended passed.

### **NEXT MEETING**

**PRESIDENT** (in Cantonese): I now adjourn the Council until 11.00 am on Wednesday, 27 October 2010.

*Adjourned accordingly at twenty-five minutes to Ten o'clock.*



## Appendix I

## WRITTEN ANSWER

**Written answer by the Secretary for Commerce and Economic Development to Ms Miriam LAU's supplementary question to Question 2**

As regards the number of visitors coming to Hong Kong for green tourism, the Hong Kong Tourism Board has been conducting sample surveys on places visited by overnight visitors. Total visitor arrivals and overnight visitor arrivals in the past three years are set out below:

	2007	2008	2009
Total visitor arrivals	28.2 million	29.5 million	29.6 million
Overnight visitor arrivals	17.2 million	17.3 million	16.9 million

Based on the outcome of the afore-mentioned surveys, the percentage of overnight visitors who have visited our countryside, such as Lantau Island (excluding the Hong Kong International Airport, Hong Kong Disneyland and AsiaWorld-Expo), Cheung Chau, Lamma Island, Sai Kung, Hong Kong Wetland Park and country parks, and so on, over the past three years is estimated as follows:

<i>Source markets of overnight visitors</i>	2007	2008	2009
(i) Long-haul markets (including the Americas; Europe, Africa and the Middle East; and Australia, New Zealand and South Pacific)	20%	23%	27%
(ii) Short-haul markets (including North Asia; South and Southeast Asia; Taiwan; and Macao)	11%	13%	16%
(iii) Mainland China	7%	7%	7%
All countries/territories	11%	12%	13%

Natural scenery is an important element of our diverse tourism appeal. We will continue to strengthen the promotion of green tourism with a view to reinforcing Hong Kong's position as a preferred travel destination in the region.

**Appendix II****WRITTEN ANSWER****Written answer by the Secretary for Food and Health to Mr Frederick's FUNG supplementary question to Question 4**

As regards the inclusion of healthy eating culture into formal school curriculum, leading a healthy lifestyle is one of the seven goals of the Hong Kong school curriculum. At present, topics and learning activities relevant to healthy eating have been infused in various subjects including Physical Education, General Studies, Science subjects, Liberal Studies, Technology and Living, and so on. The Education Bureau, also in collaboration with the Department of Health (DH), launched the "EatSmart@school.hk" Campaign, which comprises of "EatSmart School Accreditation Scheme", "School Policy on Healthy Eating", "Healthy Lunch", "Healthy Snack", and so on; currently 171 primary schools are participating in these schemes.

On the other hand, the Leisure and Cultural Services Department (LCSD) has implemented since May 2001 the School Sports Programme (SSP) in collaboration with Education Bureau and various National Sports Associations (NSAs) to provide students of primary, secondary and special schools with sports information and sports training. The main objectives of the SSP are:

- (a) to enrich the lives of students;
- (b) to provide opportunities for students to participate in sports activities constantly;
- (c) to raise the standard of sports among students;
- (d) to train more sports volunteers;
- (e) to encourage students to participate in sports activities and voluntary services related to sports; and
- (f) to foster a sporting culture.

The SSP consists of seven subsidiary programmes/schemes, namely the Sport Education Programme, the Easy Sport Programme, the Outreach Coaching Programme, the Badges Award Scheme, the Joint Schools Sports Training Programme, the Sport Captain Programme, and the sportACT Award Scheme. These programmes/schemes provide a wide range of activities, including sports demonstrations, guided tours to sports venues and on-site viewing of international

competitions of high standard for arousing students' interest in sports, basic sports training, as well as special training and badges assessments for enhancing sports skills. The SSP also provides training for sports volunteers and administration personnel to assist schools and NSAs in the organization of activities. Students participating in the SSP will be provided with training in many aspects which will eventually help them build up a healthy and active lifestyle.

To further encourage students to regularly take part in sports activities and to establish a healthy lifestyle, the LCSD has been working closely with the DH in the past few years by attending district meetings of school principals to promote the importance of healthy eating and participation in sports to students. The LCSD also launched the sportFIT Award Scheme in 2007 to encourage students to train their bodies and enhance their physical fitness for a better health and physique. Concerning publicity, the LCSD invites representatives of the DH to attend a series of SSP promotional activities and prize presentation ceremonies every year in order to disseminate the benefits of sports and information on healthy eating habits to students and teachers.

After years of effort, the LCSD has witnessed continuous growth in the number of SSP participating schools and students. In 2001-2002, over 570 schools participated in 1 180 activities of the SSP, with a total attendance of 230 000 students. In 2009-2010, a total of 1 065 schools (about 90% of schools in Hong Kong) participated in over 7 700 activities of the SSP, with a total attendance of over 600 000 students.

The LCSD will continue to provide diversified sports activities for students with a view to maintaining the school participation rate at above 90%, and will continue to co-operate with the DH and Education Bureau in the promotion of healthy eating and participation in sporting and physical activities among students.